



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
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September 26, 2008

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

Re: Administrative Complaint and Notice of Opportunity for Hearing
In the Matter of The Dow Chemical Company
Docket No. CAA- 01-2008-0098

Dear Ms. Santiago,

Enclosed for filing in the above-referenced matter, please find the original and one copy of an Administrative Complaint and Notice of Opportunity for a Hearing and the Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

Amanda J. Helwig
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1

cc: Andrew N. Liveris, President, Chief Executive Officer, and Chairman
The Dow Chemical Company

Enclosures

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION I

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In the Matter of:)
)
The Dow Chemical Company) Docket No. CAA-01-2008-0098
1761 Route 12)
Gales Ferry, CT 06335) **COMPLAINT and NOTICE OF**
) **OPPORTUNITY FOR HEARING**
)
)
Respondent)
)
)
_____)

I. STATEMENT OF AUTHORITY

1. The United States Environmental Protection Agency (“EPA”) issues this Administrative Complaint and Notice of Opportunity for Hearing to The Dow Chemical Company (“Dow” or “Respondent”) under Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. §7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. The Complaint notifies Respondent that EPA intends to assess penalties for violations of Sections 112 and 608 and Title V of the CAA, and of EPA’s regulations at 40 C.F.R. Part 63, Subpart U and 40 C.F.R. Part 82, Subpart F. The Notice of Opportunity for Hearing describes Respondent’s option to file an Answer to the Complaint and to request a formal hearing.

II. STATUTORY AND REGULATORY BASIS

3. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§7413(a) and (d), provide for the assessment of penalties for violations of Sections 112 and 608 and Title V of the CAA, or of any regulations promulgated thereunder.

A. Federal Hazardous Air Pollutant Regulations

4. Section 112 of the CAA, 42 U.S.C. §7412, lists various hazardous air pollutants and requires EPA to establish national emissions standards for these pollutants.

5. Pursuant to Section 112 of the CAA, EPA promulgated the National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins (“Group I Polymers and Resins NESHAP”), set forth in 40 C.F.R. Part 63, Subpart U (40 C.F.R. §§63.480-63.507).

6. These regulations establish, among other things, various requirements pertaining to the manufacturing operations for styrene-butadiene latexes.

B. Title V Operating Permit

7. The CAA Amendments of 1990 require that each state develop a Title V operating permit program to permit major stationary sources of air pollution and other sources subject to federal CAA requirements.

8. The Connecticut Department of Environmental Protection (“CT DEP”) has established a Title V operating permit program to meet the federal requirement.

9. On April 22, 2004, the CT DEP issued a Title V Operating Permit (Permit No. 092-0024-TV) to Dow’s Allyn’s Point Facility.

10. Under Section 502(a) of the CAA, it is unlawful to violate any requirement of a Title V operating permit.

C. Federal Stratospheric Ozone Protection Regulations

11. Sections 601 through 618 of the CAA, 42 U.S.C. §§7671-7671q, contain provisions for reducing emissions of substances that have or may have harmful effects on the stratospheric ozone layer.

12. Sections 602(a) and (b) of the CAA, 42 U.S.C. §§7671a(a) and (b), list certain ozone-depleting substances, termed “class I” and “class II” substances, which cause or significantly contribute to harmful effects on the stratospheric ozone layer.

13. Section 601(1) of the CAA, 42 U.S.C. §7671(1), defines an “appliance” as “any device which contains and uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.”

14. Section 608 of the CAA, 42 U.S.C. §7671g, requires EPA to promulgate regulations establishing standards and requirements for the use and disposal of class I and class II ozone-depleting substances during the service, repair, or disposal of appliances and industrial process refrigeration (“IPR”).

15. Pursuant to Section 608 of the CAA, EPA promulgated the Stratospheric Ozone Protection Regulations, located at 40 C.F.R. Part 82, Subpart F.

16. The Stratospheric Ozone Protection Regulations establish requirements for the service, maintenance, repair, and disposal of IPR appliances that contain ozone-depleting substances.

III. GENERAL ALLEGATIONS

17. Respondent is a Delaware corporation, with its principal place of business at 2030 Dow Center, Midland, Michigan 48674.

18. Respondent is a "person," as that term is defined in Section 302(e) of the CAA, 42 U.S.C. §7602(e).

19. Respondent owns and operates the Allyn's Point Facility (the "Facility"), located at 1761 Route 12, Gales Ferry, Connecticut 06335.

20. The Facility is a "major stationary source," as that term is defined in Section 302(j) of the CAA, 42 U.S.C. §7602(j).

21. The Facility is a "major source," as that term is defined in Sections 112(a)(1) of the CAA, 42 U.S.C. §7412(a)(1), and 501(2) of the CAA, 42 U.S.C. §7661(2).

22. Respondent is the "owner or operator" of a "stationary source" as those terms are defined in Sections 112(a)(9) and (3) of the CAA, 42 U.S.C. §§7412(a)(9) and (3).

23. The Facility is an "affected source," as that term is defined in 40 C.F.R. §63.480.

24. Respondent is the "owner or operator" of an "affected source," as those terms are defined in 40 C.F.R. §63.2.

25. The Facility constitutes a batch process chemical manufacturing facility with three basic production lines, including Styron/Magnum processes, which produce polystyrene and acrylonitrile-butadiene-styrene copolymer; a latex line, producing modified styrene-butadiene latexes; and a Styrofoam plant, producing expanded polystyrene insulation boards.

26. Styrene and 1,3 butadiene are "hazardous air pollutants," as that term is defined in Section 112(a)(6) of the CAA, 42 U.S.C. §7412(a)(6).

27. Because Dow manufactures styrene-butadiene latexes at the Facility, Dow is subject to the requirements of the Group I Polymers and Resins NESHAP.

28. Because Dow operates IPR appliances that use ozone-depleting substances and have refrigerant capacities over 50 pounds at the Facility, Dow is subject to the requirements contained in the Stratospheric Ozone Protection Regulations.

29. On June 13, 2007, authorized representatives from EPA conducted a partial compliance evaluation inspection of the Facility ("the Inspection").

30. On January 7, 2008, EPA issued Dow an Administrative Order and Reporting Requirement.

31. Based on the Inspection and Dow's responses to the Administrative Order and Reporting Requirement, Complainant has identified the following violations at the Facility.

IV. VIOLATIONS

32. The foregoing paragraphs 1 through 31 are incorporated by reference, as if fully set forth herein.

COUNT I

33. Condition H.3.4(6) of the Title V Operating Permit and 40 C.F.R. §63.502 require Dow to keep open-ended lines closed.

34. On May 3, 2005 and June 21, 2005, Dow failed to keep an open-ended line closed at emission unit GEU-016.

35. Respondent violated Condition H.3.4(6) of its Title V Operating Permit, thereby violating Section 502(a) of the CAA, and 40 C.F.R. §63.502.

COUNT II

36. Conditions H.3.4(2) and H.3.4(12) of the Title V Operating Permit and 40 C.F.R. §63.506 require Dow to keep records of visual inspections for pumps and agitators.

37. During the period from December 7, 2005 through December 17, 2005, Dow failed to keep records of visual inspections for pumps and agitators.

38. Respondent violated Conditions H.3.4(2) and H.3.4(12) of its Title V Operating Permit, thereby violating Section 502(a) of the CAA, and 40 C.F.R. §63.506.

COUNT III

39. Condition H.3.3 of the Title V Operating Permit and 40 C.F.R. §63.485 require Dow to record and report parameter monitoring results when using a combustion device to achieve the required reduction of organic hazardous air pollutants from unit GEU-016.

40. On February 5, March 17, April 10, and April 16, 2006, Dow failed to keep records of the thermal oxidizer "TOX Unit" temperatures.

41. Respondent violated Condition H.3.3 of its Title V Operating Permit, thereby violating Section 502(a) of the CAA, and 40 C.F.R. §63.485.

COUNT IV

42. Condition N.1 of the Title V Operating Permit requires Dow to maintain a removal efficiency of total VOCs of no less than 90% for emission unit GEU-033.

43. In August 2004 and August, September, October, and December 2007, the removal efficiency of total VOCs fell below 90% for emission unit GEU-033.

44. Respondent violated Condition N.1 of its Title V Operating Permit, thereby violating Section 502(a) of the CAA.

COUNT V

45. Condition H.3.4(7) of the Title V Operating Permit and 40 C.F.R. §63.502 require Dow, when a leak is detected at a gas service or light liquid service valve, to make a first attempt at repair no later than five calendar days after the leak is detected.

46. On February 27, 2007, Dow detected a leak at valve 110081.

47. Dow failed to make a first attempt at repair of valve 110081 within five calendar days after the leak was detected.

48. Respondent violated Condition H.3.4(7) of its Title V Operating Permit, thereby violating Section 502(a) of the CAA, and 40 C.F.R. §63.502.

COUNT VI

49. Pursuant to 40 C.F.R. §82.156(i), when an IPR appliance normally containing more than 50 pounds of ozone-depleting refrigerants leaks its refrigerants at a rate such that more than 35% of its total refrigerant charge would leak out of the appliance over a twelve month period, the owner or operator of the IPR appliance must:

(a) repair the leak within 30 days (with certain exceptions) such that the leak rate after the repair remains below 35% of the total refrigerant charge over a twelve month period; and

(b) verify that the repair was successful by conducting initial and follow-up leak testing; or

(c) instead of repairing the leak, or upon finding that an attempted leak repair was unsuccessful (i.e., when follow-up leak verification testing demonstrates that the IPR appliance still leaks at a rate equal to or greater than 35%), the owner or

operator of the IPR appliance must develop a plan to retrofit or retire the appliance, and subsequently retrofit or retire it within one year.

50. For two IPR units, North Chiller and 30 Chiller, Dow failed to conduct initial and follow-up leak repair verification tests on the units and/or failed to document that initial and follow-up leak repair verification tests were conducted, in violation of 40 C.F.R. §82.156(i).

COUNT VII

51. Pursuant to 40 C.F.R. §82.166(k), the owner or operator of an IPR appliance normally containing more than 50 pounds of ozone-deleting refrigerant must keep records documenting the date and type of service conducted on the appliance, including the quantity of refrigerant added.

52. For two IPR units, North Chiller and 30 Chiller, Dow failed to keep the required service records, in violation of 40 C.F.R. §82.166(k).

V. PROPOSED CIVIL PENALTY

53. Section 113(d)(1)(B) of the CAA, together with the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996), (“DCIA”) and the regulations promulgated thereunder at 40 C.F.R. Part 19, authorize the assessment of a civil administrative penalty of up to \$32,500 per day for each violation of the CAA. Section 113(e) of the CAA, 42 U.S.C. § 7413(e), requires EPA to take into consideration various penalty assessment criteria, including 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 of penalties previously assessed for the same violation, the economic benefit of non-compliance, and the seriousness of the violation. To apply these criteria, where applicable, EPA has used the “Clean Air Act Stationary Source Civil Penalty

Policy,” dated October 25, 1991 (“Penalty Policy”) and Appendix X to the Penalty Policy, copies of which are enclosed with this Complaint.

54. Section 113(d) of the CAA limits EPA’s authority to issue administrative complaints to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than twelve months prior to the initiation of the action, unless the EPA Administrator and the Attorney General for the U.S. Department of Justice (“DOJ”) jointly determine that a matter involving a larger penalty or occurring more than twelve months ago is appropriate for administrative action. Pursuant to the DCIA and its implementing regulations, the above-described penalty cap has been raised to \$270,000 for violations occurring after March 15, 2004.

55. This Complaint alleges violations that occurred more than twelve months ago and seeks a penalty that exceeds \$270,000. EPA and DOJ have jointly determined that this matter is appropriate for administrative action.

56. Based on the allegations above, and taking into consideration the penalty assessment criteria of Section 113(e), the Regional Administrator of EPA Region I proposes to assess Respondent a civil penalty of three hundred thirty thousand, one hundred twelve dollars (\$330,112). The calculation of the proposed penalty is described more fully in Attachment I to this Complaint.

57. Payment of the penalty may be made by cashier’s or certified check, payable to the “Treasurer, United States of America,” and mailed to:

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

The Complaint docket number (CAA-01-2008-0098) should be written on the check.

58. At the time of payment, Respondent shall send notice of such payments and copies of the checks to:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

and

Amanda J. Helwig
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (SEL)
Boston, Massachusetts 02114-2023

VI. OPPORTUNITY TO REQUEST A HEARING

59. As provided by Section 113(d) of the CAA, Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. Any such hearing will be conducted in accordance with the Consolidated Rules, 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint.

60. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and having the above-cited penalty assessed without further proceedings, Respondent must file a written Answer within thirty (30) days of Respondent's receipt of this Complaint. The Answer must clearly and directly admit, deny, or explain each of the

factual allegations contained in this Complaint with regard to which Respondent has any knowledge. If Respondent has no knowledge of a particular fact and so states, the allegation is considered denied. Failure to admit, deny, or explain an allegation constitutes an admission of that allegation. Respondent's Answer must also state all arguments or circumstances that are alleged to constitute grounds for a defense, as well as the facts that Respondent intends to place at issue. Further, the Answer must specifically request an administrative hearing if such a hearing is desired. If Respondent denies any material fact or raises any affirmative defense, Respondent will be considered to have requested a hearing. The Answer must be sent to:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

61. Respondent should also send a copy of the Answer and all other documents that Respondent files in this action to Amanda J. Helwig, who has been authorized to accept service on behalf of the Complainant, at:

Amanda J. Helwig
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023

62. Instead of filing an Answer, Respondent may choose to pay the proposed penalty within 30 days after receiving the Complaint, or may file a statement with the Regional Hearing Clerk within 30 days of receiving the Complaint, stating that it agrees to pay the proposed penalty within 60 days of receipt of the Complaint. See 40 C.F.R. § 22.18(a).

VII. SETTLEMENT CONFERENCE

63. Whether or not Respondent requests a hearing, it may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. Respondent may wish to be represented by counsel at the informal settlement conference. If a settlement is reached, it will be finalized by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer of EPA Region I. To explore the possibility of settlement in this matter, please contact Amanda J. Helwig, Enforcement Counsel, at (617) 918-1180. Please note that a request for an informal settlement conference does not enlarge the 30-day period for the submission of a written Answer.

Susan Studlien
Susan Studlien
Director, Office of Environmental Stewardship
EPA Region I

Date: 09/26/08

Attachment I - Dow Chemical Penalty Calculation

Final Penalty: \$330,112

Violator Size: \$165,056
 Final Penalty: \$330,112

Violation Description	Regulation(s)	Violation Classification	Begin Date of Violation	End Date of Violation	Total Duration of Violation (months)	Importance to Regulatory Scheme	Potential for Harm and Extent of Deviation from Requirement (Appendix X*)	Repair of Leaks (Appendix VI**)	Duration Penalty	Pre-Inflation Total	Inflation	Inflation-Adjusted Total
Failure to keep open ended line closed	Title V Permit Condition H.3.4(6)	Work Practice	5/3/05	6/21/05	2	\$15,000			\$5,000	\$20,000	\$5,790	\$25,790.0
Failure to keep records of visual inspections for pumps and agitators	Title V Permit Condition H.3.4(2) and H.3.4.(12)	Recordkeeping	12/7/05	12/17/05	0	\$15,000			\$5,000	\$20,000	\$5,790	\$25,790.0
Failure to keep records of thermal oxidizer temperatures	Title V Permit Condition H.3.3	Recordkeeping	2/5/06	4/16/06	2	\$15,000			\$5,000	\$20,000	\$5,790	\$25,790.0
Failure to maintain removal efficiency for total VOCs of no less than 90% for emission unit GEU-033	Title V Permit Condition N.1	Emissions	8/1/07	12/31/07	5	\$5,000			\$5,000	\$10,000	\$2,895	\$12,895.0
Failure to make first attempt at leak repair within specified time for leaks	Title V Permit Condition H.3.4.(7)	Work Practice	2/27/07	2/27/07	0			\$25,000	\$0	\$25,000	\$7,238	\$32,237.5
Failure to conduct (or document) initial and follow-up leak repair verification tests on two CFC units	40 CFR Part 82, Subpart F	Work Practice	6/13/07	6/13/07	0		\$18,000		\$0	\$18,000	\$5,211	\$23,211.0
Failure to keep service records of CFC repairs	40 CFR Part 82, Subpart F	Recordkeeping	6/13/07	6/13/07	0		\$15,000		\$0	\$15,000	\$4,343	\$19,342.5
											\$165,056.0	

Unless otherwise footnoted, all calculations are based on the Clean Air Act Stationary Source Civil Penalty Policy (CAA Penalty Policy) - October 25, 1991
 *Appendix X of CAA Penalty Policy - Clean Air Act Civil Penalty Policy for Violations of 40 CFR Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant - June 1, 1994
 **Appendix VI of CAA Penalty Policy - Volatile Hazardous Air Pollutant Civil Penalty Policy - March 2, 1988