

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

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REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF: )  
 )  
THE DOW CHEMICAL COMPANY ) DOCKET NO. RCRA-06-2010-0933  
PLAQUEMINE, LOUISIANA )  
 )  
RESPONDENT )  
\_\_\_\_\_ )

**CONSENT AGREEMENT AND FINAL ORDER**

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and The Dow Chemical Company, Plaquemine, Louisiana in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

**I. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Louisiana prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. The Respondent consents to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. PRELIMINARY ALLEGATIONS**

7. The Dow Chemical Company (Respondent) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Louisiana.

8. "Person" is defined in L.A.C. 33:V.109 [40 C.F.R. §§ 260.10 and 270.2] as "an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, an interstate body, or the federal government or any agency of the federal government."

9. The Respondent is a "person" as that term is defined in L.A.C. 33:V:109 [40 C.F.R. §§ 260.10 and 270.2].

10. "Owner" is defined in L.A.C. 33:V:109 (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

11. "Operator" is defined in L.A.C. 33:V:109 (40 C.F.R. § 260.10) as "whoever has legal authority and responsibility for a facility that generates, transports, treats, stores or disposes of any hazardous waste."

12. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

13. "Facility" is defined in L.A.C. 33:V:109 (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, etc.)."

14. The Respondent owns and/or operates a chemical manufacturing plant located at 21255 Highway 1, Plaquemine, Louisiana, EPA Identification No. LAD 008187080.

15. The plant identified in Paragraph 14 is a "facility" as that term is defined in L.A.C. 33:V:109 (40 C.F.R. § 260.10).

16. The Respondent is the "owner" and/or "operator" of the facility identified in Paragraph 14, as those terms are defined in L.A.C. 33:V:109 (40 C.F.R. §§ 260.10 and 270.2).

17. On or about June 2 - 4, 2008, and February 11 - 12, 2009, the Respondent's facility was inspected by a representative of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

## **B. VIOLATIONS**

### **Count One - Disposal of Hazardous Waste Without a Permit**

18. Sections 3005(a) and (c) of RCRA, 42 U.S.C. §§ 6925(a) and (c), and L.A.C. 33:V.305.A. [40 C.F.R. § 270.1(b)] provide that a permit is required for the treatment, storage, and disposal of any hazardous waste as identified or listed in L.A.C. 33:V.Chapter 49.

19. The Dow Return Canal System (Canal) is used as a source of cooling water and a conveyance for wastewater to Final Outfall 001. Water is pulled from the Mississippi River upstream from the facility and returned to the Mississippi River downstream from the facility through Final Outfall 001. The Canal consists of several segments: CWR (Cooling Water Return) Canal A, and Canals B, C, D, E, and F. CWR Canal A receives flow from Canals B, C, D, E, and F, and includes the wastewaters from all internal outfalls within the manufacturing areas as well as stormwater runoff, once through cooling water, and utility wastewaters flows. The daily flow through the Canal is approximately 597 million gallons per day.

20. The Canal was constructed in the late 1950's as an earthen ditch, and has an earthen bottom.

21. The Respondent discharges wastewater from its EDC/Solvents Plant into the Solvents East Ditch through Internal Outfall 201<sup>1</sup>.

22. The Solvents East Ditch has an earthen bottom.

23. The wastewater in the Solvents East Ditch flows into the CWR Canal A.

24. The wastewater being discharged is a "solid waste", as that term is defined in L.A.C. 33:V.109 (40 C.F.R. § 261.2).

25. According to the Respondent's readings of the pH monitors installed at Internal Outfall 201, the Respondent recorded pH readings of less than 2 or greater than 12.5 on the following days:

- A. January 16, 2006;
- B. February 8, 2006;
- C. May 17, 2006;
- D. June 28, 2006;

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<sup>1</sup> Internal Outfall 201 was originally identified as Outfall 005 in the 1977 and 1980 NPDES Permits, as Internal Outfall 521 in the 1988 and 2002 NPDES Permits, and as Internal Outfall 201 in the 2010 NPDES Permit.

E. August 3, 2006;  
F. August 6, 2006;  
G. August 9, 2006;  
H. August 23, 2006;  
I. August 31, 2006;  
J. September 12, 2006;  
K. February 19, 2007;  
L. June 12, 2007;  
M. June 18, 2007;  
N. July 9, 2007;  
O. July 18, 2007;  
P. July 20, 2007;  
Q. July 21, 2007;  
R. July 29, 2007;  
S. September 7, 2007;  
T. September 24, 2007;  
U. September 25, 2007  
V. March 19, 2008; and  
W. April 23, 2008.

26. Solid waste with pH readings of less than 2 or greater than 12.5 is a hazardous waste which exhibits the characteristic of corrosivity. L.A.C. 33:V.4903.C (40 C.F.R. § 261.22).

27. On the dates identified in Paragraph 25 above, the Respondent discharged a characteristic hazardous waste (D002) from its EDC/Solvents Plant into the Solvents East Ditch through Internal Outfall 201, which then flowed into the CWR Canal A.

28. The Respondent discharges wastewater which contains a listed hazardous waste (K016) from its EDC/Solvents Plant into the Solvents East Ditch through Internal Outfall 201, which then flows into the CWR Canal A.

29. The Respondent discharges wastewater which contains a listed hazardous waste (K019) from its EDC/Solvents Plant into the Solvents East Ditch through Internal Outfall 201, which then flows into the CWR Canal A.

30. The mixture of solid waste and a listed hazardous waste is a hazardous waste. L.A.C. 33:V.109 [40 C.F.R. § 261.3(a)(2)(iv)].

31. D002, K016, and K019 are hazardous waste identified or listed in L.A.C. 33:V.Chapter 49 (40 C.F.R. Part 261, Subparts C and D). L.A.C. 33:V:4901.C & 4903.C.

32. The Solvents East Ditch is not “waters of the United States” as that term is defined by 33 C.F.R. § 328.3, 40 C.F.R. § 122.2, and 40 C.F.R. § 230.3(s).

33. The Canal is not “waters of the United States” as that term is defined by 33 C.F.R. § 328.3, 40 C.F.R. § 122.2, and 40 C.F.R. § 230.3(s)(1).

34. “Disposal” is defined in L.A.C. 33:V.109 (40 C.F.R. § 260.10) as “the discharge, deposit, injection, dumping, spilling, leaking or placing 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 of the state.”

35. The Respondent is disposing of hazardous waste into the Solvents East Ditch.

36. The Respondent is disposing of hazardous waste in the Canal.

37. To date, the Respondent has neither applied for nor received a RCRA permit to allow the disposal of hazardous waste into the Solvents East Ditch.

38. To date, the Respondent has neither applied for nor received a RCRA permit to allow the disposal of hazardous waste into the Canal.

39. Therefore, the Respondent has violated and continues to violate Sections 3005(a) and (c) of RCRA, 42 U.S.C. §§ 6925(a) and (c), and L.A.C. 33:V.305.A [40 C.F.R. § 270.1(b)] by disposing of hazardous waste without a permit.

#### **Count Two - Failure to Meet Land Disposal Restrictions**

40. L.A.C. III.V.2223.A (40 C.F.R. § 268.40) provides that a prohibited waste identified in L.A.C. 33:V.2299.Appendix. Table 2, may be land disposed only if it meets the requirements found in Table 2.

41. L.A.C. 33:V.2229, Appendix, Table 2 (40 C.F.R. § 268.40) identifies, among other things, the following prohibited wastes and treatment standard requirements:

A. D002 - its hazardous waste characteristic (corrosivity) must be removed and must meet treatment standards in L.A.C. 33:V.2233 (40 C.F.R. § 268.48).

B. K016 - the following constituents must be at or below the following values (mg/l):

Hexachlorobenzene - 0.055  
Hexachlorobutadiene - 0.055  
Hexachlorocyclopentadiene - 0.057  
Hexachloroethane - 0.055  
Tetrachloroethylene - 0.056

C. K019 - the following constituents must be at or below the following values (mg/l):

bis(2-Chloroethyl)ether - 0.033  
Chlorobenzene - 0.057  
Chloroform - 0.046  
p-Dichlorobenzene - 0.090  
1,2-Dichloroethane - 0.21  
Fluorene - 0.059  
Hexachloroethane - 0.055  
Naphthalene - 0.059  
Phenanthrene - 0.059  
1,2,4,5-Tetrachlorobenzene - 0.055  
Tetrachloroethylene - 0.056  
1,2,4-Trichlorobenzene - 0.055  
1,1,1-Trichloroethane - 0.054

42. "Land disposal" is defined in L.A.C. 33:V.2203 (40 C.F.R. § 268.2) as meaning the "placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt-dome formation, salt-bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes."

43. On the days listed in Paragraph 25 above, the Respondent placed D002 hazardous waste into the Solvents East Ditch without treating the waste to remove its corrosive characteristic.

44. On the days listed in Paragraph 25 above, the Respondent placed D002 hazardous waste into the CWR Canal A without treating the waste to remove its corrosive characteristic.

45. The Respondent placed K016 hazardous waste into the Solvents East Ditch without treating the waste to LDR limits.

46. The Respondent placed K016 hazardous waste into the CWR Canal A without treating the waste to LDR limits.

47. The Respondent placed K019 hazardous waste into the Solvents East Ditch without treating the waste to LDR limits.

48. The Respondent placed K019 hazardous waste into the CWR Canal A without treating the waste to LDR limits.

49. Therefore, the Respondent violated L.A.C. 33:V.2223 [40 C.F.R. § 268.40] by disposing of hazardous wastes without meeting the applicable treatment standards.

### **III. COMPLIANCE ORDER**

50. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondent is hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Upon the effective date of this CAFO, the Respondent shall cease all discharging and/or placement activities of the D002 hazardous waste into the Respondent's Solvents East Ditch unless the requirements of 40 C.F.R. §§ 268.40 and 268.48 are met.

B. Within sixty (60) days of the effective date of this CAFO, the Respondent shall submit a closure plan for the Solvents East Ditch to the Louisiana Department of Environmental Quality (LDEQ) for approval, with a copy of the transmittal letter sent to EPA. The closure plan shall meet the applicable requirements of L.A.C. 33:V.2911 (40 C.F.R. § 264.228) and L.A.C.



33:I.Chapter 13 (RECAP). The Respondent shall implement the submitted plan as approved or modified by LDEQ according to the schedule set by LDEQ.

C. Within one hundred eighty (180) days of the effective date of this CAFO, the Respondent shall cease discharging the K016/K019 wastestream into the Respondent's Solvents East Ditch or any land disposal unit at the facility not otherwise permitted to receive the K016/K019 wastestream.

D. Within two hundred ten (210) days of the effective date of this CAFO, the Respondent shall submit a certification to EPA that it has ceased all discharging and/or placement activities of K016/K019 wastestream into the Respondent's Solvents East Ditch or any land disposal unit at the facility not otherwise permitted to receive the K016/K019 wastestream.

E. If the Respondent wishes to submit a Delisting Petition for the K016/K019 wastestream that is discharged from its EDC/Solvents Plant into the Solvents East Ditch through Internal Outfall 201, and the sediment in the Solvents East Ditch, it shall submit a notice of intent to submit the Delisting Petition to LDEQ within thirty (30) days of the effective date of this CAFO, with a copy of the transmittal letter sent to EPA. If the Respondent timely submits such a notice of intent, the requirements of Paragraphs 50.B -- 50.D (inclusive) are stayed, and Paragraphs 50.E - O become effective.

F. Within sixty (60) days of the effective date of this CAFO, the Respondent shall submit its proposed sampling and analysis plan (SAP) for the delisting to LDEQ for approval, with a copy of the transmittal letter sent to EPA. The Respondent shall implement the SAP according to the schedule set forth therein or as may be modified by the LDEQ.

G. The Respondent shall give EPA and LDEQ at least ten (10) days prior notice of any sampling required for the Delisting Petition.

H. At EPA's or LDEQ's request, the Respondent shall provide or allow split or duplicate samples to be taken by EPA, EPA's authorized representative, or LDEQ.

I. The Respondent shall submit a copy of all final, validated analytical results, including all Quality Assurance/Quality control documents, to EPA within ten (10) days after the Respondent has received the final, validated results.

J. Within sixty (60) days of obtaining final, validated results from the last sampling event required under the approved SAP or one hundred twenty (120) days of the effective date of this CAFO (whichever is later), the Respondent shall submit a Delisting Petition to LDEQ for approval, with a copy of the transmittal letter sent to EPA. The Delisting Petition shall include the K016/K019 wastestream that is discharged from its EDC/Solvents Plant into the Solvents East Ditch through Internal Outfall 201, and the sediment in the Solvents East Ditch.

K. Every thirty (30) days following submission of the Delisting Petition to LDEQ, the Respondent shall submit a Status Report to EPA, detailing the efforts it has made to ensure that LDEQ makes a timely decision on its Delisting Petition.

L. The Respondent shall notify EPA within five (5) days of receipt of LDEQ's decision on its Delisting Petition.

M. If LDEQ fails to take action on the Respondent's Delisting Petition within eighteen (18) months after submission of the Delisting Petition, the Respondent shall begin implementation of closure activities. The closure plan required by Paragraph 50.B shall be submitted to LDEQ, with a copy of the transmittal letter sent to EPA, within twenty (20) months after submission of the Delisting Petition, the discharge of the K016/K019 wastestream into the

Solvents East Ditch shall cease twenty-four (24) months after submission of the Delisting Petition as mandated by Paragraph 50.C, and the Certification required under Paragraph 50.D shall be submitted twenty-five months (25) months after submission of the Delisting Petition.

N. If LDEQ denies the petition for delisting the sediment in the Solvents East Ditch, within sixty (60) days from receipt of notification that the delisting petition is denied, the Respondent shall submit a closure plan for the Solvents East Ditch to the LDEQ for approval, with a copy of the transmittal letter sent to EPA. The closure plan shall meet the applicable requirements of L.A.C. 33:V.2911 (40 C.F.R. § 264.228) and L.A.C. 33:I.Chapter 13 (RECAP). The Respondent shall implement the submitted plan as approved or modified by LDEQ according to the schedule set by LDEQ.

O. If LDEQ denies the petition for delisting the K016/K019 wastestream, within one hundred eighty (180) days from receipt of notification that the delisting petition is denied, the Respondent shall cease discharging the K016/K019 wastestream into the Respondent's Solvents East Ditch or any land disposal unit at the facility not otherwise permitted to receive the K016/K019 wastestream. The Respondent shall submit the certification required in Paragraph 50.D within two hundred ten (210) days from receipt of notification that the delisting petition is denied.

P. In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

"I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Q. Copies of all documents required by this Compliance Order shall be sent to the following:

Chief, Compliance Enforcement Section (6EN-HE)  
Hazardous Waste Enforcement Branch  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Cheryl Nolan  
Waste Enforcement Group  
Office of Environmental Compliance  
Louisiana Department of Environmental Quality  
602 North 5<sup>th</sup> Street  
Baton Rouge, LA 70802

#### **IV. TERMS OF SETTLEMENT**

##### **A. CIVIL PENALTY**

51. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondent's good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent be assessed a civil penalty of **TWO HUNDRED THOUSAND DOLLARS (\$200,000)**.

52. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank  
Government Lockbox 979077  
US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account No. 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency"

**PLEASE NOTE: Docket number RCRA-06-2010-0933 shall be clearly typed on the check to ensure proper credit.** If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)  
Hazardous Waste Enforcement Branch  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Lorena Vaughn  
Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

53. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

54. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

55. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a

penalty charge on the debt be required, it shall accrue from the first day payment is delinquent.

*See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

**B. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

56. The Respondent shall develop and implement an Inactive Well Identification, Plugging, and Abandonment Supplemental Environmental Project (Inactive Well SEP) to do the following:

A. Identify privately-owned wells screened in the Upper Plaquemine Aquifer at intervals between approximately 100 feet to 250 feet below ground surface that are in nonuse and/or are inactive and are located in Iberville Parish, north of the City of Plaquemine's public water supply wells in Plaquemine, Louisiana, south of the The Dow Chemical Company's Louisiana Operations, west of the Mississippi River, and east of the Diamond Plastics facility (the "Inactive Wells").

B. Upon receiving approval of the respective well owner, provide for proper plugging and abandonment ("P&A") of the Inactive Wells.

C. Provide documentation of the P&A of any Inactive Well (including appropriate registration if the Inactive Well is not registered) with the Louisiana Department of Natural Resources.

D. Provide for the notification of the P&A activities for Inactive Wells on a semiannual basis to the Parish of Iberville, City of Plaquemine, and LDEQ.

57. The Inactive Well SEP shall be completed within one (1) year of the effective date of the CAFO.

58. The Respondent is responsible for the satisfactory completion of the SEP. The total expenditure for the Inactive Well SEP shall be no less than \$100,000, as described in Paragraph

56 above. Eligible SEP costs do not include inventory on hand, overhead, additional employee time and salary, administrative expenses, legal fees, and oversight of a contractor. The Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

59. The Respondent hereby certifies that, as the date of this CAFO, the Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is the Respondent required to perform or develop the SEP by any other agreement, grant, or as injunctive relief in this or any other case. The Respondent further certifies that the SEP was not a project that the Respondent was planning or intending to construct, perform, or implement other than in settlement of this action. Finally, the Respondent certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action for this SEP.

60. The Respondent's signatory to this CAFO, by signing the CAFO, makes the following additional certification:

The Respondent is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purpose of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

61. For federal income tax purposes, the Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.



**SEP Completion Report**

62. The Respondent shall submit a SEP Completion Report to EPA within thirty (30) days after completion of the SEP. The SEP Completion Report shall contain the following information:

- A. A detailed description of the SEP as implemented;
- B. A description of any operating or logistical problems encountered and the solutions thereto;
- C. Itemized final costs with copies of receipts for all expenditures;
- D. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO;
- E. Copies of documentation and notifications required by Paragraphs 56.C and 56.D. of this CAFO; and
- F. A description of the environmental, emergency preparedness, and/or public health benefits resulting from implementation of this SEP.

63. The Respondent agrees that failure to timely submit the final SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 68.F.

64. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts

do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

65. The Respondent shall submit the following certification in the SEP Completion Report, signed by a responsible corporate official:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

66. After receipt of the SEP Completion Report described in Paragraph 62 above, EPA will notify the Respondent, in writing, regarding: (a) any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (b) indicate that EPA concludes that the project has been completed satisfactorily; or (c) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 68 below.

67. If EPA elects to exercise option (a) in Paragraph 66 above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself. EPA shall permit the Respondent the opportunity to object in writing to the notification of deficiency given pursuant to Paragraph 66 within ten (10) days of receipt of such notification. EPA and the Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon the Respondent. The Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply

with the terms of this CAFO. In the event the SEP is not completed as reasonably contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 68 herein.

**Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-On Amount**

68. In the event that the Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in Paragraph 56 of this CAFO and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 58 above, the Respondent shall be liable for stipulated penalties according to the provisions set forth below:

A. Except as provided in subparagraph (B) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, the Respondent shall pay a stipulated penalty to the United States in the amount of \$80,000 (100% of the amount the penalty was mitigated).

B. If the SEP is not completed in accordance with Paragraphs 56 - 58, but EPA determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, the Respondent shall not be liable for any stipulated penalty.

C. If the SEP is completed in accordance with Paragraphs 56 - 58, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, the Respondent shall pay a stipulated penalty to the United States in the amount of \$20,000 [25% of the amount the penalty was mitigated penalty (\$80,000)].

D. If the SEP is completed in accordance with Paragraphs 56 – 58 and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, the Respondent shall not be liable for any stipulated penalty.

E. If the Respondent fails to timely complete the SEP for any reason, the Respondent shall pay stipulated penalties as follows:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 1,000
16th through 30th day	\$ 1,500
31st day and beyond	\$ 2,500

F. For failure to submit the SEP Completion Report required by Paragraph 62 above, the Respondent shall pay a stipulated penalty in the amount of \$500 for each day after the report was originally due, until the report is submitted.

69. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

70. Stipulated penalties for Paragraphs 68.E and 68.F above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

71. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 52 herein. Interest and late charges shall be paid as stated in Paragraphs 54 - 55 herein.

72. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

73. Any public statement, oral or written, in print, film, or other media, made by the Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Resource Conservation and Recovery Act (RCRA)."

74. This CAFO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by the Respondent in connection with the SEP undertaken pursuant to this CAFO.

**C. PARTIES BOUND**

75. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

**D. STIPULATED PENALTIES**

76. In addition to any other remedies or sanctions available to EPA, if the Respondent fails or refuses to comply with any provision of Section III of this CAFO, the Respondent shall

pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 1,000
16th through 30th day	\$ 1,500
31st day and beyond	\$ 2,500

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

77. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 52 herein. Interest and late charges shall be paid as stated in Paragraphs 54 - 55 herein.

78. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

#### **E. DISPUTE RESOLUTION**

79. If the Respondent objects to any decision or directive of EPA in regard to Section III, the Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director  
 Hazardous Waste Enforcement Branch (6EN-II)  
 Compliance Assurance and Enforcement Division  
 U.S. EPA - Region 6  
 1445 Ross Avenue  
 Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)  
Office of Regional Counsel  
U.S. EPA - Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733

80. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondent shall then have an additional fifteen (15) calendar days from EPA's receipt of the Respondent's written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondent, the agreement shall be reduced to writing and signed by the Associate Director and the Respondent and incorporated by reference into this CAFO.

81. If no agreement is reached between the Associate Director and the Respondent within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondent shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondent, the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this CAFO. If the Division Director and the Respondent are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the CAFO.

82. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.G (Modifications).

**F. NOTIFICATION**

83. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA: Chief, Compliance Enforcement Section (6EN-HE)  
Hazardous Waste Enforcement Branch  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Respondent: J. Scott Janoe  
Baker Botts L.L.P.  
One Shell Plaza  
910 Louisiana  
Houston, TX 77002-4995

**G. MODIFICATION**

84. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of both parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

**H. RETENTION OF ENFORCEMENT RIGHTS**

85. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

86. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or



prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

**I. INDEMNIFICATION OF EPA**

87. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondent in carrying out the activities required by this CAFO.

**J. COSTS**

88. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

**K. EFFECTIVE DATE**

89. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:**

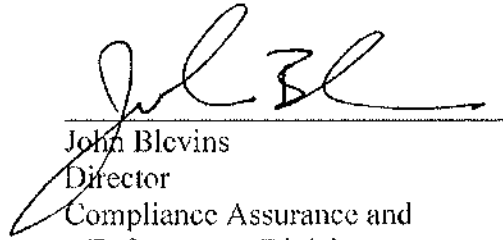
**FOR THE RESPONDENT:**

Date: Jan. 25, 2012

Sharon R Cole  
The Dow Chemical Company

**FOR THE COMPLAINANT:**

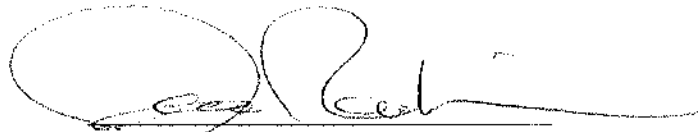
Date: 2.2.12

  
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John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

**FINAL ORDER**

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 2-6-12

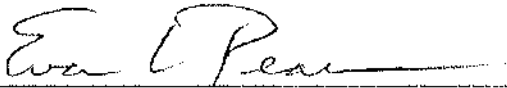


Patrick Rankin  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of February, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was were placed in the United States Mail, certified mail, return receipt requested, 7010 0780 0000 0294-8496 addressed to the following:

J. Scott Janoe  
Baker Botts L.L.P.  
One Shell Plaza  
910 Louisiana  
Houston, TX 77002-4995

  
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