



west virginia department of environmental protection

Division of Air Quality
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Charleston, WV 25304
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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: Union Carbide Corporation
South Charleston, West Virginia
Attn: Ana Marino
WVO Responsible Care Leader

Agreement #: CA-C22-2023-4
Facility ID: 039-00003

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 Union Carbide Corporation (“UCC”) under the authority of West Virginia Code, Chapter 22, Article 5, Section 1 et seq. and specifically pursuant to West Virginia Code, Chapter 22, Article 5, Section 4(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, Article 5, Section 1 et. seq.

FINDINGS OF FACT

1. UCC owns and operates a chemical manufacturing facility (“Facility”) located in South Charleston, West Virginia. The Facility receives and distributes ethylene oxide (EtO) for use in chemical manufacturing processes.

Promoting a healthy environment.

2. The Facility is currently in compliance with state and federal air regulations applicable to EtO.
3. 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 respond to local community comments about EtO.
4. Overview of UCC Actions related to EtO:
 - a. UCC had implemented and is in compliance with the federal leak detection and repair (“LDAR”) regulatory requirements.
 - b. UCC provided DAQ with monitored emission, fenceline and meteorological data.

AGREEMENT FOR VOLUNTARILY DERIVED ENFORCEABLE ACTIONS

Now, therefore, in accordance with Chapter 22, Article 5, Section 1 et seq. of the West Virginia Code, it is hereby agreed between Union Carbide Corporation and the Director:

5. The Facility shall submit a request to amend Consent Order No. CO-R27-97-17-A(94-21) within four (4) months of the Effective Date of this Agreement to modify the Facility’s EtO emissions limitations to be reflective of its current business plan.
6. 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:
 - a. Skip periods authorized under the LDAR program shall not be utilized by UCC.
 - b. For readings on EtO components upstream of reactors taken during compliance monitoring that are at or above the action thresholds of 10 ppm, an attempt at repair will be made (consistent with 40 C.F.R. §63.1434(a)), after which re-monitoring will occur.

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

*NTM – Normal To Monitor

**DTM – Difficult To Monitor

The Facility shall keep records of any measurements at or above the action threshold including concentrations and repairs and/or repair attempts. 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.

7. UCC shall immediately upon execution of this Collaborative Agreement commit to continue its ongoing effort to cooperate with U.S. EPA and the DAQ by providing in-kind or other tangible resources relative to state and 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 and securing meteorological data related to such research.
8. Records shall be maintained onsite for a period of at least 5 years.
9. If UCC 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, Article 5, Section 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 South Charleston, WV area.

OTHER PROVISIONS

10. UCC 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, UCC 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, UCC 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.
11. If any event occurs which causes delay in the achievement of the requirements of this Agreement, UCC 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 UCC 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 UCC 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 UCC (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.

14. 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.
15. This Agreement is binding on UCC, its successors and assigns.
16. The Effective Date of this Agreement shall be the date when the last party executes this Agreement.
17. 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.

Ana Marino
Ana Marino, WVO Responsible Care Leader
Union Carbide Corporation

8-21-23
Date

Laura M. Crowder
Laura M. Crowder
Director

8/22/23
Date