



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

NOV 27 2013

REPLY TO THE ATTENTION OF:

SC-5J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Toby Threet  
Lead Counsel  
The Dow Chemical Company  
1790 Building, Washington Street  
Midland, Michigan 48674

Re: **The Dow Chemical Company, Midland, Michigan**  
Consent Agreement and Final Order  
Docket No. **CAA-05-2014-0004**

Dear Mr. Threet,

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. U.S. EPA filed the original CAFO with the Regional Hearing Clerk on NOV 27 2013. Please inform your client of their obligation to pay a civil penalty in the amount of \$67,400 in the manner prescribed in paragraphs 37-42 and please note that your client must reference their check with the docket number.

Please feel free to contact Monika Chrzaszcz at (312) 886-0181 if you have any questions regarding the enclosed documents. Please direct any legal questions to Cynthia King, Regional Counsel, at (312) 886-6831. Thank you for your assistance in resolving this matter.

Sincerely yours,

Michael E. Hans, Chief  
Chemical Emergency  
Preparedness & Prevention Section

Enclosure

cc. Cynthia King, ORC

RECEIVED  
REGIONAL HEARING CLERK  
U.S. EPA-REGION 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

2013 NOV 27 11:58 AM  
REGIONAL HEARING CLERK  
RECEIVED  
NOV 27 2013  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
REGION 5

\_\_\_\_\_  
**In the Matter of:** )  
)  
**The Dow Chemical Company** )  
**Midland, Michigan** )  
)  
)  
**Respondent.** )  
\_\_\_\_\_ )

**Proceeding to Assess a Civil Penalty  
Under Section 113(d) of the Clean Air  
Act, 42 U.S.C. § 7413(d)**

**Docket No. CAA-05-2014-0004**

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22, for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the implementing regulations at 40 C.F.R. Part 68.
2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.
3. Respondent is The Dow Chemical Company (Dow or Respondent), a corporation doing business in the State of Michigan.
4. Under 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. In order to resolve this matter without litigation, Dow consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Dow admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Dow waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

**Statutory and Regulatory Background**

9. Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3), or any other extremely hazardous substance.

10. Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate, not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

11. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and

other design, equipment, work practice, and operational requirements.

12. Section 112(r)(7)(B)(i) of the Act, 42 U.S.C. § 7412(r)(7)(B)(i), provides that within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

13. Section 112(r)(7)(B)(ii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a Risk Management Plan (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

14. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which has since been codified, as amended, at 40 C.F.R. § 68.130.

15. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 61 Fed. Reg. 31668 (June 20, 1996), which were codified, and amended, at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions (Risk Management Program Regulations).

16. The Risk Management Program Regulations, at 40 C.F.R. § 68.3, define “stationary source” 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.”

17. The Risk Management Program Regulations, at 40 C.F.R. § 68.3, define “process” 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.”

18. The Risk Management Program Regulations, at Tables 1 and 2 referenced in 40 C.F.R. § 68.130, list acrylonitrile (CAS #107-13-1), ammonia (CAS# 7664-41-7), chlorine (CAS# 7782-50-5), and hydrogen chloride (CAS#7647-01-0), as regulated toxic substances with threshold quantities of 20,000 lbs., 20,000 lbs., 2,500 lbs. and 5,000 lbs. respectively.

19. The Risk Management Program Regulations, at Tables 3 and 4 referenced in 40 C.F.R. § 68.130, list 1,3 butadiene (CAS# 598-73-2) as a regulated flammable substance with a threshold quantity of 10,000 lbs. Under 40 C.F.R. § 68.115(b)(2), a regulated flammable substance is subject to Risk Management Program regulations if it is present in a mixture and the concentration of the substance is in excess of one percent of the total mixture and maintained in quantities in excess of 10,000 pounds.

20. The Risk Management Program Regulations, at 40 C.F.R. § 68.115(a), provide that a “threshold quantity of a regulated substance listed in 40 C.F.R. § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.”

21. The Risk Management Program Regulations, at 40 C.F.R. § 68.12(a), require that the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall submit a single RMP, as provided in 40 C.F.R. §§ 68.150 through 68.185.

22. The Risk Management Program Regulations, at 40 C.F.R. § 68.12(c), require that, in addition to meeting the general requirements of 40 C.F.R. § 68.12(a), the owner or operator of a stationary source with a process subject to Program 3 shall meet additional requirements identified at 40 C.F.R. § 68.12(d).

23. Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19 provide that the Administrator of the U.S. EPA may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for each violation of Section 112(r) of the Act that occurred from March 15, 2004 to January 12, 2009 and a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for each violation of Section 112(r) of the Act, 42 U.S.C. § 7412(r), that occurred after January 12, 2009.

24. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d), limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

25. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

#### **Factual Allegations and Alleged Violations**

26. Dow is a "person," as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

27. Dow owns and operates the Dow Chemical Midland Operations (Midland Operations), headquartered at 1790 Building, Washington Street, Midland, Michigan 48674,

which consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person (the Midland Operations).

28. On May 24, 2004, under Section 112(r) of the Act, 42 U.S.C. § 7412, and implementing regulations at 40 C.F.R. Part 68, Dow submitted to U.S. EPA an RMP for the Midland Operations.

29. According to the RMP submitted to U.S. EPA by Dow, the Midland Operations:

a. fell within NAICS Code 325998 as “all other miscellaneous chemical product and preparation manufacturing”, NAICS Code 325211 “plastics material and resin manufacturing”, and NAICS Code 325188 “all other basic inorganic chemical manufacturing”;

b. used acrylonitrile, ammonia, chlorine, and hydrogen chloride as process chemicals and held at least 20,000 lbs., 20,000 lbs., 2,500 lbs. and 5,000 lbs. respectively; and

c. used 1,3 butadiene as a process chemical and held 10,000 pounds.

30. Under the Risk Management Program Regulations, the Midland Operations is a “stationary source” as defined in 40 C.F.R. § 68.3.

31. As of May 24, 2004, the Midland Operations exceeded the applicability threshold established by 40 C.F.R. § 68.130, and the Midland Operations and Dow were subject to 40 C.F.R. Part 68.

32. For purposes of compliance with 40 C.F.R. Part 68, in its RMP, Dow has acknowledged that it was required to meet Program 3 eligibility requirements at the processes within the Midland Operations that are the subject of the violations alleged in this CAFO.

33. On June 15, 2009, authorized representatives of U.S. EPA conducted an inspection at the Midland Operations to determine compliance with 40 C.F.R. Part 68.

34. Based on the inspection conducted on June 15, 2009, and a review of additional information received by U.S. EPA subsequent to that date, U.S. EPA alleged the following violations of the Risk Management Program Regulations at the Midland Operations:

- a. One or more instances of failing to implement written procedures to maintain the on-going integrity of the process equipment listed in 40 C.F.R. § 68.73(a), as required pursuant to 40 C.F.R. § 68.73(b);
- b. One or more instances of failing to ensure the frequency of inspections and test of process equipment was consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience, as required pursuant to 40 C.F.R. § 68.73(d)(3);
- c. One or more instances of failing to implement written procedures to manage changes to equipment, which included valve model #2745/S4 Farris, as required pursuant to 40 C.F.R. § 68.75(a); and
- d. Failure to obtain and evaluate adequate information regarding Rail Serve's safety performance and programs when selecting them as a contractor, as required pursuant to 40 C.F.R. § 68.87(b)(1).

35. Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

36. Accordingly, the above-described violations of 40 C.F.R. Part 68 and Section 112(r) of the Act are subject to the assessment of a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

#### **Civil Penalty**

37. Based on an analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and other factors such as cooperation and prompt compliance, Complainant has determined that an appropriate civil penalty to settle this action is



\$67,400.

38. Within 30 days after the effective date of this CAFO, Respondent must pay the \$67,400 civil penalty by sending a company or personal check, by regular U.S. Postal Service mail, payable to the "Treasurer, United States of America," to:

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

The check must note "The Dow Chemical Company" and the docket number of this CAFO.

39. A transmittal letter stating Respondent's name, complete address, and the docket number of this CAFO must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Monika Chrzaszcz (SC-5J)  
Chemical Emergency Preparedness and Prevention Section  
Superfund Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Cynthia A. King, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

40. This civil penalty is not deductible for federal tax purposes.

41. If Dow does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties

and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

42. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

#### **General Provisions**

43. This CAFO fully resolves Dow's liability for civil penalties for the violations alleged in this CAFO.

44. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

45. This CAFO does not affect Dow's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 43, above, compliance with this CAFO will not be a defense to any actions subsequently commenced by Complainant pursuant to federal laws administered by it.

46. This CAFO is for settlement purposes only. It shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this CAFO. This CAFO and the statements contained herein shall not be used for any purpose in any proceeding except

the enforcement of this CAFO by Complainant and Dow. As to others who are not parties to this CAFO, nothing contained herein is an admission of Dow, and by entering this CAFO, Dow has not waived any right, cause of action or defense available to Respondent unless otherwise stated herein.

47. Respondent certifies, upon information and belief, that it is complying fully with 40 C.F.R. Part 68.

48. The terms of this CAFO bind Dow, its successors, and assigns.

49. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

50. Each party agrees to bear its own costs and attorneys' fees in this action.

51. This CAFO constitutes the entire agreement between the parties.

52. This CAFO is effective when filed with the Regional Hearing Clerk.


RECEIVED  
REGIONAL HEARING CLERK  
U.S. EPA-REGION 5

CONSENT AGREEMENT AND FINAL ORDER NOV 27 AM 10:12

In the Matter of The Dow Chemical Company  
Docket No.

The Dow Chemical Company, Respondent

Date: 11/19/13

By:   
The Dow Chemical Company  
Richard A. Wells  
Vice President and Site Director  
Michigan Operations

United States Environmental Protection Agency, Complainant

Date 11/24/2013

  
Richard C. Karl, Director  
Superfund Division


**CONSENT AGREEMENT AND FINAL ORDER**  
**In the Matter of The Dow Chemical Company**  
**Docket No. CAA-05-2014-0004**



**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

11/25/13  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

RECEIVED  
REGIONAL HEARING CLERK  
U.S. EPA-REGION 5

2013 NOV 27 AM 10:12

**Certificate of Service**

I hereby certify that I have caused a copy of the foregoing Consent Agreement and Final Order (CAFO) to be served upon the persons designated below, on the date below, by causing said copies to be delivered by depositing in the U.S. Mail, First Class, and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelope addressed to:

Toby Threet  
Lead Counsel  
The Dow Chemical Company  
Midland, Michigan 48674

I have further caused the original CAFO and this Certificate of Service, and one copy, to be filed with the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

Dated this 27<sup>th</sup> day of November, 2013.

  
Monika Chrzaszcz  
U.S. Environmental Protection Agency  
Region 5

