

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

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APR 25 2025

Environmental Quality
Board

The Courtland Company,

APPELLANT'S NAME,

Appellant,

v.

Appeal No. 25-05-EQB

DIRECTOR, DIVISION OF

Water and Waste Management,

DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Appellee.

NOTICE OF APPEAL

Action Complained Of: The appellant(s) named above respectfully represent(s) that it is aggrieved by (identify the order, failure or refusal, or permit, and give date of the order or permit): Granting of general Permit Registration No. WVG612841 to Union Carbide Corporation

Relief Requested: The appellant therefore prays that this matter be reviewed and that the Board grant the following relief (describe the relief sought): Order the Director of Water and Waste Management to require Union Carbide Corporation to obtain an individual permit for the Filmont facility

Specific Objections: The specific objections to the action, including questions of fact and law to be determined by the Board, are set forth in detail in separate numbered paragraphs and attached hereto. The objections may be factual or legal.

Amendment of this Notice of Appeal may be had only by leave of the Board, and only for good cause shown.

Dated this 25th day of April, 2025.

/s/ Michael O. Callaghan

(Signature)

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**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

THE COURTLAND COMPANY,

- Appellant,

v.

Appeal No. 25-05-EQB

**DIRECTOR, DIVISION OF WATER
AND WASTE MANAGEMENT,
DEPARTMENT OF
ENVIRONMENTAL PROTECTION,**

- Appellee.

**THE COURTLAND COMPANY'S APPEAL OF THE GRANTING OF GENERAL
PERMIT REGISTRATION NO. WVG612841**

The Courtland Company, a W. Va. Business Corporation, by counsel, hereby appeals to this Board the decision by the Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection ["WVDEP"], to issue General Permit No. WVG612841 to Union Carbide Corporation. Courtland owns the adjoining real property and has standing to challenge this permit issuance. Courtland submits that a General Permit is unlawful in this situation and this Board should direct that the Director to require Union Carbide Corporation to submit an application for an Individual Permit. In support of this submission, Courtland states as follows: 1 UCC Filmont waste disposal facility is not a "closed industrial landfill" as described in the Public Notice.

1. UCC was required by Section 103(c) of the federal Comprehensive Environmental Response, Compensation & Liability Act of 1980, as amended ("CERCLA" or "federal Superfund Act"), 42 U.S.C. § 9603(c), to report the existence of its Filmont waste disposal facility to the U.S EPA on or before June 11, 1981.
2. Less than 3 years ago, the U.S. EPA stated in writing that it has no record of receiving any

report of the existence of the UCC Filmont waste disposal facility.

3. Moreover, UCC's Filmont waste disposal facility does not now have and never has had a USEPA Facility Registry Registration Number that is assigned, *inter alia*, to all facilities formally reported to USEPA pursuant to CERCLA § 103(c).
4. UCC's Filmont waste disposal facility was NEVER CLOSED in accordance with RCRA (either 40 C.F.R., Part 264 or Part 265), the W. Va. Hazardous Waste Management Act (WV HWMA"), or the W. Va. Solid Waste Management Rule ("WVSWMR").
5. Prior to the mid-1980s the UCC Filmont waste disposal facility was for more than two (2) decades the principal depository of chemical wastes generated by the UCC South Charleston petrochemical Plant, which was then the largest petrochemical plant in this nation.
6. While UCC's dumping of industrial and chemical wastes into the UCC Filmont facility may have ceased in the mid-1980s, according to UCC there exists no governmental record that the UCC Filmont waste disposal facility was ever closed in accordance with any applicable regulation or under the supervision of any Federal, State, or local governmental regulatory agency.
7. The UCC Filmont waste disposal facility is a single, completely unlined, big hole in the ground that UCC filled with industrial wastes and hazardous wastes and then covered with a thin layer of soil – some of which was contaminated soil from the UCC Technology Park.
8. UCC's Filmont waste disposal facility, a portion of which forms the actual bank of a segment of Davis Creek, does not now have and never has had in place any associated Leachate control or collection system.
9. Even today waste from the Filmont facility sits in groundwater beneath the facility and protrudes from this "cover" at various places across the dump, and leachate oozes both from the perimeter of the facility either directly into surface waters or carried there by stormwater and from the depths of the facility into the groundwater of the Davis Creek watershed, all of which is tributary to the Kanawha River. WVDEP is aware of all of this.
10. The U.S. District Court for the Southern District of WV has determined that UCC's

Filmont waste disposal facility is, in fact and at law, a RCRA Subtitle D prohibited “Open Dump” that has been found by the same Court to contain RCRA Subtitle C “listed and identified” Hazardous Wastes.

11. WVSWMR § 1.1.a.4 [“Applicability”], W. Va. C.S.R. § 33-1-1.1.a.4¹, that became effective on June 2, 1996 plainly requires UCC’s Filmont waste disposal facility to comply with its existing permit and the WVSWMR.
12. In turn, WVSMWR § 7.2.a.1 requires that at every Solid Waste Management Facility in WV “Measures must be taken to prevent the discharge of pollutants from the accumulated waste into the waters of the State (e.g., measures to prevent runoff into surface water bodies or the infiltration of leachates into local aquifers).”
13. Section 15 of the W. Va. Solid Waste Management Act, W. Va. Code § 22-15-15, provides both civil and criminal penalties for violation of WVSMWR § 7.2.a.1 and any other requirement of the WVSWMR. UCC’s Filmont “Open Dump” does not now have and never has had in place any such protective measures “to prevent the discharge of pollutants” into Waters of the State.
14. It would strain both the English language and credibility beyond known tolerances for WVDEP not to acknowledge that UCC’s decades-long and still on-going failure to put in place such required protective measures (*i.e.*, artificial liners, leachate control & collection system, *etc.*) at its Filmont Open Dump is anything other than the result of “gross negligence or willful misconduct.”
15. WVDEP found in 2020 that the UCC’s Filmont Open Dump was discharging pollutants into Waters of the State without the required NPDES permit, and issued a Notice of

¹ Subparagraphs .1 through .3 of WVSWMR § 1.1.a provide for different applicability of the WVSWMR to a “Solid Waste Landfill Facility,” a “SWLF,” and “Existing SWLF.” In turn, WVSWMR § 2.124 defines the terms “Solid Waste Landfill Facility” and “SWLF” to mean “a discrete area of land or portion thereof or an excavation that receives household waste . . .” WVSWMR § 2.47 defines the term “Existing SWLF” to mean any solid waste landfill that is currently depositing solid waste. On the date that the 1996 amendments and repromulgation of the WVSWMR first became effective (*i.e.*, June 2, 1996), UCC’s Filmont waste disposal facility was indisputably **not** a “Solid Waste Landfill Facility,” a “SWLF” or an “Existing SWLF.” Accordingly, by the precise language of WVSWMR § 1.1.a.4, UCC’s Filmont waste disposal facility is required to comply with its existing permit (assuming that it had one) **and** the WVSWMR.

Violation and subsequently a Unilateral Order under the WV Water Pollution Control Act (“WV WPCA”) requiring UCC to obtain an NPDES permit for discharges of pollutants from the facility.

16. Subsequently – in a clear violation of the CWA and the WV WPCA – WVDEP “suspended” enforcement of their own Unilateral Order to allow² UCC voluntarily to enter its Filmont “Open Dump,” the very existence of which is federally prohibited by RCRA § 4005(a), 42 U.S.C. § 9645(a), into the WV Voluntary Remediation Program (“VRP”).
17. WVDEP thereafter accepted UCC’s application for admission of its Filmont waste disposal facility into the WV Voluntary Remediation Program notwithstanding the plain fact that Section 4(a) of the W. Va. Voluntary Remediation & Redevelopment Act, W. Va. Code § 22-22-4(a), prohibits acceptance of any site into the WV VRP program if “the release [of a contaminant or regulated substance into the environment at or from the site] which is subject to remediation was created through gross negligence or willful misconduct.”
18. To date, UCC still has not applied for the discharge permit required by the WV WPCA for its Filmont facility and leachate from UCC’s Filmont Open Dump containing hazardous wastes continues to discharge - untreated and unpermitted – into the Waters of the State.
19. Nothing in the Memorandum of Understanding between USEPA and WVDEP authorizing the WV VRP allows WVDEP to “suspend” the requirements of the Clean Water Act or the WV Water Pollution Control Act for sites in the WV VRP, which is exactly what WVDEP has done with respect to UCC’s Filmont waste disposal facility.
20. For over 4 years since becoming aware of the on-going discharge of contaminated leachate from UCC’s Filmont Open Dump into the Waters of the State, WVDEP has allowed that discharge to continue in clear violation of the governing regulations under the WV WPCA, WVSWMR § 1.6³ [**“Lawful Disposal of Solid Waste Required”**], W. Va. C.S.R.

² Section 3.1.d of the W. Va. Voluntary Remediation & Redevelopment Rule, W. Va. C.S.R. § 60-3-3.d.1, provides that “[a]ny site that is subject to a unilateral enforcement order for corrective action issued pursuant to” the WV WPCA is ineligible for participation in the WV VRP.

³ WVSWMR § 1.6 provides, in relevant part:

§ 33-1-1.6, and the WV Voluntary Remediation & Redevelopment Act.

21. The General Permit at issue specifically states that it does not cover stormwater discharges associated with either “Landfills” or “Hazardous Waste Treatment, Storage, or Disposal (“TSD”) facilities.”
22. Accordingly, even if WVDEP is willing to allow UCC to persist in identifying this federally declared and prohibited “Open Dump” as a “landfill” in a formal application to WVDEP for issuance of permit, the UCC Filmont waste disposal facility would still be a “landfill,” as that term is defined by WVSWMR § 2.64, W. Va. C.S.R. § 33-1-2.64, that contains “hazardous wastes,” as that term is defined in WV HWMA Section 3(6), W. Va. Code § 22-18-3(6).
23. For that very reason asserted in ¶ 22, *supra*, UCC’s Filmont “Open Dump” is not an “industrial Solid Waste landfill,” as that term is defined by WVSWMR § 2.59, because WVSWMR § 2.58 completely excludes hazardous waste from the definition of “Industrial Solid Waste,” which is the only waste that an “Industrial Solid Waste landfill” can lawfully contain.
24. Thus, because UCC’s Filmont Open Dump is not an “Industrial Solid Waste landfill” and is a “landfill” at which “Hazardous Waste” is now and has been continuously since the effective date of the current version of the WV HWMA in 1994 a place at which the

1.6. Lawful Disposal of Solid Waste Required. -- Solid waste must be disposed, processed, stored, transferred, or recycled only at permitted solid waste facilities as described in this rule, and in compliance with *W. Va. Code §22C-4-10*.

1.6.a. The discharge, deposit, injection, dumping, spilling, leaking burning, burying, or otherwise placing of any solid waste or leachate into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including groundwaters, is prohibited unless specifically authorized by a permit or permits from the Department.

1.6.b. Solid waste facilities or activities failing to satisfy this subsection are considered open dumps, as defined in section 2, and will be subject to the actions and penalties outlined in *W. Va. Code §22-15-15*.

W. Va. C.S.R. § 33-1-1.6 [bolding emphasis added].

“disposal”⁴ of Hazardous Waste has been and is continuing to occur, the UCC Filmont Open Dump is a Hazardous Waste TSD facility, which is not eligible for coverage under Stormwater General Permit.

For the foregoing reasons, UCC’s Filmont federally prohibited Open Dump requires an individual discharge permit that covers discrete conveyances discharging landfill leachate and stormwater associated with these activities. Coverage under this general permit is wholly inappropriate.

THE COURTLAND COMPANY, INC.

By: /s/ Michael O. Callaghan
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⁴ WV HWMA Section 3(2), W. Va. Code § 22-18-3(2), defines the term “disposal” to include “**leaking**” of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including groundwaters.”

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of April, 2025, the foregoing **THE COURTLAND COMPANY'S APPEAL OF THE GRANTING OF GENERAL PERMIT REGISTRATION NO. WVG612841** was filed with the Environmental Quality Board at the West Virginia Department of Environmental Protection and the following counsel for Union Carbide Corporation by electronic mail:

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