



WEST VIRGINIA

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RCRA CORRECTIVE ACTION PERMIT

UNION CARBIDE CORPORATION

PRIVATE TRUCKING OPERATIONS (PTO)

Nitro, West Virginia

Permit ID # WVD000739722

May 2019

**CORRECTIVE ACTION PERMIT**  
**UNION CARBIDE CORPORATION – PRIVATE TRUCKING OPERATIONS (PTO)**  
**PERMIT ID # WVD000739772**

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ATTACHMENT II-1 **PUBLIC NOTICE** - In the finalized Permit, this attachment will contain the Public Notice announcing the issuance of a draft RCRA CA Permit which is to be published in the Charleston Gazette-Mail in May 2019. The draft Permit will be open to Public Comment for 45 days (2 pages)

ATTACHMENT II-2 **FINAL DECISION & RESPONSE TO COMMENTS (FDRTC)** - In the finalized Permit this attachment will contain a copy of the FDRTC document that sets forth the Final Remedy Decision for the facility, issued on September 9, 2016 (14 pages)

ATTACHMENT II-3 **CORRECTIVE MEASURES IMPLEMENTATION WORK PLAN (CMIWP)** - In the finalized Permit this attachment will contain a copy of the CMIWP document that sets forth the Final Remedy Implementation for the facility, approved on March 2, 2018 (319 pages)

## **MODULE I STANDARD CONDITIONS**

Module I sets forth the standard conditions that are applicable to all hazardous waste management and corrective action facilities. The regulations applicable to permitting, Parts 260 through 264, 268, and 270 of Title 40, Code of Federal Regulations (CFR), have been incorporated by reference into Sections 2 through 7, and 9 through 11, respectively, of the West Virginia State Legislative Rule, Title 33, Series 20, Hazardous Waste Management System (HWMS).

### **I-A EFFECT OF PERMIT**

The Permittee is allowed to manage hazardous waste in accordance with the conditions of this Resource Conservation and Recovery Act (RCRA) Corrective Action Permit (CA Permit). Compliance with the CA Permit during its term constitutes compliance, for purposes of enforcement, with the Hazardous Waste Management Act (HWMA, the Act), Article 18, Chapter 22 of the West Virginia Code. Issuance of this CA Permit does not convey property rights of any sort or any exclusive privilege; nor does it authorize any injury to persons or property, any invasion of other private rights, or any infringement of State or local law or regulations.

Compliance with the terms of this CA Permit does not constitute a defense to any order issued or any action brought by the U. S. Environmental Protection Agency (US EPA) under Sections 3008(a), 3008(h), 3013, or 7003 of RCRA; Sections 104, 106(a), or 107, of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §9601 et. seq., commonly known as CERCLA); or any other law providing for protection of public health or the environment.

### **I-B PERMIT ACTIONS**

This CA Permit may be modified, revoked, reissued, or terminated as specified in 40 §§CFR 270.41, 270.42 and/or 270.43. This CA Permit may also be reviewed and modified by the West Virginia Department of Environmental Protection, Division of Water and Waste Management (DWWM), consistent with 40 CFR §270.41, to include terms and conditions determined necessary to protect human health and the environment, and to achieve compliance with §270.32 (b) (2). The filing of a request by the Permittee for a Permit modification, revocation and reissuance, termination, or a notification of planned changes or anticipated noncompliance, does not stay the applicability and enforceability of any Permit condition.

### **I-C PERMIT DURATION**

This permit and all conditions herein shall be effective for a fixed term not to exceed ten (10) years. Except as provided by 40 CFR §270.51, the term of a permit shall not be extended by modification beyond the duration. The Director may issue a permit for a duration that is less than the full allowable term.

## **I-D SEVERABILITY**

The provisions of this Permit are severable, and if any provision of this Permit, or if the application of any provision of this Permit, to any circumstance, is held invalid, the application of such provision to other circumstances and the remainder of this Permit shall not be affected thereby.

## **I-E DEFINITIONS**

For the purpose of this CA Permit, terms used herein shall have the same meaning as those set forth in the Act. Where terms are not otherwise defined, the meaning associated with such terms shall be as defined by a standard dictionary reference or the generally accepted scientific or industrial meaning of the term. The following definitions also apply to this Permit.

- E-1 “Director” shall mean Director of the Division of Water and Waste Management, Department of Environmental Protection;
- E-2 “Days” shall mean calendar days;
- E-3 “Facility” shall mean all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA.
- E-4 “Hazardous Constituent” shall mean any constituent identified in Appendix VIII of 40 CFR, Part 261, or any constituent identified in Appendix IX of 40 CFR, Part 264;

## **I-F FAILURE TO SUBMIT RELEVANT AND/OR ACCURATE INFORMATION**

Whenever the Permittee becomes aware that it failed to submit any relevant facts in the permit application or incorrect information in a permit application or in any report to the Director, DWWM, the Permittee shall notify the Director of such failure within seven (7) days of becoming aware of such deficiency or inaccuracy. The Permittee shall submit the correct or additional information to the Director within thirty (30) days of becoming aware of the deficiency or inaccuracy (40CFR §270.30(I) (11) and 270.32(b)). Failure to submit the information required in this Permit or misinterpretation of any submitted information is grounds for termination of this Permit (40 CFR §270.43).

## **I-G DUTIES AND REQUIREMENTS (40 CFR 270.30)**

- G-1 The Permittee must comply with all terms and conditions of this CA Permit. An exception may be granted via an emergency permit issuance; see 40 CFR §270.61. Any Permit noncompliance, except under the terms of an emergency permit, constitutes a violation of the Act and is subject to enforcement action. An enforcement action may include permit termination, revocation, reissuance, and/or modification.

- G-2 The Permittee shall submit a complete application for a new permit at least one hundred-eighty (180) days before this CA Permit expires unless: a) the Permittee is no longer required to have a RCRA CA Permit; or b) permission for a later date has been granted by the Director.
- G-3 It shall not be a defense for the Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this CA Permit.
- G-4 In the event of noncompliance with the Permit, the Permittee shall take all reasonable steps to minimize releases to the environment and shall carry out such measures as are reasonable to prevent significant adverse impact on human health or the environment.
- G-5 The Permittee shall, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the terms and the conditions of this Permit. Proper operation and maintenance include effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality control/quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the Permit.
- G-6 The Permittee shall furnish to the Director, within a reasonable time designated by the Director, any relevant information which the Director, may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Permit, or to determine compliance with this Permit. Upon request, the Permittee shall also furnish to the Director copies of records that are required by this Permit.
- G-7 The Permittee shall allow the Director, or an authorized representative upon the presentation of credentials and other documents as may be required by law to: a) Enter, at necessary times during working hours, the permitted premises where the regulated facility or activity is located or conducted, or where records must be kept under the conditions of this CA Permit; and, b) Have access to and copy any records that must be kept under the conditions of this CA Permit.
- G-8 The Permittee shall retain records of all monitoring information for a period of at least three years from the date of sampling. This period may be extended, by request of the Director, at any time.
- G-9 The Permittee shall give advance notice to the Director, of any planned changes in the permitted Facility, or activity, which may result in noncompliance with Permit requirements. Such notice does not constitute a waiver of the Permittee's duty to comply with Permit requirements.

- G-10 This Permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the Permit to change the name of the Permittee and incorporate such other requirements as may be necessary under RCRA.
- G-11 A) The Permittee shall report to the Director any noncompliance, which may endanger human health or the environment orally within twenty-four (24) hours from the time the Permittee becomes aware of the circumstances. This report shall include the following:
- a. Information concerning the release of any hazardous constituent which may endanger public drinking water supplies; and
  - b. Information concerning the release or discharge of any hazardous constituent, or of a fire or explosion at the facility, which could threaten the environment or human health outside the facility.
  - c. The description of the occurrence and its cause shall include:
    1. Name, address, and telephone number of the owner or operator;
    2. Name, address, and telephone number of the facility;
    3. Date, time, and type of incident;
    4. Name and quantity of material(s) involved;
    5. The extent of injuries, if any;
    6. An assessment of actual or potential hazard(s) to the environment and human health outside the facility, where this is applicable, and;
    7. Estimated quantity and disposition of recovered material that resulted from the incident.
- B) A written submission shall also be provided to the Director, within fifteen (15) days from the time when the Permittee becomes aware of the circumstances. The written submission shall contain:
1. A description of the non-compliance and its cause;
  2. The period(s) of non-compliance (including exact dates and times);
  3. Steps taken to minimize impact on the human health and the environments;
  4. Whether the non-compliance has been corrected, and if not, the anticipated time it is expected to continue;
  5. Steps taken or planned to be taken to reduce, eliminate or prevent recurrence of such non-compliance.
- G-12 The Permittee shall report all other instances of noncompliance not otherwise required to be reported above within thirty (30) days of when the Permittee becomes aware of the noncompliance. The reports shall contain the information listed in Condition I-G-11.

- G-13 All RCRA CA work plans, reports, notifications or other submissions required by Module II shall be sent by electronic means (preferred), certified mail, certified carrier, or hand-delivered as follows:

**One Copy To:**

RCRA CA Project Manager  
West Virginia Department of Environmental Protection  
Division of Water and Waste Management  
601 57<sup>th</sup> Street  
Charleston, WV 25301

**One Copy To:**

RCRA CA Program Manager  
West Virginia Department of Environmental Protection  
Division of Water and Waste Management  
601 57<sup>th</sup> Street  
Charleston, WV 25301

**One Copy To:**

EPA Project Manager  
United States Environmental Protection Agency, Region III  
Office of Remediation  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(3LC10)

- G-14 All reports required by this Permit and other information requested by the Director shall be signed and certified. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or because a new individual or position has responsibility for the facility's compliance with environmental laws and permits, a new authorization satisfying the requirements shall be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

**I-H CONFIDENTIAL INFORMATION**

Any information submitted to the Director, pursuant to this Permit, may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed in Section 11.18.b. and c. of the HWMS Rule. If no claim is made at the time of submission, the Director shall make the information available to the public. If a claim is asserted, the information shall be treated in accordance with the procedures in Section 11.18 of HWMS Rule. Claims of confidentiality for the name and address of Permittee will be denied.

**I- I DISCLOSURE IN DEED**

Pursuant to Section 21 of the HWMA and Section 12 of the HWMS Rule, the Permittee shall make a notation on the deed that will notify any potential purchaser that the land has been used to manage hazardous waste. Such disclosure shall describe the location upon said property, identifying the type and quantity of hazardous waste and the method of storage, treatment, or disposal with respect to such waste.



## **MODULE II**

### **FACILITY WIDE RCRA CORRECTIVE ACTION**

On June 3, 2016, WVDEP issued a Statement of Basis (SB) in which a Final Remedy for the Union Carbide Corporation Private Trucking Operations (PTO) Facility was proposed that consisted of various combinations of Institutional Controls, Engineering controls (both existing and potential future controls), groundwater recovery, and groundwater monitoring. Public comments were requested on the proposed Final Remedy from June 3, 2016 until July 19, 2016.

Since no comments were received during the public comment period, the proposed Final Remedy as set forth in the Statement of Basis became final as provided by the Final Decision Response to Comments (FDRTC), which was issued on September 7, 2016. The Final Remedy for each specific Facility area is in Section II-C of this Module. Furthermore, the Final Decision Document (FDRTC) in its entirety has been incorporated into this Facility Wide RCRA Corrective Action Module as Attachment II-2 and the requirements thereof are below.

#### **II-A DEFINITIONS**

For the purposes of RCRA Corrective Action and this RCRA Corrective Action Module, the following definitions shall apply:

1. “Project Manager” shall mean the Division of Water and Waste Management (DWWM) RCRA Corrective Action Program Project Manager
2. “Area of Concern” shall mean an area at the Facility or an off-site area, not originally identified as a solid waste management unit, where hazardous waste and/or hazardous constituents are present or suspected to be present.
3. “Solid Waste Management Unit” shall mean any unit at the facility from which hazardous constituents might migrate, irrespective of whether the units were used for the management of solid and/or hazardous wastes. Such units include any areas at a facility which solid wastes have been routinely and systematically released. The term “unit” refers to containers, container storage areas, tanks, surface impoundments, waste piles, land treatment units, landfills, incinerators, underground injection wells, and other physical, chemical and biological units or treatment units.

#### **II-B CORRECTIVE ACTION (CA) FOR CONTINUING RELEASES; PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT**

1. Section 3004(u) of RCRA, 42 U.S.C. § 6924(u), and regulations codified at 40 CFR §264.101, provide that all permits issued after November 8, 1984 must require CA as necessary to protect human health and the environment for all releases of hazardous waste or hazardous constituents from any solid waste management unit (SWMU) regardless of when waste was placed in the unit.

2. Under Section 3004(v) of RCRA, 42 U.S.C. § 6924(v), and 40 CFR §264.101(c), CA at a permitted facility may be required beyond the facility boundary, where necessary, to protect human health and the environment, unless the Facility demonstrates that, despite its best efforts, the Facility was unable to obtain the necessary permission to undertake such action.
3. This Permit requires that if additional releases of hazardous constituents and Hazardous waste from current or former UCC operations pose an unacceptable threat, the Permittee shall determine the nature and extent of those releases.

## **II-C REMEDY IMPLEMENTATION**

Remedy Implementation will be achieved as follows:

1. The Final Remedy for the Facility shall be implemented in accordance with the Corrective Measures Implementation (CMI) Work Plan (WP), which includes an Operations, Maintenance and Inspections Work Plan (O&M WP) as well as a Groundwater (GW) Monitoring Work Plan (MWP). CMIWP has been approved by WVDEP on August 2, 2018 and is hereby incorporated into and made a part of this Permit as Attachment II-3.
2. A summary of Final Remedy for each specific PTO Area is as follows:
  - SWMU 1 Area – maintain the soil cover, institutional controls restricting land and groundwater use, and groundwater monitoring;
  - SWMU 3 Area – maintain the soil cover, institutional controls restricting land and groundwater use, groundwater recovery, and groundwater monitoring;
  - SWMU 7 – institutional controls and groundwater monitoring;
  - SWMU 9 – Former Surface Impoundments – post-closure care permit requirements of cap, security and runoff inspections, maintaining, monitoring, and reporting of waste containment system, and institutional controls restricting the land and groundwater use and monitoring;
  - Central Waste-In-Place Area – maintain the soil cover, institutional controls restricting land and groundwater use, and groundwater monitoring;
  - Central Commercial/Industrial Use Area – institutional controls restricting land and groundwater use and groundwater monitoring.
  - Ryan’s Branch Area – maintain soil cover, stormwater management, institutional controls restricting land and groundwater use, and groundwater monitoring.

Module III of the Post-Closure Care Permit in the previous Permit cycle described the conditions and requirements related to the closed RCRA surface impoundments defined as SWMU 9. The remaining post-closure care requirements, as described in the SWMU 9 paragraph above are now being incorporated into this Site-Wide Corrective Action Module (Module II) and thus made a part of this Permit.

The Final Remedy for the Facility is described in entirety in the Final Decision Response to Comments (FDRTC) and has been incorporated as Attachment II-2. The requirements of this Permit provide for the implementation of the Final Remedy. The implementation of the Final Remedy for the Facility is detailed in the Corrective Measures Implementation Work Plan (CMIWP) and it has been fully incorporated as Attachment II-3. The Final Remedy for the UCC PTO Facility is readily implementable. Commencing on the effective date of this Permit and thereafter, the Permittee shall implement the selected Final Remedy described in the CMIWP, which is attached in its entirety as Attachment II-3 and made a part of this Permit.

#### **II-D EVALUATION OF THE SELECTED REMEDY**

In lieu of facility progress reports the Permittee will be submitting an Operation, Maintenance and Inspections Report and a Groundwater Monitoring Report annually in accordance with the WVDEP approved plans (see the Appendix A of the CMI WP in Appendix II-3, which is made a part of this Permit, for a generic version of the Operations, Maintenance, and Groundwater Monitoring Plan, whose details are subject to change, with WVDEP concurrence and approval, based on the changing site conditions in the future).

If the Agencies determine that the selected remedy will not comply with the media clean-up requirements, the Agencies may require the Permittee to perform additional studies and/or perform modifications to the existing Corrective Action remedy.

#### **II-E EMERGENCY RESPONSE; RELEASE REPORTING**

1. If at any time, the Permittee discovers that a release of hazardous waste or hazardous constituents from a SWMU at the Facility is presenting or may present an imminent and substantial endangerment to human health or the environment, the Permittee shall notify the WVDEP as soon as practicable of the source, nature, extent, location and amount of such release, the endangerment posed by such release and the actions taken and/or to be taken, to the extent known, to address such release.
2. Within five days of discovery, the Permittee shall notify WVDEP, in writing, of the nature, source, extent, and location of such release of hazardous waste or hazardous constituents from the SWMU.
3. If, based on the information submitted a release has not been adequately remediated to be protective of human health and the environment, WVDEP may require the SWMU and/or AOC to be included in an RFI or an IM.

## **II-F GUIDANCE DOCUMENTS**

All work to be performed at the Facility pursuant to this Permit shall be in general accordance with applicable EPA RCRA corrective action guidance available at [http://www.epa.gov/reg3wcmd/ca/ca\\_resources.htm](http://www.epa.gov/reg3wcmd/ca/ca_resources.htm).

## **II-G NEWLY DISCOVERED SOLID WASTE MANAGEMENT UNIT (SWMU) ASSESSMENT**

1. The Permittee shall notify the Project Manager, in writing, of any newly identified SWMU at the Facility, no later than thirty days after the date of discovery. The notification shall include, but is not limited to, the following known information:
  - a. A description of the newly identified SWMU(s), function, dates of operation, location (including a map), design criteria, dimensions, materials of construction, capacity, ancillary systems (e.g., piping), release controls, alterations made to the unit, engineering drawings, and all closure and post-closure information available, particularly whether wastes were left in place.
  - b. A description of the composition and quantities of solid wastes processed by the newly identified SWMU(s) with emphasis on hazardous wastes and hazardous constituents.
  - c. A description of any release (or suspected release) of hazardous waste or hazardous constituents originating from the newly identified SWMU. Include information on the date of release, type of hazardous waste or hazardous constituents, quantity and nature of the release, extent of release migration, and cause of release (e.g., overflow, broken pipe, tank leak, etc.). Also, provide any available data that quantifies the nature and extent of environmental contamination, including the results of soil and/or groundwater sampling and analysis efforts. Likewise, submit any existing monitoring information that indicates releases of hazardous waste or hazardous constituents have not occurred or is not occurring.
2. Upon receipt of the notification of any newly identified SWMU, the Project Manager will determine the need for corrective action at such SWMU. If corrective action is necessary to protect human health or the environment, the Project Manager will determine whether an RFI will be performed and the need for any IMs.
3. In lieu of a separate RFI, the Permittee may propose either to incorporate any newly identified SWMU into an ongoing RFI or to submit a proposal for the performance of corrective measures at such newly identified SWMU. Any such proposal shall be submitted to the Agencies along with notification of the discovery of the SWMU(s). Incorporation of any newly identified SWMU(s) into an ongoing RFI shall be through the submission of an RFI Work Plan

Addendum by the Permittee. Any such RFI Work Plan Addendum shall receive approval by the Agencies prior to initiation of the related RFI work.

## **II-H FINANCIAL ASSURANCE**

1. Revised Cost Estimate: Within ninety (90) calendar days of the effective date of this Permit, the Permittee shall submit a revised cost estimate (Cost Estimate), in current dollars, to perform the work required under Section II-C “Remedy Implementation”. The Cost Estimate must account for the costs of all foreseeable work, including all investigation and reports, construction work, monitoring, and other long-term care work, etc.
2. Annual Cost Estimate Updates: Within sixty (60) days prior to the anniversary date of the establishment of the financial instrument for the work required Section II-C “Remedy Implementation”, the Permittee shall submit to the CA Program Manager updated cost estimates, adjusted for inflation, for completing the approved work. If the financial test or corporate guarantee is used as the financial instrument, the owner or operator must send updated cost estimates to the CA Program Manager within 90 days after the close of each succeeding fiscal year in accordance with 40 CFR 264.145(f)(5).
3. Financial Assurance Demonstration: Within thirty (30) calendar days of approval of the initial cost estimate for the work required under this Module, and annually thereafter, the Permittee shall demonstrate compliance with financial assurance to CA Program Manager in accordance with 40 CFR § 264.143 for completing the work required under Section II-C “Remedy Implementation” in accordance with 40 CFR § 264.101(b). Within thirty calendar days of approval of any revised cost estimate, the Permittee shall demonstrate to the CA Program Manager financial assurance for the updated cost estimates.

## **II-J RECORDKEEPING**

Upon completion of closure of any current or future SWMU, the Permittee shall maintain in the Facility’s operating record, documentation of the closure measures.

## **II-J ACCESS FOR CORRECTIVE ACTION OVERSIGHT**

The WVDEP and its authorized representatives shall have access to the Facility at all reasonable times for monitoring compliance with the provisions of this Permit. The Permittee shall use its best efforts to obtain access to property for all parties beyond the boundaries of the Facility at which corrective action is required by this Permit.

## **II-K COMPLETION OF REMEDY**

Within ten (10) days of receipt of notification by the Project Manager that the remedy is complete, the Permittee shall submit a written certification to the Project Manager stating that the remedy has been completed in accordance with the requirements of this Permit Module. The certification must be signed by the Permittee. In cases where no

other Permit Conditions remain, the Permit may be modified not only to reflect the completion determination, but also to change the expiration date of the permit to allow earlier permit expiration in accordance with 40 CFR Parts 124, 270.41, and 270.42, as applicable.

## **ATTACHMENT II - 1**

### **PUBLIC NOTICE**

In the finalized Permit this attachment will contain the Public Notice announcing the issuance of a draft RCRA CA Permit which is to be published in the Charleston Gazette-Mail in May 2019. The draft Permit will be open to Public Comment for 45 days (2 pages)

## **ATTACHMENT II – 2**

### **FINAL DECISION and RESPONSE TO COMMENTS**

In the finalized Permit this attachment will contain a copy of the FDRTC document that sets forth the Final Remedy Decision for the facility, issued on September 9, 2016 (14 pages)



## **ATTACHMENT II – 3**

### **CORRECTIVE MEASURES IMPLEMENTATION WORK PLAN (CMIWP)**

In the finalized Permit this attachment will contain a copy of the CMIWP document that sets forth the Final Remedy Implementation for the facility, approved on March 2, 2018 (319 pages).