

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD RECEIVED
CHARLESTON, WEST VIRGINIA

THE COURTLAND COMPANY,

MAY 16 2025

Appellant,

SURFACE MINE BOARD

v.

Appeal No. 25-05-EQB

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

Appellee.

**UNION CARBIDE CORPORATION'S MOTION TO INTERVENE IN THE
COURTLAND COMPANY'S APPEAL OF THE GRANTING OF GENERAL PERMIT
REGISTRATION NO. WVG612841 TO UNION CARBIDE CORPORATION**

Pursuant to regulations promulgated by West Virginia Department of Environmental Protection ("WVDEP"), Union Carbide Corporation ("UCC") hereby moves to intervene in the Courtland Company's ("Courtland") appeal of UCC's General Permit No. WVG612841, as of right. Under WVDEP regulations, "[t]he holder of the permit shall be considered a party in interest in the appeal proceedings and shall have the right to intervene in the appeal."¹ UCC is the holder of the permit and its interests and ongoing work on site in compliance with the permit requirements would be significantly prejudiced by an adverse ruling in this matter. As such, UCC has a right to intervene to defend its permit and its interests alongside WVDEP.

In the related federal case, the Court found UCC liable under the Clean Water Act because Courtland's expert, Dr. Simonton, personally observed stormwater discharging to the Southern Boundary Ditch via a shallow ditch on one occasion. *See* Memorandum Opinion and Order dated

¹ Appeal Process, WVDEP (last accessed on May 2, 2025),
<https://dep.wv.gov/smb/appealprocess/Pages/default.aspx>

Sep. 28, 2023 (“2023 Order”), Dkt 567, Civil 2:19-cv-00894, at pp. 361-362, 402, Attached as Exhibit A. Notably, the District Court also found Dr. Simonton’s testimony to be “minimally descriptive, being devoid of details such as when Dr. Simonton saw the discharge or what the weather conditions were like, and is unaccompanied by any documentary evidence such as photographs and videos of the same.” *See* 2023 Order, at p. 362. Dr. Simonton did not conduct any sampling or study of the alleged discharges. Therefore, the Court found UCC to be in violation of CWA as this one discharge the former Filmont Landfill was not permitted under CWA NPDES in accordance with 33 U.S.C. § 1342. *see also* Memorandum Opinion and Order dated September 27, 2024 (“2024 Order”), Civil 2:19-cv-00894, at p. 57, attached as Exhibit B. Further, as part of UCC’s work under the West Virginia Voluntary Remediation Program, the offending discharge has been completely eliminated by the installation of a berm which does not allow the discharge of stormwater.

After trial, UCC filed a notice to the Court that it submitted applications for NPDES Industrial Permits for Massey and Filmont. *See* 2024 Order at pp. 58-59. Courtland agreed that obtaining necessary discharge permits under the CWA would render UCC in compliance of CWA. *See* 2024 Order at p. 59. Therefore, the Court ordered UCC to obtain necessary NPDES permits for these stormwater discharges identified thereto and denied a permanent injunction for Courtland because there is no basis to find any irreparable harm to Courtland. *See* 2024 Order at pp. 59-61.

UCC has conducted necessary sampling and testing on the former Filmont Landfill as required under WVDEP’s CWA permitting process. Working with WVDEP, UCC diligently finalized the application for Filmont and completed all necessary sampling. The completed permit application for the NPDES permit for Filmont was submitted to WVDEP on October 24, 2024 and a permit was issued on March 27, 2025. Because Filmont is a historical solid waste landfill

properly closed in 1987, it predates the enactment of RCRA, WVSWMA and WVHWMA. Therefore, Filmont is not a hazardous waste site under RCRA or WVHWMA, or an open dump under WVSWMA, as explicitly ruled by the Court. A general permit is thus consistent with the Court's ruling and is the only necessary NPDES permit for the single stormwater discharge associated with the former Filmont Landfill.

For the above and foregoing reasons, UCC respectfully requests that this Board grant its request to intervene in this appeal as a matter of right to respond to the appeal position and defend WVDEP's proper issuance of UCC's General Permit No. WVG612841.

UCC has also attached as Exhibit C to this Motion to Intervene a Motion to Dismiss The Courtland Company's Appeal of the Granting of General Permit Registration No. WVG612841 to Union Carbide Corporation and would request that the same be docketed following ruling by this Board on UCC's Motion to Intervene.

UNION CARBIDE CORPORATION

By Counsel:



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of May, 2025, the foregoing ***UNION CARBIDE CORPORATION'S MOTION TO INTERVENE IN THE COURTLAND COMPANY'S APPEAL OF THE GRANTING OF GENERAL PERMIT REGISTRATION NO. WVG612841 TO UNION CARBIDE CORPORATION*** was served on the following counsel of record by U.S. Mail and electronic mail as follows:

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