



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

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No.7001 0320 0005 8921 6426

Peter Cartwright
Global Executive Director
Dow Corning Corporation
2200 West Salzburg Road
Midland, Michigan 48640

Consent Agreement and Final Order, Docket No. TSCA -05-2008-0011

Dear Mr. Cartwright:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on June 17, 2008 with the Regional Hearing Clerk.

The civil penalty in the amount of \$46,422.00 is to be paid in the manner described in paragraphs 49, 50 and 51. Please be certain that the number **BD 2750847X008** and the docket number are written on both the transmittal letter and on the check. Payment is due by July 17, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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US EPA REGION 5
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In the Matter of:) Consent Agreement
) And
Dow Corning Corporation,) Final Order
2200 West Salzburg Road,)
Midland, Michigan,) Docket No. TSCA-05-2008-0011
)
Respondent.)
_____)

CONSENT AGREEMENT

1. This administrative action for the assessment of a civil penalty is being simultaneously commenced and concluded by the filing of this Consent Agreement and Final Order (CAFO) pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA or the Act), 15 U.S.C. § 2615(a), and Sections 22.13(b) and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits* (the Consolidated Rules), 40 C.F.R. Part 22;

2. Complainant is, by lawful delegation, the Chief of the Chemicals Management Branch, Land and Chemicals Division, Region 5, United States Environmental Protection Agency (U.S. EPA or the Agency);

3. Respondent is the Dow Corning Corporation, a corporation organized under the laws of the State of Michigan;

4. Respondent corporate offices are located at 2200 West Salzburg Road, Midland, Michigan;

5. Respondent operates a business located at 3901 South Saginaw Road, Midland, Michigan where it manufactures silicone products;

6. Section 12(b) of TSCA, 15 U.S.C. § 2611(b), states that any person who exports or intends to export to a foreign country a chemical substance or mixture for which U.S. EPA requires the submission of data under Section 4 or 5(b), for which U.S. EPA has issued an order under Section 5 or proposed or promulgated a rule under Section 5 or 6, or with respect to which an action is pending or relief has been granted under Section 5 or 7, must notify the Administrator of such exportation or intent to export;

7. Section 15(3) of TSCA, 15 U.S.C. § 2614(3), among other things, makes it unlawful for any person to fail to submit reports, notices or other information, as required by TSCA, or any rule promulgated thereunder;

8. Under authority of Section 12(b) of TSCA, 15 U.S.C. § 2611(b), the Administrator of U.S. EPA issued the Chemical Imports and Exports Rule on December 16, 1980 (45 *Fed. Reg.* 82850). The Agency's amended regulations are codified at 40 C.F.R. Part 707;

9. 40 C.F.R. § 707.60(a) requires any person who exports or intends to export a chemical substance or mixture to notify U.S. EPA of such exportation to a particular country if U.S. EPA requires data under Section 4 or 5(b), has issued an order under Section 5, or proposed or promulgated a rule under Section 5 or 6, or if an action is pending or relief has been granted under Section 5 or 7;

10. 40 C.F.R. § 707.65(a) requires exporters to notify U.S. EPA of their export or intended export of each regulated chemical. The Agency typically refers to these notices as Export Notices;

11. 40 C.F.R. § 707.65(a)(1) requires that the Export Notice be in writing;

12. 40 C.F.R. § 707.65(a)(2)(ii) requires that the Export Notice be for the first export or intended export to a particular country when data are required under Section 4 of TSCA, 15 U.S.C. § 2603;

13. 40 C.F.R. § 707.65(a)(3) requires that the Export Notice be postmarked within seven days of forming the intent to export or on the date of export, whichever is earlier;

14. 40 C.F.R. § 707.67 requires that the Export Notice include the name of the chemical, the name and address of the exporter, the country(ies) of import, the date(s) of export or intended export, and the section of TSCA under which U.S. EPA has taken action;

15. 40 C.F.R. § 707.60(e) provides that U.S. EPA considers a failure to comply with Section 12(b) of TSCA, 15 U.S.C. § 2611(b), as set forth in the *Chemical Imports and Exports Rule*, a violation of Section 15(3) of TSCA, 15 U.S.C. § 2614(3), which will subject the exporter to the penalty, enforcement and seizure provisions of Sections 16 and 17 of TSCA, 15 U.S.C. § 2615 and 2616;

16. Under authority of Section 5(a)(2) of TSCA, 15 U.S.C. § 2604(a)(2), U.S. EPA promulgated a proposed Significant New Use Rule at 40 C.F.R. § 721.10001, on March 1, 2005 (70 *Fed. Reg.* 9902), for the chemical substance 2-methoxyethanol (Chemical Abstracts Service Registry Number [CASRN] 109-86-4);

17. Under authority of Section 5(a)(2) of TSCA, 15 U.S.C. § 2604(a)(2), U.S. EPA promulgated a final Significant New Use Rule at 40 C.F.R. § 721.10001, on November 29, 2005 (70 *Fed. Reg.* 71401), for the chemical substance 2-methoxyethanol (CASRN 109-86-4). The effective date of this rule was December 29, 2005;

18. The proposed and final Significant New Use Rules for 2-methoxyethanol (CASRN 109-86-4) were in effect at all times relevant to this CAFO;

19. Under authority of Section 5(a)(2) of TSCA, 15 U.S.C. § 2604(a)(2), U.S. EPA promulgated a proposed Significant New Use Rule at 40 C.F.R. § 721.1535, on September 27, 1989 (54 *Fed. Reg.* 39548), for the chemical substance 2,4-pentanedione (CASRN 123-54-6);

20. The proposed Significant New Use Rule for 2,4-pentanedione (CASRN 123-54-6) was in effect at all times relevant to this CAFO;

21. Under authority of Section 5(a)(2) of TSCA, 15 U.S.C. § 2604(a)(2), U.S. EPA promulgated a direct final Significant New Use Rule at 40 C.F.R. § 721.9501, on December 17, 2003 (68 *Fed. Reg.* 70183), for the chemical substance silane, triethoxy[3-(oxiranylmethoxy)propyl]- (CASRN 2602-34-8). The effective date of this rule was February 17, 2004;

22. The Significant New Use Rule for silane, triethoxy[3-(oxiranylmethoxy)propyl]- (CASRN 2602-34-8) was in effect at all times relevant to this CAFO;

23. Under authority of Section 4 of TSCA, 15 U.S.C. § 2603, U.S. EPA promulgated a final Test Rule at 40 C.F.R. § 799.5115 on April 26, 2004 (69 *Fed. Reg.* 22402), requiring the submission of data for the chemical substance benzyl chloride (CASRN 100-44-7). This rule became effective on May 26, 2004;

24. The Test Rule for benzyl chloride (CASRN 100-44-7) was in effect at all times relevant to this CAFO;

25. At all times relevant to this CAFO, 2-methoxyethanol (CASRN 109-86-4), 2,4-pentanedione (CASRN 123-54-6), silane, triethoxy[3-(oxiranylmethoxy)propyl]- (CASRN 2602-34-8), and benzyl chloride (CASRN 100-44-7) were each *regulated chemicals*, as that term is defined at 40 C.F.R. § 707.63(c);

26. On or about the dates listed in Table 1 below, Respondent exported the listed chemicals to the specified countries;

Table 1

Chemical name	CAS No.	Receiving nation	Date of export or intended	TSCA Section
2-methoxyethanol	109-86-4	Argentina	June 14, 2005	5
2-methoxyethanol	109-86-4	Australia	April 8, 2005	5
2-methoxyethanol	109-86-4	Belgium	April 11, 2005	5
2-methoxyethanol	109-86-4	Brazil	April 6, 2005	5
2-methoxyethanol	109-86-4	Canada	April 1, 2005	5
2-methoxyethanol	109-86-4	China	April 5, 2005	5
2-methoxyethanol	109-86-4	Germany	April 11, 2005	5
2-methoxyethanol	109-86-4	Hong Kong	April 4, 2005	5
2-methoxyethanol	109-86-4	Israel	April 4, 2005	5
2-methoxyethanol	109-86-4	India	April 20, 2005	5
2-methoxyethanol	109-86-4	Japan	April 4, 2005	5
2-methoxyethanol	109-86-4	Korea	May 16, 2005	5
2-methoxyethanol	109-86-4	Mexico	April 15 2005	5
2-methoxyethanol	109-86-4	New Zealand	June 3, 2005	5
2-methoxyethanol	109-86-4	Philippines	June 23, 2005	5

Chemical name	CAS No.	Receiving nation	Date of export or intended	TSCA Section
2-methoxyethanol	109-86-4	Singapore	March 31, 2005	5
2-methoxyethanol	109-86-4	Taiwan	April 6, 2005	5
2,4-pentanedione	123-54-6	Italy	March 28, 2005	5
silane, triethoxy[3-(oxiranylmethoxy)propyl]-	2602-34-8	Belgium	July 8, 2005	5
benzyl chloride	100-44-7	Hong Kong	February 7, 2005	4

27. Respondent exported the entire quantities of 2-methoxyethanol (CASRN 109-86-4), 2,4-pentanedione (CASRN 123-54-6), silane, triethoxy[3-(oxiranylmethoxy)propyl]- (CASRN 2602-34-8), and benzyl chloride (CASRN 100-44-7) on the dates and to the countries listed in Table 1 above, as a *chemical substance*, as that term is defined at Section 3(2) of TSCA, 15 U.S.C. § 2602(2);

28. Respondent was an *exporter*, as that term is defined at 40 C.F.R. § 707.63(b), of 2-methoxyethanol (CASRN 109-86-4), 2,4-pentanedione (CASRN 123-54-6), silane, triethoxy[3-(oxiranylmethoxy)propyl]- (CASRN 2602-34-8), and benzyl chloride (CASRN 100-44-7) on the dates and to the countries listed in Table 1 above;

29. On August 16, 2005, Respondent filed with U.S. EPA an Export Notice for its export of 2-methoxyethanol (CASRN 109-86-4), 2,4-pentanedione (CASRN 123-54-6), silane, triethoxy[3-(oxiranylmethoxy)propyl]- (CASRN 2602-34-8), and benzyl chloride (CASRN 100-44-7) on the dates and to the countries listed in Table 1 above;

30. Respondent failed to submit the required Export Notice referenced in paragraph 29 above within seven days of export or of forming the intent to export;

31. Respondent's failure to submit to U.S. EPA information required by 40 C.F.R. § 707.67 in the manner required by 40 C.F.R. § 707.65 for its export of 2-methoxyethanol (CASRN 109-86-4), 2,4-pentanedione (CASRN 123-54-6), silane, triethoxy[3-(oxiranylmethoxy)propyl]- (CASRN 2602-34-8), and benzyl chloride (CASRN 100-44-7) on the dates and to the countries listed in Table 1 above constitutes 20 violations of 40 C.F.R. §§ 707.60 and 707.65 and of Section 12(b) of TSCA, 15 U.S.C. § 2611(b);

32. Pursuant to 40 C.F.R. § 707.60(e), Respondent violated Section 15 of TSCA, 15 U.S.C. § 2614, by failing to comply with the requirements of the Chemical Imports and Exports Rule at 40 C.F.R. §§ 707.60 and 707.65 and of Section 12(b) of TSCA, 15 U.S.C. 2611(b);

33. At all times relevant to this CAFO, Respondent's total annual sales, when taken together with its parent corporation and all of its subsidiaries worldwide, were greater than \$1 billion;

34. Respondent voluntarily disclosed the violations alleged in this CAFO in writing to Complainant on August 16, 2005;

35. On September 24, 2004, the Agency issued to Respondent a Notice of Violation and Final Determination (NOV) resolving eight violations of Section 12(b) of TSCA at Respondent's facility located at 2200 West Salzburg Road, Midland, Michigan which were previously disclosed by Respondent to U.S. EPA pursuant to U.S. EPA's April 11, 2000 Self Disclosure Policy, *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations Final Policy Statement* (65 Fed. Reg. 19618) (Self Disclosure Policy). U.S. EPA subsequently provided Respondent a 100% reduction in the proposed civil penalty for these violations under the September 24, 2004 NOV. Accordingly, pursuant to Condition 7 of the Self-Disclosure Policy, Respondent was barred from receiving credit under the Policy for repeat disclosures of violations of Section 12(b) of TSCA began until September 24, 2007;

36. After reviewing the above-referenced disclosure, on May 3, 2006, Complainant notified Respondent in writing that Respondent did not qualify for a penalty reduction under the Self Disclosure Policy, due the fact that the violations identified Respondent's August 16, 2005 self-disclosure were considered by U.S. EPA to be repeat violations as defined by Condition 7 of U.S. EPA's Self-Disclosure Policy. The Self Disclosure Policy defines a "repeat" violation as the same or closely related violation which occurs at the same facility within the past three years. 65 *Fed. Reg.* 9622;

37. Respondent is not a "small business" as defined under the Small Business Regulatory Enforcement Fairness Act or U.S. EPA's May 11, 2000 *Small Business Compliance Policy*;

38. Respondent has the ability to pay the penalty proposed in this Complaint;

39. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (2004), increased the statutory maximum penalty from \$25,000 to \$27,500 per day of violation for TSCA violations that occur on or after January 31, 1997 through March 15, 2004 and from \$27,500 and to \$32,500 per day for violations that occur after March 15, 2004;

40. U.S. EPA determined that, pursuant to the statutory penalty criteria set forth at Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and U.S. EPA's *Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13* (TSCA ERP) (June 1, 1999), a penalty of Forty-Six Thousand, Four Hundred and Twenty Two Dollars and No Cents (\$46,422) was appropriate for these above-listed alleged violations of the Act;

41. Complainant and Respondent discussed settlement of this matter on several occasions;

42. Complainant and Respondent have agreed to settle this matter through entry of this CAFO;

43. This proceeding is being initiated and concluded through the filing of the this CAFO;

44. Respondent consents to the terms and conditions of this CAFO.

45. Without trial or litigation of any issue of fact or law, Respondent hereby admits the jurisdictional allegations set forth in the CAFO and agrees not to contest this jurisdiction in any proceedings to enforce the terms and conditions of this CAFO. 40 C.F.R. § 22.18(b)(2).

46. Respondent neither admits nor denies the other factual allegations and/or conclusions of law set forth in this CAFO. 40 C.F.R. § 22.18(b)(2).

47. Respondent waives its rights to a hearing, as provided in 40 C.F.R. § 22.15 (c), and waives any right to appeal this waiver.

48. Respondent certifies that it has now completed and submitted all TSCA Export Notices required by Section 12(b) of TSCA, 15 U.S.C. 2611(b) for its facility and that these TSCA Export Notices are in compliance with the requirements of Section 12(b) of TSCA, 15 U.S.C. 2611(b) and 40 C.F.R. Part 700.

49. Respondent consents to the assessment of a civil penalty of \$46,422, including interest on any unpaid portion thereof, and agrees to pay such civil penalty to the United States in the manner set forth below. 40 C.F.R. § 22.18(b)(2).

50. Respondent shall make the payment of the civil penalty due under this CAFO by cashier's or certified check, to the order of the "Treasurer, United States of America," and shall send this check within thirty (30) calendar days of the date this CAFO is filed with the Regional Hearing Clerk to the following address:

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

51. A transmittal letter identifying the docket number and billing document (BD) number must accompany the check. The BD number is provided in the cover letter to this CAFO. The check shall also reference on its face the name and the docket number of the CAFO.

52. With Respondent's payment of the civil penalty, Respondent shall also separately and simultaneously send a copy of the check and transmittal letter to the following people: Sonja Brooks-Woodard, Regional Hearing Clerk (Mail Code E-13J), John P. Steketee, Associate Regional Counsel (Mail Code C-14J), and Claudia Niess (Mail Code LC-8J). The mailing address of each is: U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

53. Interest and late charges shall be paid as specified in paragraph 54 below.

54. If Respondent fails to timely remit the civil penalty payment, as agreed to herein, U.S. EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue, pursuant to 31 U.S.C. § 3717, on the civil penalty if it is not paid within thirty (30) calendar days of Respondent's receipt of U.S. EPA's notification letter of default. Interest will be assessed at the rate of the United States Treasury tax and loan rate, currently two percent (47 *Fed. Reg.* 65187), in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. § 901.9(d).

55. Failure to pay the civil penalty pursuant to this CAFO in a timely manner may result in the forwarding of this action to the U.S. Department of Justice for collection of the civil penalty, interest, and a charge to cover the cost of processing and handling a delinquent claim. This provision does not limit U.S. EPA from using any or all other remedies available at law and in equity to enforce this CAFO.

56. The civil penalty payment, or any other penalties and interest payments that might accrue hereunder, shall not be deducted by Respondent for the purpose of Federal or state taxes.

57. This CAFO shall not relieve 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.

58. The terms and conditions of this CAFO constitute a full and final settlement by U.S. EPA of all claims for civil administrative penalties, pursuant to Section 325(c) of the Act, 42 U.S.C. § 11045(c), for those violations alleged in the CAFO. 40 C.F.R. § 22.31(a).

59. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. It is the sole responsibility of Respondent to comply with all applicable legal requirements.

60. The information required to be maintained or submitted pursuant to this CAFO is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*

61. Notwithstanding any other provision of this CAFO, U.S. EPA expressly reserves any and all rights to bring an enforcement action for any violations other than those alleged in the CAFO; to take any action authorized under TSCA or any applicable regulations promulgated under the Act; and to enforce compliance with this CAFO.

62. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it. The terms and conditions of this CAFO shall be binding on both parties to this action, including their officers, directors, employees, agents, successors and assigns.

63. Each party shall bear its own costs and attorney fees in connection with the above-captioned action as resolved by this CAFO.

64. Respondent agrees to the issuance of the attached Final Order.

65. This CAFO shall be deemed to be in full effect upon the entry of the following Final Order by the Regional Administrator ratifying the CAFO, as required by the Consolidated Rules, 40 C.F.R. § 22.18(b)(3), and the filing of the CAFO with the Regional Hearing Clerk.

In the Matter of the Dow Corning Corporation
Midland, Michigan

Docket Number: **TSCA-05-2008-0011**

For Respondent:
Dow Corning Corporation

KAB.
April 2008

Peter Cartwright

Date: 20TH APRIL 2008

Peter Cartwright
Global Executive Director -- Environmental, Health and Safety
Dow Corning Corporation
2200 West Salzburg Road
Midland, Michigan 48640

For Complainant:
U.S. EPA, Region 5

Mardi Klevs, for

Date: June 3, 2008

Mardi Klevs, Chief
Chemicals Management Branch
Land and Chemicals Division

Margaret M. Guerriero

Date: 6/9/08

Margaret M. Guerriero, Director
Land and Chemicals Division

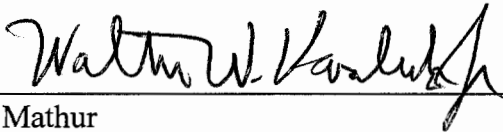
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In the Matter of the Dow Corning Corporation
Midland, Michigan
Docket Number: **TSCA-05-2008-0011**

FINAL ORDER


The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. This Final Order disposes of this proceeding in accordance with 40 C.F.R. § 22.31. Accordingly, this Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law other than those violations resolved by this Consent Agreement. Respondent is hereby ordered to comply with the terms of the above Consent Agreement effective immediately upon the filing of this Consent Agreement and Final Order with the Regional Hearing Clerk.



Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

Date 6/12/08

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CERTIFICATE OF SERVICE

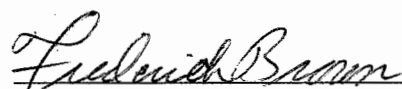
I hereby certify that a copy of the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Dow Corning Corporation, was filed on June 16, 2008, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8921 6426, a copy of the original to the

Respondents:

Peter Cartwright
Global Executive Director
Dow Corning Corporation
2200 West Salzburg Road
Midland, Michigan 48640

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
John Steketee, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD


Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. **TSCA -05-2008-0011**

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