



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2019 JUN 25 AM 8:11
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:)	
)	
UNION CARBIDE CORPORATION)	DOCKET NO. CAA-06-2019-3330
SEADRIFT, TEXAS)	
)	
RESPONDENT)	
_____)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and Union Carbide Corporation (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations contained herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall only resolve the Respondent's liability for Federal civil penalties for those violations and facts which are set forth herein.

5. The Respondent consents to the issuance of the CAFO, to the assessment and payment of the civil penalty in the amount and by the method set forth in this CAFO, and the conditions specified in the CAFO.

6. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement, to execute it, and to legally bind that party to it.

7. This CAFO shall apply to and be binding upon the Respondent, its officers, directors, servants, employees, agents, authorized representatives, successors and assigns.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

8. Union Carbide Corporation (Respondent) is a New York corporation authorized to do business in Texas.

9. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as "an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency of the United States and any officer, agent, or employee thereof."

10. The Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

11. The Respondent owns and operates a manufacturing facility located at 7501 State Highway 185 North, Seadrift, Texas 77983.

12. Stationary source” is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C.

§ 7412(r)(2)(C), and 40 C.F.R. § 68.3 as meaning:

any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

13. The Respondent’s facility identified in Paragraph 11 is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

14. The Respondent is the owner and/or operator of the stationary source identified in Paragraph 11.

15. The following substances are each a “regulated substance”, as set forth in 40 C.F.R. § 68.130:

- A. Ammonia (Anhydrous);
- B. Butene;
- C. 1-Butene;
- D. Ethylene [Ethene];
- E. Ethylene Oxide [Oxirane];
- F. Isopentane [Butane, 2-methyl-];
- G. Methane;
- H. Propylene [1-Propene];
- I. Propylene Oxide [Oxirane, methyl-];
- J. Titanium Tetrachloride [Titanium Chloride (TiCl₄) (T-4)-]; and
- K. Vinyl Acetate Monomer [Acetic Acid Ethenyl Ester].

16. “Process” is defined in 40 C.F.R. § 68.3 as meaning

any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of activities. For the purpose of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

17. The Respondent has the following processes at the stationary source identified in

Paragraph 11:

- A. Site Services Logistics;
- B. Ethanolamines;
- C. LP-1 Reaction;
- D. Oxide Glycol;
- E. LP-2;
- F. HP-2;
- G. Catalyst;
- H. Environmental Operations; and
- I. Glycol Ethers.

18. 40 C.F.R. § 68.130 specifies the following threshold quantities for the regulated

substances listed below:

- A. Ammonia (Anhydrous) – 10,000 pounds;
- B. Butene – 10,000 pounds;
- C. 1-Butene – 10,000 pounds;
- D. Ethylene [Ethene] – 10,000 pounds;
- E. Ethylene Oxide [Oxirane] – 10,000 pounds;
- F. Isopentane [Butane, 2-methyl-] – 10,000 pounds;
- G. Methane – 10,000 pounds;
- H. Propylene [1-Propene] – 10,000 pounds;
- I. Propylene Oxide [Oxirane, methyl-] – 10,000 pounds;
- J. Titanium Tetrachloride [Titanium Chloride (TiCl₄) (T-4)-] – 2,500 pounds; and
- K. Vinyl Acetate Monomer [Acetic Acid Ethenyl Ester] – 15,000 pounds.

19. The Respondent has exceeded the threshold quantity for one or more of the regulated substances listed in Paragraph 15 at each of the processes identified in Paragraphs 17.

20. “Covered process” is defined in 40 C.F.R. § 68.3 as meaning “a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.”

21. Each of the processes identified in Paragraph 17 is a “covered process” as that term is defined by 40 C.F.R. § 68.3.

22. The covered processes identified in Paragraphs 17 and 21 are subject to the “Program 3” requirements of the RMP regulations and must, among other things, comply with the Program 3 Prevention Program of 40 C.F.R. Part 68, Subpart D.

23. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d), authorizes EPA to bring an administrative action for penalties that exceed \$378,852¹ and/or the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that the matter is appropriate for administrative action.

24. EPA and the U.S. Department of Justice have jointly determined that the Complainant can administratively assess a civil penalty even though the alleged violations have occurred more than twelve (12) months prior to the initiation of the administrative action.

25. On or about January 30, 2017 – February 3, 2017, representatives of EPA conducted an inspection of the Respondent’s facility.

26. On or about May 16, 2018, EPA issued a CAA Section 114 Information Request Letter (Information Request) to the Respondent pursuant to Section 114 of the CAA, 42 U.S.C. § 7414.

27. On or about July 6, 2018, the Respondent submitted its Response to the Information Request.

¹ The maximum penalty that can be assessed (without a waiver) under Section 113 of the Clean Air Act was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$378,852 for violations that occurred after November 2, 2015 and where penalties are assessed on or after January 15, 2019.

B. VIOLATIONS

Count One – Failure to Note Certain Information in RMP

28. 40 C.F.R. § 68.30(a) & (b) provide that the owner or operator shall estimate in the RMP the population within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in 40 C.F.R. § 68.22(a). Population shall include residential population. The presence of institutions (schools, hospitals, prisons), parks and recreational areas, and major commercial, office, and industrial buildings shall be noted in the RMP.

29. 40 C.F.R. § 68.165(a)(2) & (b)(12) provide that the owner or operator of Program 2 and 3 processes shall submit the public and environmental receptors within the distance to the endpoint on one alternative release scenario for each regulated toxic substance held above the threshold quantity in the RMP information for Program 3 processes [defined in 40 C.F.R. § 68.22(a)].

30. “Public receptor” is defined in 40 C.F.R. § 68.3 meaning “offsite residences, institutions (e.g., schools, hospitals), industrial, commercial, and office buildings, parks, or recreational areas inhabited or occupied by the public at any time without restriction by the stationary source where members of the public could be exposed to toxic concentrations, radiant heat, or overpressure, as a result of an accidental release.”

31. On or about December 15, 2016, the Respondent submitted an RMP to EPA.

32. The Respondent failed to note certain information in its December 15, 2016 RMP.

33. The Respondent failed to note certain information in its December 15, 2016 RMP.

34. Therefore, the Respondent violated 40 C.F.R. §§ 68.30(b) and 68.165(b)(12) by failing to note certain information in its December 15, 2016 RMP.

Count Two – Failure to Provide Accurate Maximum Quantity of Regulated Substances in RMP

35. 40 C.F.R. § 68.160(b)(7) provides that the owner or operator shall include in its RMP, for each covered process, the maximum quantity of each regulated substance in the process (in pounds) to two significant digits.

36. On or about December 15, 2016, the Respondent submitted an RMP to EPA.

37. The December 15, 2016 RMP listed the maximum quantity of butene in the Site Services Logistics process as 4,509,000 pounds.

38. Information obtained from the Respondent during the January 30, 2017 – February 3, 2017 EPA inspection shows that the maximum intended inventory of a certain regulated substance in the Site Services Logistics process as a certain amount (pounds).

39. Information obtained from the Respondent during the January 30, 2017 – February 3, 2017 EPA inspection shows the current site inventory of a certain regulated substance in the Site Services Logistics process as a certain amount (pounds).

40. Information obtained from the Respondent during the January 30, 2017 – February 3, 2017 EPA inspection shows the maximum intended inventory of a certain regulated substance in the Glycol Ethers process as a certain amount (pounds).

41. The December 15, 2016 RMP does not list a certain regulated substance in the Glycol Ethers process.

42. The Site Services Logistics process is a “covered process” as that term is defined by 40 C.F.R. § 68.3.

43. The Glycol Ethers process is a “covered process” as that term is defined by 40 C.F.R. § 68.3.

44. Therefore, the Respondent violated 40 C.F.R. § 68.160(b)(7) by failing to include in its RMP the correct maximum quantity of a certain regulated substance in the Site Services Logistics process and the amount of a certain regulated substance in the Glycol Ethers process.

Count Three – Failure to Update Certain Process Safety Information

45. 40 C.F.R. § 68.65(a) and (d)(1)(ii) provide that in accordance with the schedule set forth in § 68.67, the owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by the rule. The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances. This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process. Information pertaining to the equipment in the process shall include piping and instrument diagrams (P&ID's).

46. 40 C.F.R. § 68.75(d) provides that if a change covered by 40 C.F.R. § 68.75 results in a change in the process safety information required by 40 C.F.R. § 68.65, such information shall be updated accordingly.

47. On or about October 24, 2016, the Respondent initiated a Management of Change (MOC) [MOC SL20106003] related to the installation of a new tank.

48. On or about the month of January 2017, a new tank was installed.

49. On or about February 26, 2017, a new tank was put into service.

50. The new tank is part of the Site Services Logistics process.

51. The Site Services Logistics process is a “covered process” as that term is defined by 40 C.F.R. § 68.3.

52. The Respondent failed to update the relevant P&ID showing the new tank until June 2017.

53. Therefore, the Respondent violated 40 C.F.R. §§ 68.65(d)(1)(ii) and 68.75(d) by failing to timely update a P&ID showing a certain new tank.

Count Four – Failure to Retain Complete Copies of Process Hazard Analyses for the Life of the Process

54. 40 C.F.R. § 68.67(g) provides that the owner or operator shall retain process hazard analyses and updates or revalidations for each process covered by 40 C.F.R. § 68.67 for the life of the process.

55. The Respondent conducts a certain hazard methodology as part of its PHA revalidation required by 40 C.F.R. § 68.67(f) for the covered processes at the facility.

56. The hazard methodology documents identified in Paragraph 55 are considered a part of the relevant PHA.

57. The Respondent’s hazard methodology manual provides a documentation retention policy that does not comply with the 40 C.F.R. § 68.67(g).

58. Based on information and belief, the Respondent has failed to retain certain hazard methodology documentation for PHA revalidations of certain covered processes at the facility.

59. Therefore, the Respondent violated 40 C.F.R. § 68.67(g) by failing to retain complete copies of certain PHAs for the life of the processes.

Count Five – Failure to Properly Respond to Clean Air Act Section 114 Information Request

60. Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1), provides in part that for the purpose of carrying out any provision of this chapter, the Administrator may require any person who is subject to any requirement of this chapter on a one-time, periodic or continuous basis to establish and maintain records, make reports, and provide such other information as the Administrator may reasonably require.

61. On or about May 16, 2018, the Complainant sent an Information Request to the Respondent under the authority of Section 114 of the Act, 42 U.S.C. § 7414.

62. The Respondent is subject, among other things, to the requirements of 40 C.F.R. Part 68 – Chemical Accident Prevention Provisions.

63. The purpose of the Request was to determine the Respondent's compliance with 40 C.F.R. Part 68.

64. The Respondent responded to the Information Request on July 16, 2018.

65. Question 6 of the Information Request required the Respondent to submit a copy of the PHA for a certain North Field tank.

66. On or about July 16, 2018, the Respondent did not submit a complete copy of the PHA for a certain North Field tank to EPA.

67. Question 8 of the Information Request required the Respondent to submit complete copies of the PHAs for the Ethanolamines and Glycol Ethers process dated April 5, 2016 that meet the requirement of 40 C.F.R. § 68.67.

68. On or about July 16, 2018, the Respondent did not submit complete copies of the Ethanolamines and Glycol Ethers PHA to EPA.

69. Question 11.A of the Information Request required the Respondent to submit a copy of the HP-2 PHA (February 11, 2014).

70. On or about July 16, 2018, the Respondent did not submit a complete copy of the HP-2 PHA (February 11, 2014) to EPA.

71. Question 11.B of the Information Request required the Respondent to submit a copy of the Site Services Logistics PHA (August 2, 2011).

72. On or about July 16, 2018, the Respondent did not submit a complete copy of the Site Services Logistics PHA (August 2, 2011) to EPA.

73. Therefore, the Respondent has violated Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1) by failing to timely provide the required documents to EPA.

Count Six – Failure to Timely Certify Operating Procedures are Current and Accurate

74. 40 C.F.R. § 68.69(c) provides that the operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

75. The Catalyst process at the facility is a “covered process” as that term is defined by 40 C.F.R. § 68.3.

76. The Respondent certified that the operating procedures were current and accurate for all process units in Catalyst facility for 2015 was on or before December 31, 2014.

77. The Respondent was required to certify that the operating procedures for the Block 12 and Block 25 process units in the Catalyst facility for 2016 were current and accurate no later than December 31, 2015.

78. The 2016 annual certification of the operating procedures for the Block 12 and Block 25 process units in the Catalyst Plant occurred on January 31, 2017.

79. Therefore, the Respondent violated 40 C.F.R. § 68.69(c) by failing to timely certify that the operating procedures for the Block 12 and Block 25 process units in the Catalyst facility for 2016 are current and accurate.

Count Seven – Inadequate Emergency Response Plan

80. 40 C.F.R. § 68.95(a) provides the following:

(a) The owner or operator shall develop and implement an emergency response program for the purpose of protecting public health and the environment. Such program shall include the following elements:

(1) An emergency response plan, which shall be maintained at the stationary source and contain at least the following elements:

(i) Procedures for informing the public and local emergency response agencies about accidental releases;

(ii) Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; and

(iii) Procedures and measures for emergency response after an accidental release of a regulated substance;

(2) Procedures for the use of emergency response equipment and for its inspection, testing, and maintenance;

(3) Training for all employees in relevant procedures; and

(4) Procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of changes.

81. The Seadrift Site Emergency Plan (February 17, 2016) does not include procedures for the use of its emergency response equipment and for its inspection, testing, and maintenance.

82. Therefore, the Respondent violated 40 C.F.R. § 68.95(a) by failing to properly develop and implement its emergency response plan.

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

83. For the reasons set forth above, the Respondent has agreed to pay a civil penalty of **ONE HUNDRED FOURTEEN THOUSAND, THREE HUNDRED THIRTEEN Dollars (\$114,313)**.

84. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency" with a phone number of
(412)234-4381".

PLEASE NOTE: Docket Number CAA-06-2019-3330 shall be clearly typed on the check or other method of payment to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Carlos Flores
Enforcement Officer
Chemical Accident Enforcement Section (ECDAC)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270

Lorena Vaughn
Regional Hearing Clerk (ORCD)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270

The Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

85. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

86. If the Respondent fails to submit payment within thirty (30) days of the effective date of this CAFO, the Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties as set forth below.

87. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

88. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional

\$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

89. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

90. This CAFO is considered a "prior violation" for the purpose of demonstrating a "history of noncompliance" under the CAA Stationary Source Penalty Policy, and the Combined Enforcement Policy for CAA Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (June 2012).

B. NOTIFICATION

91. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other party that another individual has been designated to receive the communication:

Complainant:

Carlos Flores
Enforcement Officer
Chemical Accident Enforcement Section (ECDAC)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270

Respondent:

Fran Falcon
Texas Regional Environmental Leader
The Dow Chemical Company
332 SH 332 E
Lake Jackson, TX 77566

with copies to:

Paul Bork
Lead Counsel
The Dow Chemical Company
332 SH 332 E
Lake Jackson, TX 77566

Carlos Moreno
Counsel
The Dow Chemical Company
332 SH 332 E
Lake Jackson, TX 77566

C. COMPLIANCE

92. The Respondent hereby certifies that as of the date of the execution of this CAFO, that it has corrected the violations alleged herein, and is now, to the best of its knowledge, in

compliance with all applicable requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r) and 40 C.F.R. Part 68.

D. MODIFICATION

93. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and the Respondent, and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

E. RETENTION OF ENFORCEMENT RIGHTS

94. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

95. Nothing in this CAFO shall relieve the Respondent of the duty to comply with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

96. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility whether related to the violations addressed in this CAFO or otherwise. Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

97. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. In any such action to enforce the provisions of this CAFO, the Respondent shall not assert, and may not maintain, any defense of laches, statute of limitations,

or any other equitable defense based on the passage of time. This CAFO shall not be construed to limit the rights of the EPA or United States to obtain penalties or injunctive relief under the Clean Air Act or its implementing regulations, or under other federal or state laws, regulations, or permit conditions.

98. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, to enforce the provisions of this CAFO, or other appropriate relief relating to this Facility, the Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims for civil penalties that have been specifically resolved pursuant to this CAFO.

99. The Respondent waives any right it may possess at law or in equity to challenge the authority of the EPA or the United States to bring a civil action in a United States District Court to compel compliance with this CAFO and to seek an additional penalty for such noncompliance and agrees that federal law shall govern in any such civil action. The Respondent also consents to personal jurisdiction in any action to enforce this CAFO in the appropriate Federal District Court.

100. The Respondent also waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that the Respondent may have with respect to any issue of law or fact set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1).

101. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondent's compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that the Respondent's compliance with any aspect of this CAFO will result in compliance with provisions of the CAA or with any other provisions of federal, State, or local laws, regulations, or permits.

F. COSTS

102. Except as provided in Paragraph 89, each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.


G. EFFECTIVE DATE

103. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

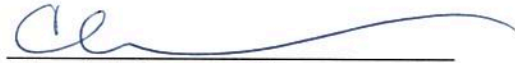
Date: 6/17/19



Brooke Barnes
Responsible Care Leader
Union Carbide Corporation/Seadrift

FOR THE COMPLAINANT:

Date: 6-19-19



Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division
EPA – Region 6

FINAL ORDER

Pursuant to the Section 113 of the CAA, 42 U.S.C. § 7413, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right or EPA or the United States to pursue appropriate injunctive relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 6/25/19



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of June, 2019, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by certified mail, return receipt requested 70151520 00034072 9033

Paul Bork
Lead Counsel
The Dow Chemical Company
332 SH 332 E
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