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BEFORE THE UNITED STATES 2012 JUN 27 PM 4: 49  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA

In the Matter of:

Union Carbide Corporation  
1254 Enclave Parkway  
Houston, TX 77077

RESPONDENT,

UCC South Charleston Site  
437 MacCorkle Avenue SW  
South Charleston, WV 25303

FACILITY.

Consent Agreement and Final Order

Docket No.: CERCLA-03-2012-0179  
Docket No.: EPCRA-03-2012-0179

Proceeding Under Sections 103 and  
109 of the Comprehensive Environmental  
Response, Compensation, and Liability Act,  
42 U.S.C. §§ 9603, 9609, and Sections 304,  
312, and 325 of the Emergency Planning  
and Community Right-to-Know Act, 42  
U.S.C. §§ 11004, 11022, 11045

**CONSENT AGREEMENT**

**STATUTORY AUTHORITY**

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9609. The President has delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA"), who has, in turn, delegated it to the Regional Administrator of EPA, Region III. The Regional Administrator has delegated this authority to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant"). This Consent Agreement is also proposed and entered into pursuant to the authority vested in the Administrator of EPA by Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, delegated to the Regional Administrator by EPA Delegation No. 22-3-A, and delegated to Complainant by the Regional Administrator. Furthermore, this Consent Agreement is proposed and entered into under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 ("Part 22"). The parties agree to commence and conclude this proceeding by issuance of this Consent Agreement and the attached Final Order pursuant to 40 C.F.R. § 22.13(b), consent to its entry, and agree to comply with its terms.

**PRELIMINARY STATEMENT**

1. The regulations implementing the emergency notifications required by Section 304 of EPCRA, 42 U.S.C. § 11004, are codified at 40 C.F.R. Part 355. On November 3, 2008, EPA issued a final rule at 73 Fed. Reg. 65451 to make these regulations easier to read by presenting them in plain language. The amendments became effective on December 3, 2008 and renumbered 40 C.F.R. Part 355. This Agreement references the newly effective

numbering, but includes the pre-2008 numbering in parentheses since those regulations were in effect at the time of some of the violations alleged herein.

### **JURISDICTION**

2. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. §§ 22.1(a)(7) and 22.1(a)(8).
3. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b)(3).
4. For the purpose of this proceeding, Respondent Union Carbide Corporation (“Respondent” or “UCC”) admits to these jurisdictional allegations and agrees not to contest EPA’s jurisdiction with respect to the execution or enforcement of this Agreement.

### **FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW**

5. For the purpose of this proceeding, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations.
6. Respondent is a corporation established under the laws of the State of New York, with its principal place of business located at 1254 Enclave Parkway in Houston, Texas.
7. As a corporation, Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61 (355.20).
8. Respondent manufactures chemicals at a manufacturing site, known informally as the UCC South Charleston Site, located at 437 MacCorkle Avenue SW in South Charleston, West Virginia (the “Facility”). At all times relevant to this Agreement, Respondent has been a person “in charge of” the Facility, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6. Respondent has also been an “operator” of the Facility, within the meaning of Section 304 of EPCRA, 42 U.S.C. § 11004.
9. The Facility is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and its regulations, 40 C.F.R. § 302.3. The Facility is also a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and its regulations, 40 C.F.R. §355.61 (formerly § 355.20).
10. On November 4, 2009, EPA conducted an inspection of the Facility to determine the Facility’s compliance with Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 302-312 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11002-11022.

11. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) (“Reportable Quantity” or “RQ”). The list of hazardous substances and their respective RQs is codified at 40 C.F.R. § 302.4.
12. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of Extremely Hazardous Substances (“EHSs”) and to promulgate regulations establishing that quantity of any EHS the release of which shall be required to be reported under Section 304(a) through (c) of EPCRA, 42 U.S.C. § 11004(a) through (c), (“Reportable Quantity” or “RQ”). The list of EHSs and their respective RQs is codified at 40 C.F.R. Part 355, Appendices A and B.
13. At all times relevant to this Agreement, the Facility was a facility at which a “hazardous chemical” was produced, used or stored, as that term is defined at Section 311(e) of EPCRA, 42 U.S.C. § 11021(e)
14. On June 5, 2008, between approximately 3:05 a.m. and approximately 3:25 a.m., Respondent released from the Facility an estimated 387 pounds of allyl alcohol, Chemical Abstracts Service (“CAS”) No. 107-18-6 (the “Release”).

**Factual Allegations: CERCLA § 103 Violation**

15. Paragraphs 6 through 14 are incorporated herein by reference.
16. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center (“NRC”) established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.
17. Allyl alcohol is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 100 pounds, as listed in 40 C.F.R. § 302.4.
18. The Release constitutes a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
19. The Release was not a “federally permitted release” as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).
20. Respondent notified the NRC of the Release at approximately 2:55 p.m. on June 6, 2008.

21. Respondent knew or should have known of the Release at least two hours before Respondent notified the NRC.
22. Respondent failed to immediately notify the NRC of the Release as soon as Respondent knew that a release of a hazardous substance had occurred from the Facility in an amount equal to or exceeding its applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

**Conclusion of Law: CERCLA § 103 Violation**

23. Respondent's failure to immediately notify the NRC of the Release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603, and is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

**Factual Allegations: EPCRA § 304 Violations**

24. Paragraphs 6 through 14 are incorporated herein by reference.
25. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), as implemented by 40 C.F.R. Part 355, Subpart C (formerly § 355.40), requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored to notify the State Emergency Response Commission ("SERC") and the Local Emergency Planning Committee ("LEPC") immediately following a release of a hazardous substance or an EHS in a quantity equal to or exceeding the RQ for the hazardous substance or EHS.
26. Allyl alcohol is an EHS as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and 40 C.F.R. § 355.61 (formerly § 355.20), with an RQ of 100 pounds, as listed in 40 C.F.R. Part 355, Appendices A and B.
27. The SERC for the Facility for the purpose of emergency release notification is, and has been at all times relevant to this Agreement, the West Virginia Division of Homeland Security and Emergency Management, located at Building 1, Room EB-80, 1900 Kanawha Blvd East, in Charleston, West Virginia 25305.
28. The LEPC for the Facility for the purpose of emergency release notification is, and has been at all times relevant to this Agreement, the Kanawha/Putnam Local Emergency Planning Committee, located at 113 Lakeview Dr., in Charleston, West Virginia 25313.
29. The Release of allyl alcohol from the Facility constitutes a release of an EHS in a quantity equal to or exceeding its RQ.
30. The Release required immediate notification of the SERC and LEPC pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C (formerly § 355.40).
31. Respondent did not notify the SERC of the Release until June 6, 2008 at approximately 3:10 p.m.

32. Respondent did not notify the LEPC of the Release until June 6, 2008 at approximately 3:35 p.m.
33. Respondent knew or should have known of the Release at least two hours before Respondent notified the SERC or LEPC.
34. Respondent failed to immediately notify the SERC and LEPC of the Release of allyl alcohol as soon as Respondent knew that a release of an EHS had occurred at the Facility in an amount equal to or exceeding its RQ, as required by Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C (formerly § 355.40).

#### **Conclusions of Law: EPCRA § 304 Violations**

35. Respondent's failure to notify the SERC immediately of the Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.
36. Respondent's failure to notify the LEPC immediately of the Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

#### **Factual Allegations: EPCRA § 312 Violation**

37. Paragraphs 6 through 14 are incorporated herein by reference.
38. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility where hazardous chemicals are present during a calendar year in a quantity equal to or greater than its applicable minimum threshold for reporting ("MTL") or equal to or greater than its threshold planning quantity ("TPQ"), who is in turn required to prepare or have available a Material Safety and Data Sheet ("MSDS") for a hazardous chemical in accordance with the OSHA Hazard Communication Standard, 29 C.F.R. § 1910.1200, to submit by March 1st of the following year, a completed Emergency and Hazardous Chemical Inventory Form ("Chemical Inventory Form"). Two types of inventory forms ("Tier I" or "Tier II") are allowed. The Tier II Chemical Inventory form, which is the form that Respondent submitted, must identify the hazardous chemical and provide the information described in Section 312(d)(1) of EPCRA, 42 U.S.C. § 11022(d)(1) and be submitted to the appropriate SERC, LEPC, and local fire department for the facility.
39. The SERC for the Facility is, and has been at all times relevant to this Agreement, the West Virginia Division of Homeland Security and Emergency Management, located at Building 1, Room EB-80, 1900 Kanawha Blvd East, in Charleston, West Virginia 25305.
40. The LEPC for the Facility is, and has been at all times relevant to this Agreement, the Kanawha/Putnam Local Emergency Planning Committee, located at 113 Lakeview Dr., in Charleston, West Virginia 25313.

41. The local fire department for the Facility is the South Charleston Fire Department, Station IV, located at 1103 Jefferson Road, in South Charleston, West Virginia 25309.
42. AEP 410 is a hazardous chemical for purposes of Section 312(c) of EPCRA, 42 U.S.C. § 11022(c), 40 C.F.R. § 370.66 (formerly § 370.40), and 29 C.F.R. § 1910.1200(c).
43. Pursuant to 40 C.F.R. § 370.10(a)(2)(i), the MTL for AEP 410 is 10,000 pounds.
44. At all times relevant to this Agreement, Respondent was a person engaged in a business where chemicals were used, distributed, or produced for use or distribution.
45. At all times relevant to this Agreement, Respondent was an “employer” as that term is defined at 29 U.S.C. § 1910.1200(c).
46. At all times relevant to this Agreement, Respondent was required to have MSDSs at the Facility for each hazardous chemical it uses, pursuant to 29 C.F.R. § 1910.1200(g).
47. On February 27, 2009, Respondent submitted Tier II reports to the SERC, LEPC, and the local fire department for calendar year 2008, omitting AEP 410, which was present at the Facility in a quantity exceeding its MTL at any one time in 2008.

#### **Conclusions of Law: EPCRA § 312 Violation**

48. Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, by failing to submit by March 1, 2009 complete and accurate Emergency and Hazardous Chemical Inventory Forms for calendar year 2008 to the SERC, LEPC, and the local fire department.

#### **CIVIL PENALTY**

49. In full and final settlement and resolution of all allegations referenced in the foregoing Factual Allegations and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violation of Section 103 of CERCLA, 42 U.S.C. § 9603, set forth above, in the amount of **\$6,046** (“CERCLA civil penalty”), and for the violations of Sections 304(a) and (b) and 312 of EPCRA, 42 U.S.C. §§ 11004(a) and (b) and 11022, set forth above, in the amount of **\$18,137** (“EPCRA civil penalty”).

#### **PAYMENT TERMS**

50. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this Agreement, Respondent shall pay the CERCLA civil penalty of \$6,046 and EPCRA civil penalty of \$18,137, no later than 30 days after the effective date of the Final Order. Payment of the CERCLA civil penalty and EPCRA civil penalty shall be made in the following manner:
  - A. All payments by Respondent shall reference Respondent’s name and address, and the Docket Numbers of this action;

B. All checks for the CERCLA civil penalty shall be made payable to EPA-Hazardous Substances Superfund; all checks for the EPCRA civil penalty shall be made payable to United States Treasury;

C. All payments for the CERCLA civil penalty made by check and sent by regular mail shall be addressed to:

U.S. EPA  
ATTN: Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

D. All payments for the EPCRA civil penalty made by check and sent by regular mail shall be addressed to:

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

E. All payments for the CERCLA civil penalty made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA  
ATTENTION: Superfund Payments  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

F. All payments for the EPCRA civil penalty made by check and sent by overnight delivery service shall be addressed for delivery to:

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

G. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS-NWD  
26 W. M.L. King Drive

Cincinnati, OH 45268-0001

- H. All payments made by electronic wire transfer shall be directed 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

- I. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking  
Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- J. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV  
Enter sfo 1.1 in the search field. Open and complete the form.

51. The Respondent shall submit proof of the penalty payment, noting the title and docket numbers of this case, to the following persons:

Wojciech Jankowski Assistant Regional Counsel U.S. Environmental Protection Agency Region III (Mail Code 3RC50) 1650 Arch Street Philadelphia, PA 19103-2029	Ms. Lydia Guy Regional Hearing Clerk U.S. Environmental Protection Agency Region III (Mail Code 3RC00) 1650 Arch Street Philadelphia, PA 19103-2029
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52. The CERCLA civil penalty and EPCRA civil penalty stated herein are based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and the penalty criteria set forth in Section 325 of EPCRA, 42 U.S.C. § 11045, and are consistent with 40 C.F.R. Part 19 and the Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (September 30, 1999).



53. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to 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, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply with the conditions in this Agreement shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.
54. Pursuant to 40 C.F.R. § 13.11(a)(1), interest begins to accrue on the penalty in paragraph 45 from the date that Respondent receives a copy of the filed and fully executed Consent Agreement and Final Order. However, EPA will not recover interest on any portion of the penalty paid within 30 days of this 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).
55. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.
56. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).
57. Failure by the Respondent to pay the \$6,046 CERCLA civil penalty and the \$18,137 EPCRA civil penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.
58. Respondent shall not deduct any penalties paid under this Consent Agreement in calculating its federal income tax.

#### **GENERAL PROVISIONS**

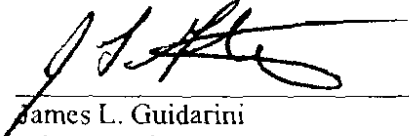
59. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.
60. The provisions of this Agreement shall be binding upon Respondent and its successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party

represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

61. This Agreement resolves only those civil claims that are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this Agreement shall be construed to limit the United States' authority to pursue criminal sanctions.
62. Each party to this action shall bear its own costs and attorney's fees.

For the Respondent, Union Carbide Corporation:

Date: 6/12/12

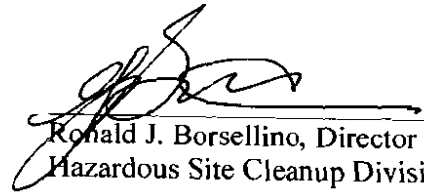
By:   
James L. Guidarini  
Vice President and Site Leader

For the Complainant, U.S. Environmental Protection Agency, Region III:

Date:

June 20, 2017

By:

  
Ronald J. Borsellino, Director  
Hazardous Site Cleanup Division

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

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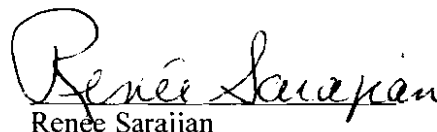
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U.S.C. §§ 11004, 11022, 11045**

**FINAL ORDER**

Pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

The effective date of the accompanying Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk of U.S Environmental Protection Agency, Region III.

6/27/12  
Date

  
Renee Sarajian

Regional Judicial Officer

U.S. Environmental Protection Agency, Region III



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CERTIFICATE OF SERVICE

I certify that on the date provided below, I hand-delivered the original and one copy of the Consent Agreement and Final Order in the case captioned *In re Union Carbide Corporation*, Docket No. CERCLA-03-2012-0179 / EPCRA-03-2012-0179 to Lydia Guy, Regional Hearing Clerk, U.S. EPA, Region 3, 1650 Arch St, Philadelphia, PA 19134, and sent one copy of the signed original of the document by certified mail—return receipt requested to James L. Guidarini, Vice President and Site Leader, Union Carbide Corporation, PO Box 1005, Institute, WV 25112.

Dated: 6/27/2012

  
Wojciech Jankowski  
Assistant Regional Counsel  
U.S. EPA Region 3