



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

FEB 22 2008

REPLY TO THE ATTENTION OF:
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kenneth P. Kaufman
Dow Corning Corporation
Midland Site
3901 South Saginaw Road
Midlane, MI 48640-5670

Re: In the Matter of: Dow Corning Corporation
Docket No. CAA-05-2007-0034

Dear Mr. Kaufman:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves In the Matter of Dow Corning Corporation, Docket No. CAA-05-2007-0034. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on [**FEB 22 2008**

Pursuant to paragraph 10 of the CAFO, Dow Corning must pay the civil penalty within 30 days of **FEB 22 2008**. Your check must display the case name, case docket number of CAA-05-2007-0034, and the billing document number 2750803A004.

Please direct any questions regarding this case to Sabrina Argentieri, Associate Regional Counsel, (312) 353-5485.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Bonnie Bush".

Bonnie Bush, Chief
Air Enforcement and Compliance Assurance Branch, MI/WI Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. CAA-05-2007-0034
)
Dow Corning Corporation)
Midland, Michigan,)
Respondent.)
_____)

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

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Consent Agreement and Final Order

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency (EPA), Region 5, brought this administrative action seeking civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. On September 28, 2007, EPA filed the Complaint in this action against Respondent, Dow Corning Corporation. The Complaint alleges that Respondent violated Sections 110 and 502(a) of the Act, 42 U.S.C. §§ 7410 and 7661a(a), the Michigan State Implementation Plan (SIP), and its Title V Renewable Operating Permit Number 199600217 (ROP) at its facility in Midland, Michigan.

3. Respondent filed an Answer and Affirmative Defenses admitting certain allegations, denying some allegations, and neither admitting nor denying some allegations, and raising certain affirmative defenses. Respondent requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).

Stipulations

4. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual allegations in the Complaint other than those it admitted in its Answer.

5. In order to effect settlement of this proceeding and buy its peace, Respondent waives its right to contest EPA's allegations in the Complaint and waives its right to appeal this

Consent Agreement and Final Order (CAFO).

6. Respondent submits annual compliance certification reports as required by the ROP and will submit its next annual certification on or before March 15, 2008.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

8. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

9. In consideration of Respondent's cooperative attitude during settlement negotiations, its prompt actions to come into compliance with the Michigan SIP and its Title V Permit, and other factors as justice may require, Complainant agrees to mitigate the proposed penalty of \$159,109 to \$95,000.

10. Within 30 days after the effective date of this CAFO, Respondent must pay the \$95,000 civil penalty by sending a cashier's or certified check 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 "In the Matter of Dow Corning Corporation," "CAA Docket Number CAA-05-2007-0034" and the billing document number.

11. A transmittal letter stating the Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

13. If Respondent does not pay timely the civil penalty, 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.

14. 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

15. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Complaint.

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

17. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant. Respondent does not waive its rights to contest the factual allegations in any proceeding brought by any third party.

18. This CAFO constitutes an "enforcement response" as that term is used in EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

19. The terms of this CAFO bind Respondent, its successors, and assigns.

20. Each person signing this consent agreement 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.

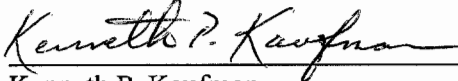
21. Each party agrees to bear its own cost and attorneys' fees in this action.

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

**In the Matter of:
Dow Corning Corporation
Docket No. CAA-05-2007-0034**

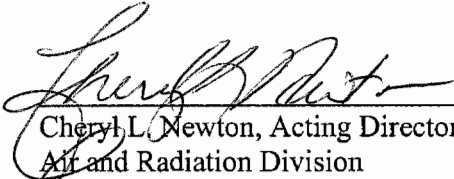
Dow Corning Corporation, Respondent

2/13/08
Date


Kenneth P. Kaufman
Midland Site Manager
Dow Corning Corporation

United States Environmental Protection Agency, Complainant

2/20/08
Date

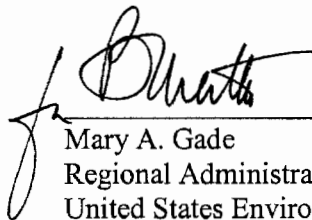

Cheryl L. Newton, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

In the Matter of:
Dow Corning Corporation
Docket No. CAA-05-2007-0034

Final Order

This Consent Agreement and Final Order, as agreed to by 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.

Feb 22, 08
Date



Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

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Docket No. CAA-05-2007-0034

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order in this matter with the Regional Hearing Clerk (E-13J), United States Environmental Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that mailed by Certified Mail, Receipt No. _____, the second original to Respondent, addressed as follows:

Kenneth P. Kaufman
Dow Corning Corporation
Midland Site
3901 S. Saginaw Rd.
Midland, MI 48640-5670

and that I mailed a correct copy by first class, United States mail, addressed as follows:

Honorable William B. Moran
United States Environmental Protection Agency
Office of Administrative Law Judges
Mailcode 1900L/Ariel Rios Building
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Ronald Baylor
Miller, Canfield, Paddock and Stone, PLC
44 W. Michigan Ave.
Kalamazoo, MI 49007

On this 22nd day of February, 2008.

Shanee Rucker

Shanee Rucker
Air Enforcement and Compliance Assurance
Section Michigan/Wisconsin

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