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**ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS**

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

The Dow Chemical Company

Respondent

Plaquemine, Louisiana

**CONSENT AGREEMENT AND FINAL
ORDER**

EPA DOCKET NO. CAA-06-2021-3302

CONSENT AGREEMENT AND FINAL ORDER

The Director, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and The Dow Chemical Company (“Respondent” or “Dow”), in the above referenced action, have agreed to simultaneously commence and resolve this matter through issuance of this Consent Agreement and Final Order (“CAFO”).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act, as amended (“CAA” or “the Act”), 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), 22.18(b)(3), and 22.34.

2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A).

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

4. Respondent waives any right to contest the allegations in the CAFO and its right

to appeal the Final Order set forth herein and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Respondent does not waive any rights or defenses which have been raised or could be raised in any subsequent proceeding(s) which has been brought or which could be brought against Respondent regarding the claims set forth in the CAFO. This CAFO may not be used in any federal or state proceeding except proceedings by EPA to enforce this CAFO.

6. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil monetary penalties for the violations and facts alleged in the CAFO.

7. Respondent consents to the issuance of this CAFO, and consents to the assessment and payment of the stated federal civil monetary penalty in the amount and by the method set out in this CAFO.

8. Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not alleged in this CAFO.

9. Nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, and criminal authorities, or that of other federal, state, or local agencies or departments to obtain penalties or injunctive relief under federal, state, or local laws or regulations, except as provided in the release for federal, civil monetary penalties for the violations specifically identified in this CAFO.

10. Respondent represents that the undersigned representative is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind the Respondent to the terms and conditions of this CAFO.

11. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

II. STATUTORY AND REGULATORY BACKGROUND SECTION

12. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides that the objective of the regulations and programs authorized under Section 112(r) shall be to prevent the accidental release of regulated substances or other extremely hazardous substances and to minimize the consequences of any such release that does occur.

13. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate regulations dictating release prevention, detection, and correction requirements.

14. On June 20, 1996, the EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7).

15. Pursuant to 40 C.F.R. § 68.10(a), an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process ("Covered Process"), as determined under 40 C.F.R. § 68.115, shall comply with the requirements of 40 C.F.R. Part 68 no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under Section 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

16. Pursuant to 40 C.F.R. § 68.12(a), an owner or operator of a stationary source subject to Part 68 requirements must submit a Risk Management Plan ("RMP"), as provided in 40 C.F.R. Part 68 Subpart G (§§ 68.150-68.185), that reflects all covered processes at the stationary source.

17. 40 C.F.R. Part 68 provides general requirements applicable to owners or operators of a stationary source subject to Part 68.

18. 40 C.F.R. Part 68 also establishes requirements that apply to an owner or operator depending on whether the stationary source operates processes subject to one of three “Programs” -- Program 1, Program 2, and Program 3, as these program levels are defined in 40 C.F.R. § 68.10.

19. Pursuant to 40 C.F.R. § 68.12(d), the owner or operator of a stationary source with a process subject to the “Program 3” requirements of the Part 68 regulations, as determined pursuant to 40 C.F.R. § 68.10(d), must comply with the chemical accident prevention requirements of 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program, at 40 C.F.R. §§ 68.65-68.87).

20. Pursuant to Sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), whenever the Administrator finds that any person has violated or is violating a requirement of the CAA, including, but not limited to, a requirement or prohibition of any rule promulgated under the CAA, other than those requirements specified in Sections 113(a)(1), 113(a)(2) or 113(d)(1)(A) of the CAA 42 U.S.C. §§ 7413(a)(1), 7413(a)(2), or 7413(d)(1)(A), the Administrator may issue an order assessing a civil administrative penalty.

21. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. 7413(d)(1), and as adjusted by the Civil Penalty Inflation Adjustment Rule of March 4, 2019 (83 Fed. Reg. 1190, 1193), 40 C.F.R. § 19.4, the Administrator may assess a civil administrative penalty of up to \$48,192 per day of violation for a violation occurring after November 2, 2015, where penalties are assessed on or after January 13, 2020.

22. “Covered process” is defined in 40 C.F.R. § 68.3 as a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

23. “Mechanical integrity” means the process of ensuring that process equipment is fabricated from the proper materials of construction and is properly installed, maintained, and replaced to prevent failures and accidental releases.

24. “Owner or operator” shall mean any person who owns, leases, operates, controls, or supervises a stationary source.

25. “Person” is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

26. “Process” is defined in 40 C.F.R. § 68.3 as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

27. “Regulated substance” is defined in 40 C.F.R. § 68.3 as any substance listed pursuant to Section 112(r)(3) of the CAA as amended, in § 68.130.

28. “RMP” is defined in 40 C.F.R. § 68.3 as the risk management plan required under subpart G of 40 C.F.R. Part 68.

29. “Stationary source” is defined in Section 112(r)(2)(C) of the CAA and 40 C.F.R. § 68.3 as any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

30. “Threshold quantity” is defined in 40 C.F.R. § 68.3 as the quantity specified for

regulated substances pursuant to Section 112(r)(5) of the CAA as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

31. Respondent is a Delaware corporation and is authorized to do business in the State of Louisiana.

32. Respondent is a “person” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).

33. At all times relevant to this CAFO, Respondent owned and operated DOW’s Louisiana Operations Complex located at 21225 Highway 1, Plaquemine, Louisiana, 70764 (“Facility”).

34. The Facility is a “stationary source” as that term is defined in Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C) and 40 C.F.R. § 68.3.

35. The Facility is the largest petrochemical complex in Louisiana and produces more than 50 different basic and specialty.

36. At the Facility, Respondent produces, processes, stores, or handles more than 10,000 pounds of ethylene oxide.

37. Ethylene oxide is identified at 40 C.F.R. § 68.130 as regulated toxic substance with a threshold quantity of 10,000 pounds.

38. Respondent’s RMP lists several “covered process[es],” as that term is defined in 40 C.F.R. § 68.3, including the ethylene oxide producing facility, Glycol 2.

39. Respondent is required to submit an RMP pursuant to 40 C.F.R. § 68.12(a).

40. Respondent’s RMP indicates that the Facility is subject to OSHA Process Safety Management standard, 29 C.F.R. § 1910.119.

41. Respondent's Facility includes a Program Level 3 covered process, as that term is defined in 40 C.F.R. § 68.65 - 68.87.

42. Pursuant to 40 C.F.R. § 68.12(d), Respondent is required to implement the prevention requirements of 40 C.F.R. §§ 68.65 - 68.87 at its Facility.

43. On November 3, 2019, the Glycol 2 Production Unit experienced a release of ethylene oxide.

44. Respondent's Glycol 2 Production Unit experienced an ethylene oxide release involving the knockout pot D-410 of the Ethylene Oxide Scrubber Process.

45. In response to level fluctuations in acid scrubber T-410, the control system shutdown the ethylene oxide vents to D-410.

46. In response to the low pressure on T-410, the operator manually opened the automated D-410 valve for a few seconds in an effort to maintain enough pressure on T-410.

47. Based on the high level of acid in T-410, this effort resulted in an undesired backflow of 5% sulfuric acid from T-410 into the overhead line for D-410 when flow was reestablished.

48. Once the acid and liquid ethylene oxide mixed in D-410, the reaction resulted in an immediate over pressure and burst of the drum D-410, which resulted in the release of 28.8 pounds of ethylene oxide.

49. DOW Emergency Services were notified of a ruptured vessel, the lines were isolated, and the release stopped.

IV. VIOLATION

Operating Procedures 40 C.F.R. § 68.69(a)(1)(vii)

50. Complainant hereby restates and incorporates by reference Paragraphs 1 through 49 above.

51. 40 C.F.R. § 68.69(a)(1)(vii) requires the owner or operator to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements. (1) Steps for each operating phase: ... (vii) Startup following a turnaround, or after an emergency shutdown.

52. Respondent's effort to control the pressure in the scrubber by manually opening an automatic valve led to the introduction of sulfuric acid with liquid ethylene oxide in D-410, which burst the vessel, was the cause of the release and a violation of 40 C.F.R. § 68.69(a)(1)(vii).

V. CIVIL PENALTY AND TERMS OF SETTLEMENT

53. Section 113(d)(1) of CAA, 42 U.S.C. § 7413(d)(1), authorizes the Administrator to assess a penalty up to \$48,192 for each violation of any requirement of Section 112(r) of CAA, 42 U.S.C. § 7412(r).¹

54. Upon consideration of the entire record herein, and upon consideration (in addition to such other factors as justice may require) of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation, the parties agree Thirty-eight thousand and five hundred dollars (\$38,500.00) is an appropriate penalty to resolve this matter.

55. Within thirty (30) days of this fully executed CAFO, Respondent shall pay by

¹ As adjusted by the 2018 Civil Monetary Penalty Inflation Adjustment Rule (83 Fed. Reg. 1190), 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$48,192 per day of violation for a violation occurring after November 2, 2015.

cashier's check, certified check, or wire transfer made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of five ways: regular U.S. Postal Service mail, certified mail; overnight mail; wire transfer; Automated Clearinghouse for receiving U.S. currency; or online payment. For regular U.S. Postal Service 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., FedEx), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: Warren Stroman
225-621-1554

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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"

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court

Riverdale, MD 20737
Contact – Jesse White (301) 887-6548

For online payment:

WWW.PAY.GOV

Enter sfo 1.1 in search field
Open form and complete required fields.

PLEASE
NOTE:

The docket number “CAA 06-2021-3302” shall be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter and shall reference Respondent’s name and address, the case name, and docket number of the administrative Complaint and CAFO. Respondent’s adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following:

Samuel Tates
Chief (ECDAC)
Chemical Accident Enforcement Section
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102

Lorena Vaughn
Region 6 Hearing Clerk (ORC)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102

56. 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.

57. 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).

58. EPA will also assess a fifteen-dollar (\$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 fifteen dollars (\$15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) 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.

59. Pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis, a civil penalty ordered or assessed under this section shall be required to pay - in addition to such penalty and interest - the United States enforcement expenses, including but not limited to, attorney's fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten (10%) percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

60. 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 any equipment or technology installed by the Respondent in

connection with any additional settlement terms undertaken pursuant to this CAFO. Nothing in this CAFO shall be construed to prohibit or prevent the federal, state, or local government from developing, implementing, and enforcing more stringent standards through rulemaking, the permit process, or as otherwise authorized or required.

61. This document constitutes a “Final Order” as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of “prior such violations.”

VI. RETENTION OF ENFORCEMENT RIGHTS

62. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of federal or state laws, regulations, statutes, or permitting programs.

63. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA.

64. 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, or regulated or other extremely hazardous substances at, on, or from the Respondent’s facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA’s civil, injunctive, or 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, regulations, or subparts thereof.

VII. COSTS

65. Each party shall bear its own costs and attorney’s fees.

IT IS SO AGREED.

FOR THE RESPONDENT:

Date: _____

Karen B. Williams

Digitally signed by Karen B.
Williams
Date: 2020.10.14 12:04:11 -05'00'

Karen Williams
Louisiana Environmental Leader

FOR THE COMPLAINANT:



Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=CHERYL SEAGER,
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Date: 2020.10.19 15:43:41 -05'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA Region 6

FINAL ORDER

Pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), 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 in this CAFO. 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 terms of settlement as set forth in the Consent Agreement, including the assessment of civil penalties. In accordance with 40 C.F.R. Part 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Rucki, Thomas
Digitally signed by Rucki, Thomas
DN: cn=Rucki, Thomas,
email=Rucki.Thomas@epa.gov
Date: 2020.10.19 16:44:20 -05'00'

Thomas Rucki
Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that an original electronic copy of the foregoing Consent Agreement and Final Order (“CAFO”) was electronically mailed to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

VIA ELECTRONIC MAIL

Carlos Moreno
Counsel
U.S. Operations, Regulatory & North America Legal Department
Dow Chemical Company
cmoreno3@dow.com

Ms. Lorena Vaughn
Regional Hearing Clerk
U.S. EPA Region 6
Vaughn.lorena@epa.gov

Office of Regional Counsel
U.S. EPA Region 6, Dallas, Texas