



west virginia department of environmental protection

Division of Air Quality
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Harold D. Ward, Cabinet Secretary
dep.wv.gov

**COLLABORATIVE AGREEMENT
ISSUED UNDER THE AIR POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 5, SECTION 4**

TO:

Specialty Products US, LLC
Institute, West Virginia
Attn: Rick Thomas
Plant Manager

Agreement#: CA-C22-2023-2
Facility ID: 039-00682

INTRODUCTION

This Collaborative Agreement ("Agreement") is established between the Director of the Division of Air Quality, West Virginia Department of Environmental Protection (hereinafter "Director" or "DAQ") and Specialty Products US, LLC ("Specialty Products") under the authority of West Virginia Code, 22-5-1 *et seq.* and specifically pursuant to West Virginia Code, Chapter 22-5-4(a)(7) addressing agency encouragement of voluntary cooperation by industries in preserving the purity of the air within the state.

The Agreement shall be governed by the enforcement and penalty provisions of Chapter 22-5-1 *et seq.*

FINDINGS OF FACT

1. Specialty Products owns and operates a chemical manufacturing facility ("Facility") located in a manufacturing complex in Institute, West Virginia ("Institute Complex"). The Facility uses ethylene oxide ("EtO") in its chemical manufacturing processes.

Promoting a healthy environment.

2. The Facility is currently in compliance with state and federal air regulations applicable to EtO.
3. In response to U.S. EPA's 2016 redesignation of EtO cancer risk and the release of the August 22, 2018, National Air Toxics Assessment ("NATA") screening tool results identifying areas in and around Institute as having potentially elevated cancer risk due to EtO exposure, DAQ took the following actions related to EtO:
 - a. Starting in 2018, the DAQ developed and implemented an information request methodology to obtain onsite meteorological data and updated, more-accurate EtO emission data for operations in Kanawha County of all EtO emitters, to include the Specialty Products, Institute - Facility ID 039-00682.
 - b. The DAQ has performed two (2) air dispersion model runs to estimate EtO concentrations in ambient air using the EPA approved AERMOD program:
 1. In 2021 using 2017 emissions and 2019 meteorological data.
 11. In 2022 using 2020 emissions and 2019 meteorological data.
 - c. In 2022, the DAQ performed the latest AERMOD model with data obtained using the information request methodology. The AERMOD results were used in EPA's Human Exposure Model (HEM). This modeling estimated potential EtO risk levels above 100 in a million in some populated areas of Jefferson, Institute and St. Albans, WV.
 - d. In 2022, the DAQ performed a short term EtO monitoring study. Four sets of 24-hour samples were taken from January through April 2022 using canister monitors near the Institute Complex.
4. The local community within the vicinity of the Institute Complex has communicated comments about EtO emissions to the Director.
5. The terms and conditions of this Collaborative Agreement represent unique site-specific state-only enforceable commitments, not otherwise addressed by current law or regulation, designed by the parties to specifically respond to local community comments.

AGREEMENT FOR VOLUNTARILY DERIVED ENFORCEABLE ACTIONS

Now, therefore, in accordance with Chapter 22-5-1 *et seq.* of the West Virginia Code, it is hereby agreed between Specialty Products and the Director:

6. The Facility shall immediately initiate due diligence to prepare to submit a request to amend R13-3404A to reduce the Facility's emissions limitations, including EtO and VOCs, to reflect its current business plan. If the due diligence suggests that changes to regulatory applicability are appropriate, then Specialty Products and DAQ shall collaborate to apply for and amend or modify permits appropriate to the regulatory applicability determination.
7. The Facility, in addition to its obligations to comply with the federal LDAR program, as set forth in 40 C.F.R. §63.1434(a), shall be subject to the following State only requirements that shall apply to components on the EtO supply line upstream of the Reactors ("components in EtO service"):
 - a. The Facility shall not skip monitoring periods as authorized under the federal LDAR rules.
 - b. The Facility will monitor components in EtO service based on the following frequency:

Component Type	Frequency	Weekly Visual	Action Threshold
Agitator	Monthly	Yes	10ppm
Connector - NTM*	Annual		10 ppm
Connector - DTM**	Annual		10ppm
Pump	Monthly	Yes	10ppm
Relief	Monitored After Release		10ppm
Valve-NTM*	Quarterly		10ppm
Valve -DTM**	Annual		10ppm

*NTM - Normal To Monitor

**DTM - Difficult To Monitor

- c. The Facility shall make an initial attempt at repair of components if monitoring indicates readings at or above the action threshold of 10 ppm. After the initial attempt at repair, the Facility will conduct re-monitoring.
 - d. The Facility shall keep records of any measurements at or above the action threshold including concentrations and repairs and/or repair attempts.
 - e. The provisions of this Paragraph 7 shall only apply to components on the EtO supply line upstream of the Reactors.
 - f. The requirements of this paragraph are not required by federal or state law and were entered into voluntarily consistent with discretionary authorities under state law and are not intended nor designed for incorporation into the Facility's Clean Air Act Title V permit.
8. Within six months of the execution of this Agreement Specialty Products shall conduct and complete a study to determine the feasibility of engineering controls to further reduce EtO emissions from the facility.
 9. Specialty Products shall cooperate with U.S. EPA or the DAQ by providing in-kind or other tangible resources relative to state or federal air agency research related to EtO to assist with the development of air quality related data collection, air quality modeling, development of fence-line EtO monitoring protocols or securing meteorological data related to such research.
 10. Records shall be maintained onsite for a period of at least 5 years.
 11. If Specialty Products fails to complete any of the requirements contained in this Agreement within the time limits set forth herein, this Agreement shall be governed by the enforcement and penalty provisions of Chapter 22-5-1 *et. seq.* Payments made pursuant to this paragraph are not tax-deductible expenditures for purposes of State or federal law. At the discretion of the Director, penalties collected pursuant to this Agreement may be dedicated to the community within the Institute, WV area.
 12. The requirements of this Collaborative Agreement shall terminate upon the promulgation or adoption of equivalent or more stringent requirements by the USEPA or the WVDEP. In any event, compliance with equivalent or more stringent state or federal requirements shall constitute compliance with the requirements of this Collaborative Agreement.


OTHER PROVISIONS

13. Specialty Products hereby waives its right to appeal this Agreement under the provisions of Chapter 22, Article 5, Section 1 of the Code of West Virginia. Under this Agreement, Specialty

Products agrees to take all actions required by the terms and conditions of this Agreement and consents to and will not contest the Director's jurisdiction regarding this Agreement. However, Specialty Products does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings, administrative or civil, to enforce this Agreement.

14. If any event occurs that causes delay in the achievement of the requirements of this Agreement, Specialty Products shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Within five (5) working days after Specialty Products becomes aware of such a delay, notification shall be provided to the Director and shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Specialty Products intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Specialty Products (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances.
15. Compliance with the terms and conditions of this Agreement shall not in any way be construed as relieving Specialty Products of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Failure to adhere to the terms and conditions of this Agreement may subject Specialty Products to injunctive relief in accordance with the applicable law.
16. The terms and conditions of this Agreement shall not in any way be construed as relevant to any other state or federal statutory provisions or regulatory requirements or future proposals or representative of general industry best practices as this Agreement is unique to the Facility and was mutually executed as a means of responding to local community comment.
17. The provisions of this Agreement are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
18. This Agreement is binding on Specialty Products, its successors and assigns.
19. The Effective Date of this Agreement shall be the date when the last party executes this Agreement.

20. This Agreement may be amended or modified in whole or in part upon written agreement of the parties. An amendment or modification granted by the Director shall be incorporated into the Agreement, considered binding, and subject to all stipulated requirements of the Agreement.


Rick Thomas, Plant Manager
Specialty Products US, LLC

5/25/2023
Date


Laura M. Crowder, Director
WV Division of Air Quality

5/25/2023
Date