

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PA 19103-2029

EXPEDITED PENALTY
ACTION AND
CONSENT AGREEMENT
DOCKET NO. CAA-03-2015-0090

RESPONDENT

Union Carbide Corporation
437 MacCorkle Avenue, SW
South Charleston, WV 25303

RECEIVED
2015 APR 30 AM 7:21
REGIONAL HEARINGS CLERK
EPA REGION III, PHILA. PA

MAY 1-2015

FACILITY

Union Carbide Institute Plant
WV State Route 25
Institute, WV 25112

On November 18, 2014, an authorized representative of the EPA conducted an inspection of the subject facility to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the Clean Air Act (the Act or CAA). EPA found that the Respondent had violated regulations implementing Section 112(r) of the Act by failing to comply with the regulations, as more fully alleged in the attached RISK MANAGEMENT PROGRAM, INSPECTION FINDINGS, ALLEGED VIOLATIONS AND PROPOSED PENALTY SHEET (FORM), which is hereby incorporated by reference.

The parties enter into this Expedited Penalty Action to settle the civil violation set forth above for a penalty of \$2,000. This Expedited Penalty Action commences and concludes this action pursuant to Sections 22.13(b), and 22.18(b)(2), and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. § 22.13(b), and 22.18(b)(2), and (3). This Expedited Penalty Action and Consent Agreement is being entered into by the United States Environmental Protection Agency, Region 3 (EPA), by its duly delegated official, the Director, Hazardous Site Cleanup Division, and by Respondent pursuant to Section 113(a)(3) and (d) of the Act, 42 U.S.C. § 7413(a)(3) and (d).

The settlement is subject to the following terms and conditions.

The Respondent consents to the assessment of the penalty stated above. The settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the seriousness of the violation and the other factors provided in CAA Section 113(e)(1) and EPA's Combined Enforcement Policy for CAA Section 112(r) Risk Management Program dated June 20, 2012. The Respondent certifies that it has corrected the violation set forth in the Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet. The Respondent also certifies that, since its last Risk Management Plan update required pursuant to 40 C.F.R. § 68.190, it has not done either of the following: (a) introduced a new regulated substance at the facility in an amount greater than its threshold quantity; or (b) introduced a new process which uses a regulated substance in an amount greater than its threshold quantity. Further, the Respondent agrees that it shall, within 15 calendar days of receipt of an executed copy of this Expedited Penalty Action, make payment of \$2,000 in one of two forms: 1) electronic funds transfer (EFT) or 2) a cashier's check or certified check payable to the "US Environmental Protection Agency", with the Docket Number, located at the top right-hand corner of the Expedited Penalty Action, and "Chemical Accident Prevention Provisions - 112(r)" referenced on the check.

Payment of the penalty amount by EFT to: Federal Reserve Bank of New York
ABA 021030004
Account 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D68010727 Environmental Protection Agency"

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Payment of the penalty amount by regular US Postal Service shall be sent via certified mail to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Payment of the penalty amount by overnight mail (FedEx or other non-US Postal Service express mail) shall be sent to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The Respondent shall also send a copy of the EFT confirmation or check via certified mail to:

Michael Welsh, P.E.
RMP Coordinator
U.S. EPA, Region III (3HS61)
1650 Arch Street
Philadelphia, PA 19103-2029

Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

The payment made pursuant to this Expedited Penalty Action is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and, therefore, Respondent shall not claim it as a tax deductible expenditure for purposes of federal, state or local law. This Expedited Penalty Action resolves only the civil claims for the specific violation alleged in the attached Risk Management Program, Inspection Findings, Alleged Violations and Proposed Penalty Sheet. Furthermore, EPA reserves the right to commence an action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules. Further, EPA reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Expedited Penalty Action, following its filing with the Regional Hearing Clerk.

Respondent neither admits nor denies the allegations set forth in the attached Risk Management Program, Inspection Findings, Alleged Violations and Proposed Penalty Sheet, but admits that jurisdiction has been established for this Penalty Action. Also, upon EPA final approval of the Expedited Penalty Action, Respondent expressly waives its right to contest the allegations, to a hearing under Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), and to appeal this Order under Section 113 (d)(4) of the Act, 42 U.S.C. § 7413(d)(4). Moreover, in entering into this Consent Agreement, the Respondent agrees to bear its own costs and attorney's fees related to this Expedited Penalty Action.

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ACCEPT THE PROPOSED PENALTY

I/we consent to the proposed penalty.

DECLINE THE PROPOSED PENALTY

I/we decline the proposed penalty. If you choose to decline this proposed penalty, check the box. You may be subject to formal enforcement action and, in that event, will have an opportunity to a hearing related to any subsequent penalty assessment.

COST OF COMPLIANCE

Respondent certifies that it has expended \$ 135.00 ^{MW} ^{3/31/15} to correct the alleged violation and to come into compliance.

EFFECTIVE DATE

This Expedited Penalty Action will be effective upon filing.

The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Expedited Penalty Action and to legally bind the party whom he or she represents to this Expedited Penalty Action.

Signature  Date: 3/2/2015

Name and Title (print) Vice President and Site Leader, West Virginia Operations

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SIGNATURE BY COMPLAINANT:



Date: _____

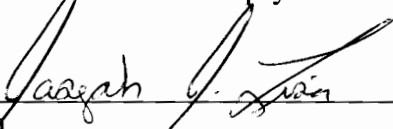
APR 29 2015

Cecil Rodrigues, Director
Hazardous Site Cleanup Division

FINAL ORDER

Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, and having relied upon the representations of the parties set forth in the Consent Agreement, I have determined that the penalty assessed herein is based on a consideration of the factors set forth in CAA Section § 7413(e)(1) and EPA's Combined Enforcement Policy for CAA Section 112(r) Risk Management Program dated June 20, 2012.

THEREFORE, the foregoing Consent Agreement is hereby approved and incorporated by reference into the Final Order. The Respondent is ORDERED to pay the civil penalty as set forth in the Consent Agreement.



Date: _____

April 30, 2015

Joseph J. Lisa
Regional Judicial Officer