



west virginia department of environmental protection

Division of Air Quality
601 57th Street, SE
Charleston, WV 25304
(304) 926-0475

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: Covestro LLC
South Charleston, West Virginia
Attn: Barbara Buck
Vice President & Plant Manager

Agreement #: CA-C22-2023-3
Facility ID #: 039-00102

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 Covestro LLC (“Covestro”) 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. The Covestro South Charleston plant is a chemical manufacturing facility that produces polyether and polymer polyols. Covestro leases the facility site from Union Carbide Corporation (“UCC” or “Landlord”).

2. The Covestro South Charleston plant is currently in compliance with state and federal air regulations applicable to ethylene oxide (“EtO”).
3. The terms and conditions of this 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. Covestro has developed and implemented best management practices for EtO emissions at the South Charleston plant by utilizing Leak Detection and Repair (“LDAR”) methods above and beyond the state and federal requirements.

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 Covestro and the Director:

5. Covestro will immediately initiate due diligence to prepare to submit an Administrative Update (Class 1) to its West Virginia Department of Environmental Protection Regulation 13 Permit within four (4) weeks of the effective date of this Agreement to reduce the permitted EtO emissions limitations to be reflective of Covestro’s current business plan. The permitted EtO emissions limitations will relate to the components in EtO service pursuant to Subpart H of 40 C.F.R. § 63.180(d)(1) as it was promulgated on April 22, 1994. In the event of revisions to this regulation or related regulations, this Agreement will be modified for consistency.
6. In addition to its obligations to comply with the federal LDAR program as set forth in 40 C.F.R. § 63.1434(a), the Covestro South Charleston plant, within four (4) weeks, will be subject to the following state-only requirements:
 - a. Skip periods that are authorized under the federal LDAR program shall not be utilized by the South Charleston plant.
 - b. Compliance monitoring shall be conducted at the frequencies indicated below. For readings taken during compliance monitoring that are at or above the action threshold of 10 ppm, Covestro will attempt to repair consistent with 40 C.F.R. § 63.1434(a) as it was promulgated on June 1, 1999, after which re-monitoring will occur.

Component Type	Frequency	Action Threshold
Connector	Quarterly	10 ppm
Valve	Quarterly	10 ppm

- c. The Covestro South Charleston plant 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 Covestro South Charleston plant's Clean Air Act Title V permit.

7. Covestro shall immediately upon execution of this Agreement commit to continue to cooperate with its Landlord UCC in its efforts to cooperate with U.S. EPA and the DAQ with regard to EtO measures, to the extent Covestro is able to do so as a tenant of the South Charleston facility.
8. Records shall be maintained onsite for a period of at least 5 years.
9. If Covestro fails to conduct compliance monitoring as described 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.

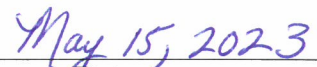
OTHER PROVISIONS

10. Covestro 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, Covestro 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, Covestro does not admit to any factual or 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 that causes delay in the achievement of the requirements of this Agreement, Covestro 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 (e.g., force majeure). Within five (5) working days after Covestro 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 Covestro 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 Covestro (e.g., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances.
12. Compliance with the terms and conditions of this Agreement shall not in any way be construed as relieving Covestro 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 Covestro to injunctive relief in accordance with the applicable law.

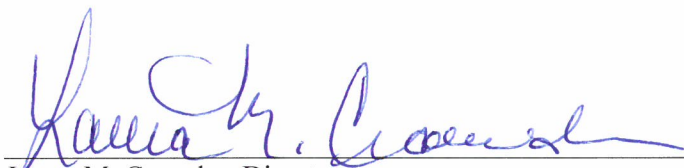
13. The terms and conditions of this Agreement shall not in any way be construed as relevant to any other state or federal statutory provisions or regulatory requirements or future proposals or representative of general industry best practices, as this Agreement is unique to Covestro's South Charleston operations and was mutually executed as a means of voluntary cooperation.
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 Covestro, 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 by 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.
18. This Agreement is based on Covestro's approved state permits as written on May 15, 2023 and the parties will revisit the terms of this Agreement in the event that any rule or regulation is promulgated which is inconsistent with existing applicable regulations as well as with this Agreement (e.g., changes to Clean Air Act Title V regulations, changes to West Virginia DAQ Regulation 13 and West Virginia DAQ Regulation 27, the existence of relevant exemptions or agreements, etc.



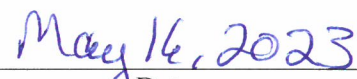
Barbara Buck, Vice President & Plant Manager
Covestro



Date



Laura M. Crowder, Director
WV Division of Air Quality



Date