



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, West Virginia 25304-2345
Phone: 304-926-0495
Fax: 304-926-0463

Harold Ward, Cabinet Secretary
<https://dep.wv.gov>

May 15, 2025

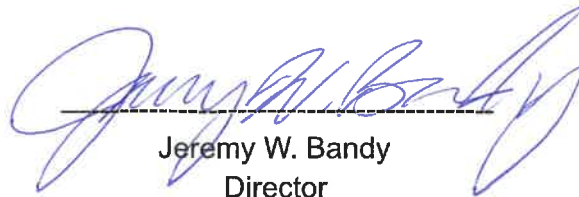
CERTIFICATION

**RE: WV/NPDES Permit Registration Number WVG612841
Union Carbide Corporation
Kanawha County**

Appeal No: 25-05-EQB

I, Jeremy W Bandy, Director, Division of Water and Waste Management, Department of Environmental Protection, in compliance with Chapter 22B, Article 1, Section 7(e), Code of West Virginia, as amended, do hereby certify that the enclosed is true and accurate reproduction of the record of proceedings out of which the appeal arises including documents and correspondence in the Director's file relating to the matter in question.

DIVISION OF WATER AND WASTE MANAGEMENT

A handwritten signature in blue ink, reading "Jeremy W. Bandy", is written over a horizontal dashed line.

Jeremy W. Bandy
Director



Burch, Patrick D <patrick.d.burch@wv.gov>

Fwd: CERTIFIED RECORD REQUEST: 25-05-EQB - The Courtland Company v. WVDEP

2 messages

Patel, Yogesh P <yogesh.p.patel@wv.gov>

Tue, May 6, 2025 at 9:14 AM

To: Larry D Board <larry.d.board@wv.gov>, "Burch, Patrick D" <patrick.d.burch@wv.gov>

Need to prepare a certified file.

----- Forwarded message -----

From: **DeRaimo, Kenna M** <kenna.m.deraimo@wv.gov>

Date: Tue, May 6, 2025 at 7:00 AM

Subject: CERTIFIED RECORD REQUEST: 25-05-EQB - The Courtland Company v. WVDEP

To: Jeremy W Bandy <jeremy.w.bandy@wv.gov>

Cc: Teresa A Pauline <teresa.a.pauline@wv.gov>, Yogesh P Patel <yogesh.p.patel@wv.gov>, Brad M Wright <brad.m.wright@wv.gov>, Charles Scott Driver <charles.s.driver@wv.gov>, Jonathan C Frame Esq. <jonathan.c.frame@wv.gov>

Good Morning,

A new Environmental Quality Board (EQB) appeal was filed on April 25, 2025. The **Notice of Appeal** is attached to this email for your reference along with a **Memo requesting the Certified Record which is due on May 20, 2025**. I am kindly requesting that **on or before 4 p.m. on May 20, 2025**, DWWM please provide the EQB the following:

1. **A paper copy** of the Certified Record delivered to me in Room #1026; and
2. **An electronic copy** of the Certified Record emailed to me at Kenna.M.DeRaimo@wv.gov.

A prehearing status conference (PHSC) will be held on Thursday, June 26, 2025, and an evidentiary hearing is scheduled for July 10, 2025. An **Order for Continuance with Notice of Hearing and Prehearing Status Conference** is attached for your reference. The documents referred to in this email have also been placed in interdepartmental mail to your attention.

If you have any questions, concerns, or need further information, please do not hesitate to contact me.

Sincerely,

Kenna

Kenna M. DeRaimo, Clerk

Air Quality Board

Environmental Quality Board

Surface Mine Board

601 57th Street, SE

Charleston, West Virginia 25304

Office Desk Phone: (304) 414-1128

Office Cell Phone: (304) 993-8562

3 attachments**2025.04.25. 25-05-EQB. Notice of Appeal WVG612841.pdf**

384K

**2025.05.06. 25-05-EQB. Order for Continuance and NOH & PHSC. 06.26.2025.pdf**

139K

**2025.05.06. 25-05-EQB. DWWM Certified Record Request.pdf**

65K

5/6/25, 9:41 AM

State of West Virginia Mail - Fwd: CERTIFIED RECORD REQUEST: 25-05-EQB - The Courtland Company v. WVDEP

To: Patrick D Burch <patrick.d.burch@wv.gov>

[Quoted text hidden]

--

Larry Board

CPESC CESSWI CPMSM CSIMS4
Environmental Resource Program Manager
WV Dept. of Environmental Protection
Division of Water and Waste Management
[601 57th St., SE](#)
[Charleston, WV 25304](#)
phone: (304) 926-0499 x43883
cell: (304) 932-3681
fax: (304) 926-0463

3 attachments



2025.04.25. 25-05-EQB. Notice of Appeal WVG612841.pdf
384K



2025.05.06. 25-05-EQB. Order for Continuance and NOH & PHSC. 06.26.2025.pdf
139K



2025.05.06. 25-05-EQB. DWWM Certified Record Request.pdf
65K



West Virginia Environmental Quality Board

601 57th Street, S.E.
Charleston, West Virginia 25304

MEMORANDUM

Phone: (304) 414-1128
eqb.wv.gov

DATE: May 6, 2025

TO: Jeremy W. Bandy, Director
Division of Water and Waste Management
West Virginia Department of Environmental Protection (WVDEP)

CC: Teresa Pauline, Division of Water and Waste Management, WVDEP (Via E-Mail)
Yogesh Patel, Division of Water and Waste Management, WVDEP (Via E-Mail)
Brad Wright, Division of Water and Waste Management, WVDEP (Via E-Mail)

FROM: Kenna M. DeRaimo, Clerk *KMD*
Environmental Quality Board

RE: **Request for Certified File – Appeal No. 25-05-EQB**
The Courtland Company v. WVDEP

Attached is **Appeal No. 25-05-EQB**, which was filed with the Environmental Quality Board ("EQB") on **May 6, 2025**. Within fourteen (14) days after receipt of this appeal, you must prepare, certify, and provide to the EQB a complete paper record of the proceedings out of which the appeal arises, including all documents and correspondence in the Director's file relating to the matter in question.

The record must be presented in chronological order with each page consecutively numbered. **The Certified Record in this matter is due on May 20, 2025.** In addition to the paper copy, please also send an electronic copy of the complete record to Kenna DeRaimo, Clerk of the EQB, at Kenna.M.DeRaimo@wv.gov.

If you have any questions about what to include in the certified record, please contact the West Virginia Department of Environmental Protection's Office of Legal Services.

Thank you for your attention to this matter.

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

THE COURTLAND COMPANY,

Appellant,

v.

Appeal Nos. 25-05-EQB

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

Appellee.

**ORDER FOR CONTINUANCE
AND NOTICE OF HEARING AND PREHEARING STATUS CONFERENCE**

Appeal No. 25-05-EQB was filed with the West Virginia Environmental Quality Board (“Board”) on April 25, 2025. In accordance with West Virginia Code §22B-1-7(f), an evidentiary hearing concerning matters as more fully set forth in the *Notice of Appeal* filed in Appeal No. 25-05-EQB is scheduled for May 21, 2025.

The Board, on its own motion, determined that the evidentiary hearing in Appeal No. 25-05-EQB shall be continued until the **July 10, 2025, Board meeting beginning at 8:30 a.m.** The Parties may attend and participate in the evidentiary hearing in person or via Zoom by using the following Zoom link: <https://us02web.zoom.us/j/82961435631>.

Additionally, pursuant to CSR §46-4-5.2 of the *Procedural Rules Governing Appeals Before the Environmental Quality Board*, a **prehearing status conference (PHSC) will be held on Thursday, June 26, 2025, at 10:00 a.m.** before the Board’s Chairman and/or legal counsel. The Parties may attend and participate in the PHSC by **Zoom only** by using the following Zoom link:

<https://us02web.zoom.us/j/85255309758>.

The proceedings will be recorded and transcribed later, if necessary. The following will be discussed at the prehearing:

- (1) Presentation and consideration of preliminary legal issues;
- (2) Stipulations to facts that are not contested by the parties;
- (3) Stipulations to the admission of evidence to avoid unnecessary proof;
- (4) Identification and reduction of number of witnesses; and
- (5) Consideration of any other matters that will aid in the expeditious conduct of the hearing.

It is further ordered that each counselor representative attending the prehearing conference is required to have a thorough knowledge of the case, be prepared to discuss it, and to make stipulations or admissions where appropriate and to argue any pending motions. Each counselor representative must have full authority from the party represented and any law firm associated with to take such action as may be necessary to comply with this order.

It is further ordered that at the conclusion of the conference, either orally for the record or by separate writing, an order will be entered which recites any action taken and agreements reached by the parties. The order will take the place of all that has taken place before and will control the subsequent course of the hearing unless modified to prevent manifest injustice.

It is so **ORDERED** and **ENTERED** this 6th day of May, 2025.

Environmental Quality Board

for Kenneth M. DeRaimo
Dr. Edward Snyder, Chairman

**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.

CERTIFICATE OF SERVICE

I, Kenna M. DeRaimo, Clerk for the Environmental Quality Board, hereby certify that on this day,
the 6th day of May, 2025, a true copy of the foregoing **ORDER FOR CONTINUANCE AND NOTICE OF
HEARING AND PREHEARING STATUS CONFERENCE** has been served upon the following:

Michael O. Callaghan, Esq.
Neely & Callaghan
1337 Virginia Street East, Suite 200
Charleston, WV 25301-3011
*Counsel for Appellant
The Courtland Company*

***Via Certified First-Class U.S. Mail
and Electronic Mail***
9489 0090 0027 6692 2651 74

Charles S. Driver, Esq.
Jonathan C. Frame, Esq.
WV Department of Environmental Protection
Office of Legal Services
601 57th Street SE
Charleston, WV 25304
*Counsel for Appellee
West Virginia Department of Environmental Protection*

***Via Interdepartmental Mail
and Electronic Mail***

Jeremy W. Bandy, Director
WV Department of Environmental Protection
Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Appellee

***Via Interdepartmental Mail
and Electronic Mail***


Kenna M. DeRaimo, Clerk

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

RECEIVED

APR 25 2025

The Courtland Company,

APPELLANT'S NAME,

Appellant,

v.

DIRECTOR, DIVISION OF

Water and Waste Management,

DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Appellee.

Environmental Quality
Board

Appeal No. 25-05-EQB

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)

Michael O. Callaghan

(Address)

1337 Virginia St E, Charleston, WV 25301

304-545-4794

(Telephone)

**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
Michael O. Callaghan (WV Bar No. 5509)
NEELY & CALLAGHAN
1337 Virginia St. E., Suite 200
Charleston, WV 25301-3011
Telephone: (304) 343-6500
Cell: (304) 545-4794
Facsimile: (304) 343-6528
E-Mail: mcallaghan@neelycallaghan.com
Lead Counsel for Appellant, The Courtland Co.

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:

R. Scott Masterson (WV Bar #10730)
Patricia M. Bello (WV Bar #11500)
LEWIS BRISBOIS BISGAARD & SMITH LLP
707 Virginia Street E, Suite 1400
Charleston, West Virginia 25301
(304) 553-0166
Scott.masterson@lewisbrisbois.com
Patricia.bello@lewisbrisbois.com

and

Martin A. Shelton (*pro hac vice*)
LEWIS BRISBOIS BISGAARD & SMITH LLP
1180 Peachtree St. NE, Suite 2900
Atlanta, GA 30309
(404) 348-8585
Martin.Shelton@lewisbrisbois.com

Counsel for Appellee

and constitutes service on counsel of record.

/s/ Michael O. Callaghan
Michael O. Callaghan, Esq. (WV Bar No. 5509)
NEELY & CALLAGHAN
1337 Virginia Street East, Suite 200
Charleston, WV 25301-2134

Telephone: (304) 343-6500
Facsimile: (304) 343-6528
E-Mail: mcallaghan@neelycallaghan.com



Burch, Patrick D <patrick.d.burch@wv.gov>

Fwd: Appeal

2 messages

Patel, Yogesh P <yogesh.p.patel@wv.gov>

Fri, May 2, 2025 at 4:20 PM

To: "Burch, Patrick D" <patrick.d.burch@wv.gov>, Larry D Board <larry.d.board@wv.gov>

Need to prepare a certified file for this appeal.

----- Forwarded message -----

From: **Pauline, Teresa A** <teresa.a.pauline@wv.gov>

Date: Mon, Apr 28, 2025 at 12:02 PM

Subject: Appeal

To: Yogesh P Patel <yogesh.p.patel@wv.gov>

Hi Yogesh,

Here's a copy of the Appeal we just received. Michael Callaghan dropped it off at the front desk.

--

Thank you & have a blessed day!

Teresa A. Pauline

Administrative Secretary

Division of Water & Waste

601 57th Street, SE

Charleston, WV 25304

304.926.0499 x.43831

304.414.3831 Direct



Appeal Courtland Company.pdf

1978K

Board, Larry D <larry.d.board@wv.gov>

Fri, May 2, 2025 at 4:33 PM

To: Patrick D Burch <patrick.d.burch@wv.gov>

Download or print and scan a copy of the Permit registration, ant emails, inspection reports and any other documentation you have and place it in a folder.

[Quoted text hidden]

--

Larry Board

CPESC CESSWI CPMSM CSIMS4

Environmental Resource Program Manager

WV Dept. of Environmental Protection

Division of Water and Waste Management

601 57th St., SE

Charleston, WV 25304

phone: (304) 926-0499 x43883

cell: (304) 932-3681

fax: (304) 926-0463



Appeal Courtland Company.pdf

1978K

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

The Courtland Company,
APPELLANT'S NAME,

Appellant,

v.

Appeal No. _____

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)

Michael O. Callaghan

(Address)

1337 Virginia St E, Charleston, WV 25301

304-545-4794

(Telephone)

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

THE COURTLAND COMPANY,

- Appellant,

v.

Appeal No. _____

**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, WWSWMR § 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 WWSWMR § 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
Michael O. Callaghan (WV Bar No. 5509)

NEELY & CALLAGHAN
1337 Virginia St. E., Suite 200
Charleston, WV 25301-3011
Telephone: (304) 343-6500
Cell: (304) 545-4794
Facsimile: (304) 343-6528
E-Mail: mcallaghan@neelycallaghan.com

Lead Counsel for Appellant, The Courtland Co.

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:

R. Scott Masterson (WV Bar #10730)
Patricia M. Bello (WV Bar #11500)
LEWIS BRISBOIS BISGAARD & SMITH LLP
707 Virginia Street E, Suite 1400
Charleston, West Virginia 25301
(304) 553-0166
Scott.masterson@lewisbrisbois.com
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and

Martin A. Shelton (*pro hac vice*)
LEWIS BRISBOIS BISGAARD & SMITH LLP
1180 Peachtree St. NE, Suite 2900
Atlanta, GA 30309
(404) 348-8585
Martin.Shelton@lewisbrisbois.com

Counsel for Appellee

and constitutes service on counsel of record.

/s/ Michael O. Callaghan
Michael O. Callaghan, Esq. (WV Bar No. 5509)
NEELY & CALLAGHAN
1337 Virginia Street East, Suite 200
Charleston, WV 25301-2134

Telephone: (304) 343-6500
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E-Mail: mcallaghan@neelycallaghan.com



Burch, Patrick D <patrick.d.burch@wv.gov>

WVG612841 - Union Carbide Comments

3 messages

Shirley, Billy T <billy.t.shirley@wv.gov>

Fri, Mar 28, 2025 at 9:22 AM

To: Patrick D Burch <patrick.d.burch@wv.gov>, Rick D Adams <rick.d.adams@wv.gov>

Hey, I saw that the application was marked as issued yesterday. Did the comment responses get sent to Mr. Simonton? He emailed me yesterday morning asking about them.

Thanks,

Billy Shirley
Environmental Resource Specialist II
WV DEP- DWWM
601 57th St SE
Charleston, WV 25304
(304) 926-0499 ext 43893

Burch, Patrick D <patrick.d.burch@wv.gov>

Fri, Mar 28, 2025 at 9:26 AM

To: "Shirley, Billy T" <billy.t.shirley@wv.gov>

Yes

Patrick

[Quoted text hidden]

Shirley, Billy T <billy.t.shirley@wv.gov>

Fri, Mar 28, 2025 at 9:26 AM

To: "Burch, Patrick D" <patrick.d.burch@wv.gov>, Rick D Adams <rick.d.adams@wv.gov>

Awesome, thanks!

Billy Shirley
WV DEP- DWWM
(304) 926-0499 ext 43893

[Quoted text hidden]

5/6/25, 8:01 AM

State of West Virginia Mail - copy of Closed Landfill permit registration approval as requested.



Burch, Patrick D <patrick.d.burch@wv.gov>

copy of Closed Landfill permit registration approval as requested.

4 messages

Burch, Patrick D <patrick.d.burch@wv.gov>
To: David Carpenter <David.Carpenter@erm.com>

Fri, Mar 28, 2025 at 7:12 AM

See attached.

--
Patrick Burch
ERS III
WV DEP

2 attachments

WVG612841 Approval.pdf
144K

WVG612841DMR.pdf
130K

David Carpenter <David.Carpenter@erm.com>
To: "Burch, Patrick D" <patrick.d.burch@wv.gov>

Fri, Mar 28, 2025 at 8:47 AM

Thank you Patrick.

Get [Outlook for iOS](#)

From: Burch, Patrick D <patrick.d.burch@wv.gov>
Sent: Friday, March 28, 2025 7:14 AM
To: David Carpenter <David.Carpenter@erm.com>
Subject: copy of Closed Landfill permit registration approval as requested.

EXTERNAL MESSAGE

[Quoted text hidden]

This e-mail and any attachments may contain proprietary, confidential and/or privileged information. No confidentiality or privilege is waived or lost by any transmission errors. This communication is intended solely for the intended recipient, and if you are not the intended recipient, please notify the sender immediately, delete it from your system and do not copy, distribute, disclose, or otherwise act upon any part of this email communication or its attachments. To find out how the ERM Group manages personal data please review our [Privacy Policy](#)

David Carpenter <David.Carpenter@erm.com>
To: "Burch, Patrick D" <patrick.d.burch@wv.gov>

Fri, Apr 11, 2025 at 12:00 PM

Hello Patrick, wanted to confirm one parameter. Do we compare the results of Ammonia as Nitrogen to the benchmark for Ammonia in the MSGP fact sheet?

Dave

5/6/25, 8:01 AM

State of West Virginia Mail - copy of Closed Landfill permit registration approval as requested.

From: Burch, Patrick D <patrick.d.burch@wv.gov>
Sent: Friday, March 28, 2025 7:13 AM
To: David Carpenter <David.Carpenter@erm.com>
Subject: copy of Closed Landfill permit registration approval as requested.

EXTERNAL MESSAGE

See attached.

[Quoted text hidden]

[Quoted text hidden]

Burch, Patrick D <patrick.d.burch@wv.gov>
To: David Carpenter <David.Carpenter@erm.com>

Tue, Apr 15, 2025 at 8:23 AM

Mr. Carpenter,

The benchmark for Ammonia is 4.0 mg/l

Patrick Burch
ERS III
WV DEP

[Quoted text hidden]



Burch, Patrick D <patrick.d.burch@wv.gov>

Approval for WVG612841, Union Carbide Corporation, Kanawha County

1 message

NPDESEP, DEP <dep.npdesep@wv.gov>

Thu, Mar 27, 2025 at 2:15 PM

To: Jesprauge@dow.com

Cc: Mandie J Simpson <mandie.j.simpson@wv.gov>, "Harbison, Ryan T" <ryan.t.harbison@wv.gov>, Patrick D Burch <patrick.d.burch@wv.gov>, DEP NPDESEP <DEP.NPDESEP@wv.gov>

Union Carbide Corporation

437 MacCorkle Ave., SW
South Charleston, WV 25303

Physical Location:

3201 Kanawha Turnpike
South Charleston, WV 25303

Dear Permittee:

The Division of Water and Waste Management has reviewed your General Permit Site Registration Application Form for the coverage of your activity. Based on the information you submitted on this registration form, you are now authorized to operate under WV/ NPDES General Water Pollution Control Permit No. WV0111457. Please find attached your permit approval with your registration number assigned to your facility.

The approved Groundwater Protection Plan (GPP) shall be maintained at the plant site and shall be available for inspection by the Division of Water and Waste Management personnel. The GPP approval afforded by this permit shall not relieve the permittee of any requirements pertaining to the Above Ground Storage Tank (AST) Program.

If you have any questions or concerns, please contact Patrick Burch at 304-926-0499 ext. 43813 or email at Patrick.D.Burch@wv.gov

Jeremy W. Bandy, Director
Division of Water and Waste Management
601 57th St SE
Charleston, WV 25304-2345
Phone: (304) 926-0495
Fax: (304) 926-0463

2 attachments **WVG612841DMR.pdf**
130K

5/6/25, 8:06 AM

State of West Virginia Mail - Approval for WVG612841, Union Carbide Corporation, Kanawha County



WVG612841 Approval.pdf

144K

FOR: W-1

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

PMT. REGISTRATION NO. WVG612841

STORMWATER MONITORING REPORT

FACILITY NAME: (Union Carbide Corporation Closed Filmont Landfill) UNION CARBIDE

CERTIFIED LABORATORY NAME:

LOCATION OF FACILITY: SOUTH CHARLESTON, Kanawha County

CERTIFIED LABORATORY ADDRESS:

MIT NO.: WV0111457

OUTLET NO.: 001

TELEAD FOR THE MONTH OF:

INDIVIDUAL PERFORMING ANALYSIS:

Parameter		Quantity			Other Units			CEL *	Units	N.E.	Measurement Frequency	Sample Type
1 (ML-1) RF-B 5-Day 20 Deg.C	Reported											
	Permit Limits	N/A				N/A			mg/l		1/quarter	Grab
2 (ML-1) RF-B Suspended Solids	Reported											
	Permit Limits	N/A				N/A			mg/l		1/quarter	Grab
3 (ML-1) RF-B	Reported											
	Permit Limits	N/A				Rpt Only Inst. Min.	N/A		S.U.		1/quarter	Grab
4 (ML-1) RF-B Ammonia Nitrogen	Reported											
	Permit Limits	N/A				Rpt Only Max. Daily	N/A		mg/l		1/quarter	Grab
5 (ML-1) RF-B Total Nitrate Nitrogen	Reported											
	Permit Limits	N/A				Rpt Only Max. Daily	N/A		mg/l		1/quarter	Grab
6 (ML-1) RF-B Total Oxygen Demand	Reported											
	Permit Limits	N/A				Rpt Only Max. Daily	N/A		mg/l		1/quarter	Grab
7 (ML-1) RF-B Total Grease, Hexane EXTR.	Reported											
	Permit Limits	N/A				Rpt Only Max. Daily	N/A		mg/l		1/quarter	Grab
8 (ML-1) RF-B	Reported											
	Permit Limits	N/A				Rpt Only Max. Daily	N/A		mg/l		1/quarter	Grab

L = Compliance Evaluation Level

Signature of Principal Executive Officer

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of a fine and imprisonment for knowing violations.

Date Completed

Signature of Principal Executive Officer or Authorized Agent



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, West Virginia 25304-2345
Phone: 304-926-0495
Fax: 304-926-0463

Harold Ward, Cabinet Secretary
<https://dep.wv.gov>

March 27, 2025

Union Carbide Corporation
437 MacCorkle Ave., SW
South Charleston, WV 25303

RE: WV/NPDES Permit No. WV0111457
General Permit Registration No.
WVG612841
Union Carbide Corporation
Kanawha County

Dear Permittee:

The Division of Water and Waste Management has reviewed your General Permit Site Registration Application Form for the coverage of your activity. Based upon the information you submitted on this registration form, you are now authorized to operate under WV/NPDES General Water Pollution Control Permit No. WV0111457, Issued February 5, 2025. The general permit can be found at: <http://www.dep.wv.gov/WWE/Programs/stormwater/multisector/Pages/home.aspx>. You should carefully read the contents of the permit and become familiar with all requirements needed to remain in compliance with the permit.

Although you should be aware of all the terms and conditions of this permit, we wish to advise you of the following important requirements:

1. You are subject to the monitoring requirements of Sector W-1 of the General Permit.
2. In accordance with Section B.18. of the General Permit, you are required to have a complete storm water pollution prevention plan (SWPPP) and a groundwater protection (GPP) plan. These plans are to be retained on site and be available for review by the Director or the Director's authorized representative.

3. The current General Permit expires on March 6, 2030. If you wish to continue a regulated activity after the expiration date of this permit, provisions for coverage will be made during the public notice process for any new General Permit to be issued at that time.

4. Facilities permitted to discharge pollutants to the waters of the State under Chapter 22, Article 11 of the West Virginia Code are required to test their effluent in order to verify permit compliance. This testing is the responsibility of the permittee and these test results are to be submitted to this office on the enclosed Discharge Monitoring Report (DMR) forms.

All monitoring required by this permit is benchmark monitoring. This monitoring is not an effluent limitation and should not be construed as such it is merely an indicator of whether or not the facilities discharges indicates if there is a reasonable potential to violate state water quality standards. If the benchmarks are exceeded then the permittee must immediately review both the stormwater and groundwater protection plans to reduce pollutant levels to meet the benchmark levels.

If required by the assigned industrial sector, you must perform this sampling and analysis once every three (3) months. However, the DMR forms are to be completed and submitted to this office 25 days following the end of each required three (3) month sampling period. Failure to submit required DMRs is a violation of the permit and can lead to enforcement actions being taken by this agency for noncompliance. It is suggested that several copies of the enclosed DMR forms be made for your future use, as this office does not supply permittees with DMR forms. Your first DMR is due within 25 days after your first required reporting period.

Based upon the review of your eight baseline monitoring the following parameter has been added to the monitoring requirements listed in the assigned industrial sector. Outlet 001 add Nitrate plus Nitrite Nitrogen.

Your annual permit fee has been assessed as \$250.00. You will be invoiced by this agency one month prior to the anniversary date of your original approval date. Failure to submit the annual fee within 90 days of the due date will render your permit void upon the date you are mailed a certified written notice to that effect.

Finally, note that copies of all future correspondence regarding the permit registration must be sent to the following addresses:

Department of Environmental Protection
Division of Water and Waste Management
Permitting Section
601 57th Street SE
Charleston, WV 25304-2345

Department of Environmental Protection
Environmental Enforcement
601 57th Street SE
Charleston, WV 25304

Union Carbide Corporation
Page 3

The validity of this General Permit Registration is contingent upon payment of the applicable annual permit fee, as required by Chapter 22, Article 11, Section 10 of the Code of West Virginia.

Your efforts toward preventing the degradation of our natural resources are greatly appreciated. If you have any questions, please contact Patrick Burch of this Division at (304) 926-0499 extension 43813, or by email at Patrick.D.Burch@wv.gov.

Jeremy Bandy, Director

Division of Water and Waste Management

601 57th St SE

Charleston, WV 25304-2345

Phone: (304) 926-0495

Fax: (304) 926-0463



west virginia department of environmental protection

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601 57th Street SE
Charleston, West Virginia 25304-2345
Phone: 304-926-0495
Fax: 304-926-0463

Harold Ward, Cabinet Secretary
<https://dep.wv.gov>

March 27, 2025

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437 MacCorkle Ave., SW
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WVG612841
Union Carbide Corporation
Kanawha County

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Charleston, WV 25304

Union Carbide Corporation
Page 3

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Jeremy Bandy, Director

Division of Water and Waste Management

601 57th St SE

Charleston, WV 25304-2345

Phone: (304) 926-0495

Fax: (304) 926-0463

LITY NAME: (Union Carbide Corporation Closed Filmont Landfill) UNION CARBIDE

CERTIFIED LABORATORY NAME:

ATION OF FACILITY: SOUTH CHARLESTON, Kanawha County

CERTIFIED LABORATORY ADDRESS:

MIT NO.: WV0111457

OUTLET NO.: 001

TELOAD FOR THE MONTH OF:

INDIVIDUAL PERFORMING ANALYSIS:

Parameter	Frequency	Quantity			Other Units			Measurement Frequency	Sample Type
			Units	N.E.		CEL*	Units	N.E.	
0 (ML-1) RF-B 5-Day 20 Deg.C Year Round	Reported								
	Permit Limits	N/A	N/A		N/A		mg/l	1/quarter	Grab
0 (ML-1) RF-B Suspended Solids Year Round	Reported								
	Permit Limits	N/A	N/A		N/A		mg/l	1/quarter	Grab
0 (ML-1) RF-B Year Round	Reported								
	Permit Limits	N/A	N/A		Rpt Only Inst. Min.	N/A	S.U.	1/quarter	Grab
0 (ML-1) RF-B Total Nitrogen Year Round	Reported								
	Permit Limits	N/A	N/A		N/A		mg/l	1/quarter	Grab
0 (ML-1) RF-B Plus Nitrate Nitrogen Year Round	Reported								
	Permit Limits	N/A	N/A		N/A		mg/l	1/quarter	Grab
0 (ML-1) RF-B Oxygen Demand Year Round	Reported								
	Permit Limits	N/A	N/A		N/A		mg/l	1/quarter	Grab
0 (ML-1) RF-B Grease, Hexane EXTR. Year Round	Reported								
	Permit Limits	N/A	N/A		N/A		mg/l	1/quarter	Grab

L = Compliance Evaluation Level

Signature of Principal Executive Officer

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of a fine and imprisonment for knowing violations.

Date Completed

Signature of Principal Executive Officer or Authorized Agent



Burch, Patrick D <patrick.d.burch@wv.gov>

Union Carbide Corporation closed landfill WVG612841

4 messages

Burch, Patrick D <patrick.d.burch@wv.gov>
To: Yogesh P Patel <yogesh.p.patel@wv.gov>

Thu, Mar 27, 2025 at 1:44 PM

I sent the response to comments to Scott Simonton.

The registration will be issued today.

--
Patrick Burch
ERS III
WV DEP

Patel, Yogesh P <yogesh.p.patel@wv.gov>
To: "Burch, Patrick D" <patrick.d.burch@wv.gov>

Thu, Mar 27, 2025 at 1:48 PM

Who is issuing it?
[Quoted text hidden]

Burch, Patrick D <patrick.d.burch@wv.gov>
To: "Patel, Yogesh P" <yogesh.p.patel@wv.gov>

Thu, Mar 27, 2025 at 1:52 PM

The approval will be sent out by Rick Adams.

[Quoted text hidden]

Patel, Yogesh P <yogesh.p.patel@wv.gov>
To: "Burch, Patrick D" <patrick.d.burch@wv.gov>

Thu, Mar 27, 2025 at 1:55 PM

ohh okay.
[Quoted text hidden]



Burch, Patrick D <patrick.d.burch@wv.gov>

Filmont MSGP permit

2 messages

David Carpenter <David.Carpenter@erm.com>
To: "Burch, Patrick D" <patrick.d.burch@wv.gov>

Thu, Mar 27, 2025 at 3:16 PM

Hello Patrick, sorry to bug you. Yogesh mentioned the Filmont MSGP has been issued. Would you have a copy of it or is there a way I can get a copy today so counsel can provide to the federal court yet today?

Dave

Kind Regards,



David Carpenter, P.E., LRS (licensed in WV, OH, KY, PA)

Partner

Charleston, WV

erm.com

Office/Cell (304) 546-1783

Teams (612) 347-7131

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Burch, Patrick D <patrick.d.burch@wv.gov>
To: David Carpenter <David.Carpenter@erm.com>

Fri, Mar 28, 2025 at 7:09 AM

5/6/25, 8:01 AM

State of West Virginia Mail - Filmont MSGP permit

I will provide you a copy in a separate email.

Patrick Burch

[Quoted text hidden]

5/6/25, 7:51 AM

State of West Virginia Mail - Fwd: Courtland Final Response



Burch, Patrick D <patrick.d.burch@wv.gov>

Fwd: Courtland Final Response

1 message

Patel, Yogesh P <yogesh.p.patel@wv.gov>
To: "Burch, Patrick D" <patrick.d.burch@wv.gov>

Thu, Mar 27, 2025 at 11:27 AM

----- Forwarded message -----

From: **Pauline, Teresa A** <teresa.a.pauline@wv.gov>
Date: Thu, Mar 27, 2025 at 10:57 AM
Subject: Courtland Final Response
To: Yogesh P Patel <yogesh.p.patel@wv.gov>

Good Morning Yogesh,

Please see the attached.

--

Thank you & have a blessed day!
Teresa A. Pauline
Administrative Secretary
Division of Water & Waste
601 57th Street, SE
Charleston, WV 25304
304.926.0499 x.43831
304.414.3831 Direct



Courtland final response 032725.pdf
316K



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston West Virginia 25304-2345
Phone: 304-926-0495
Fax: 304-926-0496

Harold D. Ward, Cabinet Secretary
dep.wv.gov

March 27, 2025

Re: General Permit Registration No. WVG612841
Carbide Corporation (UCC)
Response to Comments from The Courtland
Company


Dear Dr. Simonton,

The West Virginia Department of Environmental Protection (DEP), Division of Water and Waste Management (DWWM), appreciates the opportunity to respond to the comments submitted by Dr. Simonton on behalf of The Courtland Company regarding Draft Registration No. WVG612841, which was made available for public notice for Union Carbide.

This permit registration is scheduled for issuance on March 27, 2025. Please be advised that you have the right to appeal to any terms and conditions of this permit registration that you find objectionable. Appeals must be submitted to the Environmental Quality Board by filing a Notice of Appeal using the Board's prescribed form. This must be done in accordance with Section 21, Article 11, Chapter 22 of the West Virginia Code, within thirty (30) days of the permit registration's issuance.

Thank you for your interest and comments on the Carbide Corporation (UCC) application. If you have any further questions or concerns, please do not hesitate to contact Yogesh P. Patel, P.E. of my staff at 304-926-0499 ext. 43877 or by email at Yogesh.P.Patel@wv.gov.

Sincerely,


Jeremy W. Bandy
Director

The comments provided by the Courtland are shown below in *italics* and the response is shown below in **bold**.

Brief Site Background.

Union Carbide Corporation has requested to discharge stormwater from the closed Filmont Landfill into waters of the State. The closed landfill covers an area of approximately 10 acres.

Approximately 0.418 acres is a gravel access road extending from the western entrance around the top perimeter of the landfill. The remainder of the landfill is vegetated. The main landfill drainage area encompasses approximately 9 acres with another 0.55 acres on the northern edge that contributes to the discharge at the proposed landfill outfall location, herein designated as Outfall F001. The remaining 0.47 acres consist of landfill side slopes. The area that drains to the proposed outfall consists of the eastern access road that slopes down to a low area and discharges off the landfill surface at Outfall F001. Outfall F001 drains to an unnamed drainage ditch that also collects stormwater drainage from interstate 64 and ultimately migrates northwest to Ward Branch, which discharges into Davis Creek, and then ultimately discharging to the Kanawha River.

The site is a closed landfill, consisting of approximately 10 acres, which was active from the 1950's through the 1980's. The landfill was closed and covered in the late 1980's. The closed landfill is vacant and consists of predominantly wooded areas and flat grass fields. This NPDES discharge permit application applies to an approximately 0.55-acre drainage area. Average discharge was anticipated to 507 gallon per day. The closed landfill is vegetated and stabilized and has been covered with clayey soils during closure. There is no exposure of stormwater with materials previously disposed of at the Site. The Site is currently vacant, undeveloped, and predominately flat grass fields with forested slopes leading to varying tributaries to the northern, eastern, and western extent. There have been no materials disposed of in the landfill since the 1980s. The intended future land use of the Site is continued long-term maintenance of the closed landfill.

As per application facility are under SIC Code 4953 – Refuse Systems category.

Comment No. 1.

“First, 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. 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. 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).”

Response No. 1

Thank you for bringing this to our attention; we have taken note of your input.

Comment No. 2.

“Second, 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”).”

Response No. 2.

As explained on brief site background, The landfill was closed and covered in the late 1980's. As such an Agency believes UCC is not required to obtain any such permit from the Agency at the time.

Comment No. 3.

“Third, 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. 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.”

Response No. 3

This comment states factual and or legal conclusions that have no bearing on the application in question; accordingly, a response is not required

Comment No. 4.

Fourth and of considerable importance, the UCC Filmont waste disposal facility is in fact entirely a single, completely unlined, big hole in the ground containing industrial wastes and hazardous wastes covered with a thin layer of soil – some of which was contaminated soil from the UCC Technology Park. It does not now have and never has had in place any associated Leachate control or collection system. Even today waste 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.

Response 4.

This comment states factual and or legal conclusions that have no bearing on the application in question; accordingly, a response is not required

Comment No. 6.

“Sixth, and also of considerable importance, 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.”

Response No. 6.

This comment states factual and or legal conclusions that have no bearing on the application in question; accordingly, a response is not required

Comment No. 7.

“Seventh, The provisions of WVSWMR § 1.1.a.4 [“Applicability”], W. Va. C.S.R. § 33-1-1.1.a.41 , that became effective on June 6, 1996 plainly requires UCC’s Filmont waste disposal facility to comply with its existing permit and the WVSWMR. In turn, WVSWMR § 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).” 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 this 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. 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.”

Response No. 7.

This comment states factual and or legal conclusions that have no bearing on the application in question; accordingly, a response is not required

Comment No. 8.

“Eighth, WVDEP found in 2020 that the UCC’s Filmont Open Dump was discharging pollutants to Waters of the State without the required NPDES permit, and issued a Notice of 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. Then – 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”). WVDEP subsequently 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.”

Response No. 8

This comment states factual and or legal conclusions that have no bearing on the application in question; accordingly, a response is not required

Comment No. 9.

Ninth, 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.

Response No. 9.

As explained in Brief Site Background, this is a closed landfill and UCC is proposing to divert stormwater from the portion of landfill (Approximately 0.55 acre) via an unnamed drainage ditch that also collects stormwater drainage from interstate 64 and ultimately migrates northwest to Ward Branch, which discharges into Davis Creek, and then ultimately discharging to the Kanawha River. This registration only permits the discharge of stormwater from a portion of a closed landfill into the waters of the State.

Comment No. 10.

“Tenth, 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. 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 both the WV WPCA and the WV Voluntary Remediation & Redevelopment Act.”

Response No. 10.

This comment states factual and or legal conclusions that have no bearing on the application in question; accordingly, a response is not required

Comment No. 11.

“Eleventh, 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.” 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) . For that very reason alone the UCC 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. 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 “disposal”³ 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.”

Response No. 11.

As explained in Brief Site Background, this is a closed landfill and they are proposing to divert stormwater from the portion of landfill (Approximately 0.55 acre) via an unnamed drainage ditch that also collects stormwater drainage from interstate 64 and ultimately migrates northwest to Ward Branch, which discharges into Davis Creek, and then ultimately discharging to the Kanawha River.



Burch, Patrick D <patrick.d.burch@wv.gov>

FW: Filmont MSGP application public comments

3 messages

David Carpenter <David.Carpenter@erm.com>
To: "Burch, Patrick D" <patrick.d.burch@wv.gov>

Thu, Mar 13, 2025 at 9:37 AM

Hello Patrick, I connected with Yogesh last week on some details he needed to address the permit comments. He mentioned the permit is in process of being registered. I was asked to check in and see what the expected date of issuance would be so they can share that with the court.

Dave

From: Patel, Yogesh P <yogesh.p.patel@wv.gov>
Sent: Wednesday, February 5, 2025 10:36 AM
To: David Carpenter <David.Carpenter@erm.com>
Cc: Weber, Paul (P) <pweber6@dow.com>
Subject: Re: Filmont MSGP application public comments

EXTERNAL MESSAGE

Here you go sir!

On Wed, Feb 5, 2025 at 10:27 AM David Carpenter <David.Carpenter@erm.com> wrote:

Good morning Yogesh, Dow counsel has asked if there are any public comments that you can share from the MSGP comment period?

Dave

Kind Regards,
[ERM]<<https://www.erm.com/>>
David Carpenter, P.E., LRS (licensed in WV, OH, KY, PA)

Charleston, WV
[erm.com](https://www.erm.com/)<<https://www.erm.com/>>
Office/Cell (304) 546-1783
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Courtland Pub Comment-WVDEP Prop General NPDES Permit for Filmont - DSS.pdf

182K

Burch, Patrick D <patrick.d.burch@wv.gov>
To: David Carpenter <David.Carpenter@erm.com>

Thu, Mar 13, 2025 at 9:50 AM

Mr. Carpenter,

I do not know the answer to your question. Please contact Yogesh Patel and he may possibly be able to help you.

Thanks,
Patrick Burch
ERS III
WV DEP

[Quoted text hidden]

David Carpenter <David.Carpenter@erm.com>
To: "Burch, Patrick D" <patrick.d.burch@wv.gov>

Thu, Mar 13, 2025 at 9:51 AM

Will do, thank you for the prompt reply Patrick.

[Quoted text hidden]

[Quoted text hidden]

Delivered via E-mail to: BILLY.T.SHIRLEY@WV.GOV
CC: JEREMY.W.BANDY@WV.GOV

Director, Division of Water and Waste Management
West Virginia Department of Environmental Protection
ATTN: Billy Shirley, Permitting Section
601 57th Street SE
Charleston, WV 25304-2345

RE: The Courtland Company's Public Comment Responsive to WVDEP Public Notice No. BS-124-2024 Concerning Union Carbide Corporation (UCC) Application # WVG612841 for Coverage under the General West Virginia National Pollutant Discharge Elimination System Water Pollution Control Permit No. WV0111457

Mr. Shirley:

The Courtland Company, a commercial landowner of real property immediately adjacent to the UCC Filmont waste disposal facility in South Charleston, WV, opposes coverage of that facility under this or any other General Permit for, *inter alia*, the reasons set forth below. The Courtland Company submit these comments and requests a Public Hearing on this matter.

UCC Filmont waste disposal facility is not a "closed industrial landfill" as described in the Public Notice.

First, 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. 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. 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).

Second, 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").

Third, 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. 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.

Fourth and of considerable importance, the UCC Filmont waste disposal facility is in fact entirely a single, completely unlined, big hole in the ground containing industrial wastes and hazardous wastes covered with a thin layer of soil – some of which was contaminated soil from the UCC Technology Park. It does not now have and never has had in place any associated Leachate control or collection system. Even today waste 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.

Sixth, and also of considerable importance, 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.

Seventh, The provisions of WVSWMR § 1.1.a.4 [**“Applicability”**], W. Va. C.S.R. § 33-1-1.1.a.4¹, that became effective on June 6, 1996 plainly requires UCC's Filmont waste disposal facility to comply with its existing permit **and the WVSWMR**. In turn, WVSWMR § 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).” 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 this and any other

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 effective date of the current version of the WVSWMR (*i.e.*, June 6, 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**.

requirement of the WWSWMR. 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. 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."

Eighth, WVDEP found in 2020 that the UCC's Filmont Open Dump was discharging pollutants to Waters of the State without the required NPDES permit, and issued a Notice of 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. Then – 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"). WVDEP subsequently 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."

Ninth, 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.

Tenth, 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. 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 both the WV WPCA and the WV Voluntary Remediation & Redevelopment Act.

Eleventh, the General Permit at issue specifically states that it does not cover stormwater discharges associated with either "Landfills" or "Hazardous Waste Treatment, Storage, or

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.

Disposal (“TSD”) facilities.” 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 WWSWMR § 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) . For that very reason alone the UCC Filmont “Open Dump” is not an “Industrial Solid Waste landfill,” as that term is defined by WWSWMR § 2.59, because WWSWMR § 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. 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 “disposal”³ 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 all of 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.

Thank you for the opportunity to comment.

Sincerely –

D. Scott Simonton, PE, PhD

For The Courtland Company

³ 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.”

5/6/25, 7:50 AM

State of West Virginia Mail - draft response to comments for UCC WVG612841



Burch, Patrick D <patrick.d.burch@wv.gov>

draft response to comments for UCC WVG612841

1 message

Burch, Patrick D <patrick.d.burch@wv.gov>
To: Yogesh P Patel <yogesh.p.patel@wv.gov>

Wed, Jan 8, 2025 at 1:07 PM

See attached.

Thanks,

Patrick Burch



UCCWVG612841comments

Response to comments for WVG612841 Union Carbide Corporation

First, 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. 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. 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).

Response: Permit registrations cover discharges composed of stormwater associated with industrial activity. No other types of discharges are allowed under this permit. The permit has nothing to do with the CERCLA act and nowhere in the permit does it state any requirements for a site to obtain a USEPA Facility Registry Registration Number.

Second, 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").

Response: If in fact the facility is not closed as their comment suggests then the description of their operation will need to be changed in the application before any registration may be issued.

Third, 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. 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.

Response: Again If in fact the facility is not closed as their comment suggests then the description of their operation will need to be changed in the application.

Fourth and of considerable importance, the UCC Filmont waste disposal facility is in fact entirely a single, completely unlined, big hole in the ground containing industrial wastes and hazardous wastes covered with a thin layer of soil – some of which was contaminated soil from the UCC Technology Park. It does not now have and never has had in place any associated Leachate control or collection system. Even today waste 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.

Response: This permit registration covers only a small portion of the site which consists of surface flow across the landfill cover to surface outlet 001. There is no industrial activity taking place in this section of the site and no materials are stored on the surface in this area. It does not address any sumps from the site. (There are sumps at the base of the fill area which drain to Davis Creek)

Sixth, and also of considerable importance, 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.

Response: Again If in fact the facility is not closed as their comment suggests then the description of their operation will need to be changed in the application. If the site contains hazardous waste then they are not eligible for coverage under this permit.

Seventh, The provisions of WWSWMR § 1.1.a.4 ["Applicability"], W. Va. C.S.R. § 33-1-1.1.a.41, that became effective on June 6, 1996 plainly requires UCC's Filmont waste disposal facility to comply with its existing permit and the WWSWMR. In turn, WWSWMR § 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)." 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 this and any other 1 Subparagraphs .1 through .3 of WWSWMR § 1.1.a provide for different applicability of the WWSWMR to a "Solid Waste Landfill Facility," a "SWLF," and "Existing SWLF." In turn, WWSWMR § 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 . . ." WWSWMR § 2.47 defines the term "Existing SWLF" to mean any solid waste landfill that is currently depositing solid waste. On the effective date of the current version of the WWSWMR (i.e., June 6, 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 WWSWMR § 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 WWSWMR requirement of the WWSWMR. 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. 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."

Response: This comment relates to the Solid Waste Act and is not related to NPDES permitting.

Eighth, WVDEP found in 2020 that the UCC's Filmont Open Dump was discharging pollutants to Waters of the State without the required NPDES permit, and issued a Notice of 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. Then – in a clear violation of the CWA and the WV WPCA – WVDEP "suspended" enforcement of their own Unilateral Order to allow 2 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"). WVDEP subsequently 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."

Response: If the NOV required them to apply for an NPDES permit for any discharges other than just stormwater then they will need to apply for an individual permit to cover those discharges i.e. leachate. This application will then need to be denied. This individual permit may cover any stormwater discharges along with all other non stormwater discharges. Is the order still in effect?

Ninth, 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.

Response: Again this permit registration covers only a small portion of the site which consists of surface flow across the landfill cover to surface outlet 001. There is no industrial activity taking place in this section of the site and no materials are stored on the surface in this area. It does not address any sumps from the site.

Tenth, 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. 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 both the WV WPCA and the WV Voluntary Remediation & Redevelopment Act.

Response: Yet Again this permit registration covers only a small portion of the site which consists of surface flow across the landfill cover to surface outlet 001. There is no industrial activity taking place in this section of the site and no materials are stored on the surface in this area. It does not address any sumps from the site. If leachate is to be addressed an individual NPDES permit is required.

Eleventh, the General Permit at issue specifically states that it does not cover stormwater discharges associated with either "Landfills" or "Hazardous Waste Treatment, Storage, or 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. Disposal ("TSD") facilities." 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 WWSWMR § 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) . For that very reason alone the UCC Filmont "Open Dump" is not an "industrial Solid Waste landfill," as that term is defined by WWSWMR § 2.59, because WWSWMR § 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. 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 "disposal"³ 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.

Response: The SIC code is Identified in the application as 4953 which is prohibited from coverage under the MSGP. They must either revise their SIC code and provide justification why it is another code or should rescind this application and apply for an individual NPDES. (Appears to say not eligible for inclusion in the VRP)

For all of 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.

Response: Agree if we are to include any discharges except for just the surface flow from the surface outlet 001 as stated in an earlier comment. If any other discharges they will need an individual permit and this registration must be rescinded. In addition , the permittee must revise the SIC code and provide justification about why a SIC code other than 4953 is appropriate for this site.

5/6/25, 7:48 AM

State of West Virginia Mail - UNION CARBIDE CORPORATION, WVG612841



Burch, Patrick D <patrick.d.burch@wv.gov>

UNION CARBIDE CORPORATION, WVG612841

2 messages

Shirley, Billy T <billy.t.shirley@wv.gov>

Tue, Dec 10, 2024 at 7:42 AM

To: Patrick D Burch <patrick.d.burch@wv.gov>, Terry A Fletcher <terry.a.fletcher@wv.gov>

Have either of you received any comments on the public notice? Patrick, if no comments were received then please prepare the permit approval.

Thank you,

Billy Shirley
Environmental Resource Specialist II
WV DEP- DWWMM
601 57th St SE
Charleston, WV 25304
(304) 926-0499 ext 43893

Burch, Patrick D <patrick.d.burch@wv.gov>

Tue, Dec 10, 2024 at 7:44 AM

To: "Shirley, Billy T" <billy.t.shirley@wv.gov>

Cc: Terry A Fletcher <terry.a.fletcher@wv.gov>

comments received.

Patrick Burch

[Quoted text hidden]

**Burch, Patrick D** <patrick.d.burch@wv.gov>

WVG612841 - End Public Notice

2 messages

Shirley, Billy T <billy.t.shirley@wv.gov>

Mon, Jan 6, 2025 at 3:26 PM

To: Patrick D Burch <patrick.d.burch@wv.gov>, Terry A Fletcher <terry.a.fletcher@wv.gov>

This Public Notice Should have ended 12/9/24, have either of you received any comments on the public notice? Attached are the comments that I had received.

Thank you,

Billy Shirley
Environmental Resource Specialist II
WV DEP- DWWM
601 57th St SE
Charleston, WV 25304
(304) 926-0499 ext 43893



Courtland Pub Comment-WVDEP Prop General NPDES Permit for Filmont - DSS.pdf
182K

Fletcher, Terry A <terry.a.fletcher@wv.gov>

Tue, Jan 7, 2025 at 8:34 AM

To: "Shirley, Billy T" <billy.t.shirley@wv.gov>

Cc: Patrick D Burch <patrick.d.burch@wv.gov>

No other comments received by PIO.

Thanks,

Terry

--

**Terry Fletcher***Chief Communications Officer*

West Virginia Department of Environmental Protection

601 57th St. SE, Charleston, WV 25304

304-926-0499 | <https://dep.wv.gov>

[Quoted text hidden]

Delivered via E-mail to: BILLY.T.SHIRLEY@WV.GOV
CC: JEREMY.W.BANDY@WV.GOV

Director, Division of Water and Waste Management
West Virginia Department of Environmental Protection
ATTN: Billy Shirley, Permitting Section
601 57th Street SE
Charleston, WV 25304-2345

RE: The Courtland Company's Public Comment Responsive to WVDEP Public Notice No. BS-124-2024 Concerning Union Carbide Corporation (UCC) Application # WVG612841 for Coverage under the General West Virginia National Pollutant Discharge Elimination System Water Pollution Control Permit No. WV0111457

Mr. Shirley:

The Courtland Company, a commercial landowner of real property immediately adjacent to the UCC Filmont waste disposal facility in South Charleston, WV, opposes coverage of that facility under this or any other General Permit for, *inter alia*, the reasons set forth below. The Courtland Company submit these comments and requests a Public Hearing on this matter.

UCC Filmont waste disposal facility is not a "closed industrial landfill" as described in the Public Notice.

First, 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. 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. 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).

Second, 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").

Third, 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. 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.

Fourth and of considerable importance, the UCC Filmont waste disposal facility is in fact entirely a single, completely unlined, big hole in the ground containing industrial wastes and hazardous wastes covered with a thin layer of soil – some of which was contaminated soil from the UCC Technology Park. It does not now have and never has had in place any associated Leachate control or collection system. Even today waste 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.

Sixth, and also of considerable importance, 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.

Seventh, The provisions of WWSWMR § 1.1.a.4 [**“Applicability”**], W. Va. C.S.R. § 33-1-1.1.a.4¹, that became effective on June 6, 1996 plainly requires UCC's Filmont waste disposal facility to comply with its existing permit **and the WWSWMR**. In turn, WWSWMR § 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).” 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 this and any other

¹ Subparagraphs .1 through .3 of WWSWMR § 1.1.a provide for different applicability of the WWSWMR to a “Solid Waste Landfill Facility,” a “SWLF,” and “Existing SWLF.” In turn, WWSWMR § 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 . . .” WWSWMR § 2.47 defines the term “Existing SWLF” to mean any solid waste landfill that is currently depositing solid waste. On the effective date of the current version of the WWSWMR (*i.e.*, June 6, 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 WWSWMR § 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 WWSWMR**.

requirement of the WWSWMR. 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. 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."

Eighth, WVDEP found in 2020 that the UCC's Filmont Open Dump was discharging pollutants to Waters of the State without the required NPDES permit, and issued a Notice of 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. Then – 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"). WVDEP subsequently 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."

Ninth, 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.

Tenth, 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. 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 both the WV WPCA and the WV Voluntary Remediation & Redevelopment Act.

Eleventh, the General Permit at issue specifically states that it does not cover stormwater discharges associated with either "Landfills" or "Hazardous Waste Treatment, Storage, or

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.

Disposal (“TSD”) facilities.” 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 WWSWMR § 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) . For that very reason alone the UCC Filmont “Open Dump” is not an “Industrial Solid Waste landfill,” as that term is defined by WWSWMR § 2.59, because WWSWMR § 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. 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 “disposal”³ 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 all of 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.

Thank you for the opportunity to comment.

Sincerely –

D. Scott Simonton, PE, PhD

For The Courtland Company

³ 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.”



Burch, Patrick D <patrick.d.burch@wv.gov>

Public Comments received for WVG612841

1 message

Shirley, Billy T <billy.t.shirley@wv.gov>
To: Patrick D Burch <patrick.d.burch@wv.gov>

Mon, Dec 9, 2024 at 9:05 AM

See attached PDF for comments

Billy Shirley
WV DEP- DWWWM
(304) 926-0499 ext 43893

----- Forwarded message -----

From: **Ashby-Tucker Environmental, LLC** <ashby.tucker.env.llc@gmail.com>
Date: Mon, Dec 9, 2024 at 8:43 AM
Subject: DEP Public Notice - Application for coverage under the General Permit No. WV0111457 - Kanawha County - Union Carbide Corporation
To: <**BILLY.T.SHIRLEY@wv.gov**>, <**JEREMY.W.BANDY@wv.gov**>
Cc: Michael Callaghan <mcallaghan@neelycallaghan.com>, Michael C. Donovan, Esq. <mcd@legal-recoveries.com>

Mr. Shirley -

Please find attached comments regarding the above referenced application, as well as a request for a public hearing on the matter.

Thank you -

Scott

D. Scott Simonton, PE, PhD



www.ashby-tucker.com

 **Courtland Pub Comment-WVDEP Prop General NPDES Permit for Filmont - DSS.pdf**
182K

Delivered via E-mail to: BILLY.T.SHIRLEY@WV.GOV
CC: JEREMY.W.BANDY@WV.GOV

Director, Division of Water and Waste Management
West Virginia Department of Environmental Protection
ATTN: Billy Shirley, Permitting Section
601 57th Street SE
Charleston, WV 25304-2345

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Third, 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. 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.

Fourth and of considerable importance, the UCC Filmont waste disposal facility is in fact entirely a single, completely unlined, big hole in the ground containing industrial wastes and hazardous wastes covered with a thin layer of soil – some of which was contaminated soil from the UCC Technology Park. It does not now have and never has had in place any associated Leachate control or collection system. Even today waste 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.

Sixth, and also of considerable importance, 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.

Seventh, The provisions of WVSWMR § 1.1.a.4 [**“Applicability”**], W. Va. C.S.R. § 33-1-1.1.a.4¹, that became effective on June 6, 1996 plainly requires UCC's Filmont waste disposal facility to comply with its existing permit **and the WVSWMR**. In turn, WVSWMR § 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).” 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 this and any other

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 effective date of the current version of the WVSWMR (*i.e.*, June 6, 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**.

requirement of the WWSWMR. 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. 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."

Eighth, WVDEP found in 2020 that the UCC's Filmont Open Dump was discharging pollutants to Waters of the State without the required NPDES permit, and issued a Notice of 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. Then – 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"). WVDEP subsequently 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."

Ninth, 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.

Tenth, 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. 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 both the WV WPCA and the WV Voluntary Remediation & Redevelopment Act.

Eleventh, the General Permit at issue specifically states that it does not cover stormwater discharges associated with either "Landfills" or "Hazardous Waste Treatment, Storage, or

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.

Disposal (“TSD”) facilities.” 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 WWSWMR § 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) . For that very reason alone the UCC Filmont “Open Dump” is not an “Industrial Solid Waste landfill,” as that term is defined by WWSWMR § 2.59, because WWSWMR § 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. 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 “disposal”³ 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 all of 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.

Thank you for the opportunity to comment.

Sincerely –

D. Scott Simonton, PE, PhD

For The Courtland Company

³ 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.”