

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the matter of:

Docket No. CAA-05-2007-0034

DOW CORNING CORPORATION,
Midland, Michigan,

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

Respondent.

ANSWER TO COMPLAINT

Respondent, Dow Corning Corporation, answers the Complaint in this matter as follows:

1. This is an administrative action to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

ANSWER: The allegations of Paragraph 1 are admitted.

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5, Chicago, Illinois.

ANSWER: The allegations of Paragraph 2 are admitted.

3. The Respondent is Dow Corning, a corporation doing business in Michigan.

ANSWER: The allegations of Paragraph 3 are admitted.

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Statutory and Regulatory Background

4. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), states that, after the effective date of any permit program approved or promulgated under Title V of the Act, no source subject to Title V may operate except in compliance with a Title V permit.

ANSWER: The allegations of Paragraph 4 are admitted.

5. EPA granted final interim approval to the Michigan Title V operating permit program on January 10, 1997. 62 Fed. Reg. 1387. The program became effective on February 10, 1997. The Michigan Title V program was granted final full approval by EPA, effective November 30, 2001. 66 Fed. Reg. 62949. See 40 C.F.R. Part 70, Appendix A.

ANSWER: The allegations of Paragraph 5 are admitted.

6. The Michigan State Implementation Plan (SIP), R 336.1201, states, in part, that a person shall not install or construct any process, fuel burning or refuse burning equipment, or control equipment pertaining thereto, which may be a source of an air contaminant, until a permit is issued by the commission. R 336.1201(3) states that an application for a permit to install may be approved subject to any condition specified in writing that is reasonably necessary to assure compliance with these rules.

ANSWER: The allegations of Paragraph 6 are admitted.

7. On May 6, 1980, R 336.1201 was approved by the EPA as part of the federally enforceable Michigan SIP and became effective on the same date. See 45 Fed. Reg. 29790.

ANSWER: The allegation that R 336.1201, as it existed on May 6, 1980, was approved into the Michigan SIP is admitted. However, the May 6 1980 version of R 336.1201 is not the version of R 336.1201 under which any conditions cited in this Complaint were established. MDEQ has not issued permits pursuant to the May 6, 1980 version of R 336.1201 since April 17, 1992.

The May 6, 1980 version of R 336.1201 also does not reflect MDEQ's current permitting rules or the requirements of the Clean Air Act. On November 9, 1999, the EPA proposed disapproval of a July 26, 1995 version of R 336.1201 that MDEQ had submitted to the EPA for inclusion in the Michigan SIP. In its proposed disapproval, the EPA found that MDEQ's permitting rules did not satisfy Clean Air Act requirements. See 61 Fed. Reg. 61046. Effective July 1, 2003, the MDEQ made additional changes to R 336.1201 in response to the EPA's proposed disapproval. Among other things, MDEQ changed R 336.1201 to codify MDEQ's longstanding practice of including state-only enforceable conditions established under Michigan's nuisance and toxic air contaminant control programs in R 336.1201 permits. The EPA has not yet incorporated the July 1, 2003 version of R 336.1201 into the Michigan SIP or taken final action on its November 9, 1999 proposed disapproval. Consequently, while still present in

the Michigan SIP, the May 6, 1980 version of R 336.1201 referenced in Paragraphs 6 and 7 does not satisfy Clean Air Act requirements, is not reflective of MDEQ's current permitting rules and is not the version of R 336.1201 under which any conditions cited in this Complaint were established.

8. The Michigan SIP, R 336.1702(a) states, in part, that a person who is responsible for any new source of volatile organic compound emissions shall not cause or allow the emission of VOC emissions from the new source in excess of the lowest maximum allowable emission rate listed by the commission on its own initiative or based upon the application of the best available control technology.

ANSWER: The allegations of Paragraph 8 are admitted.

9. On November 7, 1994, R 336.1702(a) was approved by EPA as part of the federally enforceable Michigan SIP and became effective the same date. See 59 Fed. Reg. 46182.

ANSWER: The allegations of Paragraph 9 are admitted.

10. The Michigan SIP, R 336.1910, states that any air-cleaning device shall be installed, maintained and operated in a satisfactory manner and in accordance with these rules and existing laws.

ANSWER: The allegations of Paragraph 10 are admitted.

11. On May 31, 1972, EPA approved R 336.1910 as part of the federally enforceable Michigan SIP. See 37 Fed. Reg. 10842. On May 6, 1980, a revision to R 336.1910 was approved by the EPA and became federally effective. See 45 Fed. Reg. 29790.

ANSWER: The allegations of Paragraph 11 are admitted. However, R 336.1910 as incorporated into the Michigan SIP does not apply to air-cleaning devices that are not otherwise required by the Michigan SIP, like HVAC air filters, automobile catalytic converters or control devices only for MDEQ's nuisance and toxic air contaminant control programs which are not in the SIP and are not otherwise federally enforceable. (See Michigan Air Pollution Control Rules R 336.1224 to R 336.1229 and R 336.1901.)

12. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for volatile organic compound and/or particulate matter emission violations that occurred from January 31, 1997, through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004, pursuant to Section 113(d)(l) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

ANSWER: The allegations of Paragraph 12 are admitted, but Respondent notes that penalties under Michigan law, approved by EPA, are significantly less than those cited.

13. The Administrator may assess a penalty greater than \$220,000 or \$270,000 where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for an administrative penalty action. 42 U.S.C. § 7413(d)(1) and 40 C.F.R. Part 19.

ANSWER: The allegations of Paragraph 13 are admitted, but Respondent denies that a penalty of such amount is appropriate in this matter.

14. Section 113(d)(l) 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 Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

ANSWER: The allegations of Paragraph 14 are admitted.

15. 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 complaint.

ANSWER: The allegations of Paragraph 15 are neither admitted nor denied, as such determinations are not within Respondent's knowledge.

General Allegations

16. Dow Corning operates and maintains, among other things, a silicone rubber manufacturing process and a methylvinylchlorosilane production process located at 3901 South Saginaw Road, Midland, Michigan.

ANSWER: The allegations of Paragraph 16 are admitted.

17. Dow Corning's Midland facility is a major source of criteria air pollutants and, therefore, is subject to 40 C.F.R. Part 70, State Operating Permit Programs.

ANSWER: The allegations of Paragraph 17 are admitted.

18. On May 8, 2002, the Michigan Department of Environmental Quality (MDEQ) issued a Renewable Operating Permit (ROP) Number 199600217 to Dow Corning pursuant to Michigan's Title V program.

ANSWER: The allegations of Paragraph 18 are admitted.

19. On August 3, 2006, a Notice of Violation and Finding of Violation (NOV/FOV) was issued to Dow Corning for violating its ROP, including applicable Michigan SIP requirements.

ANSWER: The allegations of Paragraph 19 are admitted.

20. On October 12, 2006, a Section 113 Conference Meeting was held with Dow Corning to discuss the violations and any actions the company has taken to come into compliance with the alleged violations.

ANSWER: The allegations of Paragraph 20 are admitted.

Count I

21. Complainant incorporates paragraphs 1 through 20 of this Complaint, as if set forth in this paragraph.

ANSWER: Respondent incorporates its answers to Paragraphs 1 through 20 above as if set forth in full.

22. On October 9, October 30, and December 26, 2005, and on February 25 and May 30, 2006, Dow Corning exceeded the 40 degrees Fahrenheit exit gas temperature limit of the glycol condenser located in the silicon [sic] rubber manufacturing process (EG207-01).

ANSWER: It is admitted that the 'exit gas' sensor adjacent to the glycol condenser recorded a temperature in excess of 40 degrees Fahrenheit on the dates alleged other than October 30, 2005. A deviation was mistakenly reported for October 30, 2005, but the data for that date indicates that no temperatures in excess of 40 degrees were recorded. It is also admitted that the exit gas temperature briefly exceeded 40 degrees during start-ups on December 26, 2005

and May 30, 2006 during start-up conditions after the Christmas and Memorial Day holiday weekends, respectively. The allegation that the exit gas temperature exceeded 40 degrees on October 9, 2005 and February 25, 2006 is denied because the sensor was not measuring the temperature of exit gas at the time that it recorded readings in excess of 40 degrees.

The term 'exit gas' means gas exiting the condenser. The 'exit gas' sensor is a probe located in a pipe just downstream of the condenser. The condenser is essentially a chamber in which a very low temperature is maintained. Gas streams from a number of batch mixers are combined and routed through the condenser, which chills the combined gas stream to a temperature where certain substances condense into liquids. During periods in which gaseous substances are generated in the batch mixer, vacuum pumps prevent explosive conditions by removing the gas from each mixer and pushing it through the condenser. The condenser is most heavily tasked when the vacuum pumps are pushing gas through it because the gas will spend less time in the chamber and thus have less time to cool. When the vacuum pumps are not operating, trace amounts of gas may migrate to the condenser. However, with no vacuum pump pushing air through the system, any gas which migrates to the condenser will spend a long time in the chamber and have a long time to cool.

The ROP requires monitoring of exit gas temperature to ensure that the condenser is working properly. Exit gas temperature was chosen as the ROP monitoring method because it demonstrates that the condenser is working

properly when emissions are expected to be occurring from the batch reactions, i.e. when the vacuum pumps are operating. When the vacuum pumps are not operating, the 'exit gas' sensor, which is not located in the condenser, will gradually warm to the ambient temperature. This occurs despite the fact that any trace amounts of gas exiting the condenser will be chilled to well below 40 degrees when the condenser is working properly. That the condenser was working properly at times when the vacuum pumps were not operating is demonstrated by the recorded temperatures immediately before and immediately after such periods. If the recorded temperature was below 40 degrees immediately before the vacuum pumps ceased operating and immediately after the vacuum pumps resumed operating, then the temperature of any trace amounts of exit gas would have had to be less than 40 degrees during the interim period.

The October 9, 2005 and February 25, 2006 incidents cited in Paragraph 22 are occasions when no vacuum pumps were operating. Recorded temperature data from those dates indicate that the temperature of the exit gas was below 40 degrees immediately before the vacuum pumps ceased operating and immediately after they resumed operating. Thus the temperature of any trace amounts of exit gas leaving the condenser during these periods had to be below 40 degrees. Because only trace amounts of chilled gas exited the condenser during these periods, the influence of the surrounding uncooled

environment caused the sensor probe to gradually warm, thus recording temperatures in excess of 40 degrees, but that was not the exit gas temperature.

23. This is a violation of Table E-1.3 EG207-01, Condition V.1 of the ROP; 336.1702(a); and R 336.1201.

ANSWER: Respondent admits that the exit gas temperature on February 25 and May 30, 2006 exceeded Condition V.1 during start-up only.

Respondent denies the allegation that a violation occurred on October 9, 2005 and February 25, 2006. Since the vacuum pumps were not operating and there was little or no exit gas flow at the times alleged, the values recorded during these periods by the sensor probe downstream of the condenser were not exit gas temperatures.

Count II

24. Complainant incorporates paragraphs 1 through 20 of this Complaint as if set forth in this paragraph.

ANSWER: Respondent incorporates its answers to Paragraphs 1 through 20 above as if set forth in full.

25. On June 30, August 16, August 27, and November 27, 2004; on September 1, September 12, November 23, and December 9, 2005; and on April 25, April 30, May 8 and February 10, 2006, Dow Corning exceeded the 65

degree Fahrenheit vent compressor condenser vapor outlet temperature limit from its silicone products manufacturing process (EG2504-01).

ANSWER: The allegations of Paragraph 25 are admitted.

26. This is a violation of Table E-1.9 EG2504-01, Condition V of the ROP; R 336.1910; and R 336.1201.

ANSWER: Respondent admits that the vent compressor condenser vapor outlet temperature on June 30, August 27, and November 27, 2004; on September 1, November 23, and December 9, 2005; and on April 30 and May 8, 2006 exceeded 65 degrees Fahrenheit. Respondent admits that the vent compressor condenser vapor outlet temperature on August 16, 2004; September 12, 2005; and February 10 and April 25, 2006 exceeded 65 degrees Fahrenheit only during malfunction conditions.

Count III

27. Complainant incorporates paragraphs 1 through 20 of this Complaint, as if set forth in this paragraph.

ANSWER: Respondent incorporates its answers to Paragraphs 1 through 20 above as if set forth in full.

28. From July 1 through December 15, 2006, and from January 1 through May 30, 2006, Dow Corning failed to maintain a 10 gallon per minute flowrate

from its primary scrubber (scrubber no. 22452) in its methylvinylchlorosilane production (EG322-02).

ANSWER: The allegations of Paragraph 28 are denied as untrue.

Based on the description of the alleged period, Respondent assumes that Paragraph 28 contains a typo and that EPA intended to cite the July 1 through December 15, 2005 period. Although there were periodic instances of recorded flow rate below 10 gallons per minute during the time periods alleged, the continuous flow rate during the periods in question was always at or above 10 gallons per minute. Additionally, although the flow meter itself malfunctioned at times during the July through December 2005 period alleged, pump operations data confirm that the scrubber operated appropriately at all times during this period. During this period, recycled water made up 90 percent of the flow through the scrubber. Recurrent flow meter problems suggested, and subsequent investigation confirmed, that recycled water tended to film up a sensor on the flow meter, causing it to record lower than actual flow rates. Pump records demonstrate that the pumps continued to operate, cycling liquid through the scrubber while the flow meter was malfunctioning, and the flow meter's recorded flow rates always increased to greater than 10 gallons per minute immediately after the sensor was cleaned. This data demonstrates that Respondent did maintain the 10 gallon per minute flow rate, even during the periods in which the flow meter malfunctioned.

During the second alleged period, January through May 2006, Respondent's flow meter recorded periodic episodes where the flow rate dropped slightly below 10 gallons per minute due to variations in city water pressure, but Respondent denies this slight fluctuation impaired the operation of the scrubber in any way or constituted a violation of the ROP for which assessment of civil penalty is appropriate. The second alleged period occurred after the scrubber liquid was switched from 90% recycled water to 100% clean water. Clean water is much more efficient than recycled water at removing air contaminants. The switch to clean water would have counteracted any possible change in scrubber efficiency due to the slight variations in liquid flow rate during the second alleged period. Furthermore, the average continuous flow rate over the second alleged period was 11.3 gallons per minute, comfortably above the 10 gallons per minute rate specified in the ROP.

29. This is a violation of Table F-1.12 EG322SCRUBBERS, Condition III.2, Condition V, and of Table E-1.31 EG322-02, Condition VI of the ROP.

ANSWER: Respondent denies the allegations of Paragraph 29 because they are not true and because the alleged ROP violations are not properly subject to an administrative penalty by the EPA.

Condition III.2 of Table E-1.31 requires the permittee to "monitor and record, on a continuous basis, the liquid flow rate of scrubber no. 22452 with instrumentation acceptable to [MDEQ]." The Complaint contains no allegation

that Respondent did not monitor liquid flow rate through the scrubber no. 22452 or that the instrumentation was not acceptable to MDEQ.

The purpose of Scrubber no. 22452 is not to control VOCs in the vent stream but rather to remove small amounts of chlorosilanes which, if vented, may form a visible haze if they contact ammonia from a nearby vent stack. The scrubber and the associated monitoring conditions in question were required by MDEQ either under its state-only enforceable toxic air contaminant control program (R 336.1225) or nuisance control program (R 336.1901). R 336.1201 allows state-only enforceable conditions in a PTI. Michigan's Title V permitting program allows renewable operating permits to contain conditions that are not federally enforceable and requires MDEQ to designate them as state-only enforceable. The Conditions referenced in Paragraph 29 are state-only enforceable, although improperly marked by MDEQ.

Count IV

30. Complainant incorporates paragraphs 1 through 20 of this Complaint, as if set forth in this paragraph.

ANSWER: Respondent incorporates its answers to Paragraphs 1 through 20 above as if set forth in full.

31. On January 11, June 15, July 22, and July 25, 2004, and on October 4, 2005, Dow Corning exceeded the -76 degrees Celsius limit from the exhaust gas of condenser #2044 (EG304).

ANSWER: Respondent admits that on each of the alleged dates, the exhaust gas temperature sensor recorded temperatures above -76 degrees Celsius, but denies that any environmental or process harm resulted from the deviation, denies that the deviation is appropriate for Federal enforcement insofar as the subject condition relates to a state-only enforceable requirement, and denies that the deviation is appropriate for the imposition of an administrative penalty.

32. This is a violation of Table F-1.3 FG304, Condition V of the ROP; R 336.1910; and R 336.1201.

ANSWER: Respondent denies that the deviations alleged in Paragraph 32 are ROP violations properly subject to an administrative penalty by the EPA. For further answer, Respondent states that the -76 degrees Celsius requirement was likely required by MDEQ under its state-only enforceable toxic air contaminant control program (R 336.1225) or nuisance control program (R 336.1901). R 336.1201 allows state-only enforceable conditions in a PTI. Michigan's Title V permitting program allows renewable operating permits to contain conditions that are not federally enforceable and requires MDEQ to designate them as state-only

enforceable. Condition V of Table F-1.3, is state-only enforceable, although improperly marked by MDEQ.

Proposed Civil Penalty

33. Complainant proposes that the Administrator assess a civil penalty against Respondent for the violations alleged in this Complaint of \$159,109.

ANSWER: Respondent asserts that the penalty amount is inappropriate under the circumstance and urges Complainant and this Tribunal to reduce it.

34. Complainant determined the proposed civil penalty according to the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e). Complainant evaluated the facts and circumstances of this case with specific reference to EPA's *Clean Air Act Stationary Source Civil Penalty Policy*, dated October 25, 1991 (penalty policy). Enclosed with this Complaint is a copy of the penalty policy.

ANSWER: The allegations of Paragraph 34 are admitted, upon information and belief. However, Respondent denies that the proposed penalty amount is appropriate or warranted under the circumstances, and urges Complainant and this Tribunal to reduce it.

35. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the

proposed penalty if Respondent establishes *bona fide* issues of ability to pay or other defenses relevant to the penalty's appropriateness.

ANSWER: Respondent asserts that the penalty amount is inappropriate under the circumstance and urges Complainant and this Tribunal to reduce it.

Rules Governing This Proceeding

36. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules), at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

ANSWER: The allegations of Paragraph 36 are admitted.

Filing and Service of Documents

37. Respondent must file with the EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-135)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

ANSWER: This answer is served on the Regional Hearing Clerk.

38. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Sabrina Argentieri to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Sabrina Argentieri at (312) 353-5485. Sabrina Argentieri's address is:

Sabrina Argentieri (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

ANSWER: This answer is served as required.

Penalty Payment

39. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

ANSWER: No answer required.

40. Respondent must include the case name, docket number and billing document number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to the Regional Hearing Clerk and Sabrina Argentieri at the addresses given above, and to:

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

ANSWER: No answer required.

Answer and Opportunity to Request a Hearing

41. If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.

ANSWER: Respondent does contest material facts in the complaint, contends the proposed penalty is not appropriate and should be reduced or

eliminated, and contends it is entitled to judgment as a matter of law as to some or all of the claims. Respondent does hereby request a hearing.

42. In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day period expires on a Saturday, Sunday or federal legal holiday, the time period extends to the next business day.

ANSWER: This answer is timely.

43. To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address given above.

ANSWER: This answer is filed and served as required.

44. Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

ANSWER: This answer is believed to comply with the rules.

45. Respondent's Answer must also state:
- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
 - b. the facts that Respondent disputes;
 - c. the basis for opposing the proposed penalty; and
 - d. whether Respondent requests a hearing.

ANSWER: This answer is believed to comply with the rules. In addition to the Answers set forth above, Respondent believes that Complainant has included in its calculation of the proposed penalty, amounts not appropriate under EPA's Stationary Source Civil Penalty Policy, under the applicable rules, and under the circumstances.

46. If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order, without further proceedings, 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

ANSWER: This answer is timely.

Settlement Conference

47. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts alleged in the Complaint and to discuss a settlement. To request an informal settlement conference, Respondent may contact Sabrina Argentieri at the (312) 353-5485.

ANSWER: Respondent does request an informal settlement conference.

48. Respondent's request for an informal settlement conference does not extend the 30-day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

ANSWER: Respondent does request an informal settlement conference.

Continuing Obligation to Comply

49. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

ANSWER: Respondent will comply with the rules.

AFFIRMATIVE DEFENSES

PLEASE NOTE that Respondent may assert the following affirmative and other defenses:

A. Respondent has, at all times, cooperated completely with regulatory authorities.

B. Some or all of the claims are for deviations that occurred during start-ups, shut-downs or malfunctions. In each case, Respondent operated in a manner consistent with good air pollution control practices for minimizing emissions, as provided in R 336.1912-1915, as approved by EPA in the Michigan SIP and Title V permitting program, specifically:

Count I, Paragraph 23, EG207-01

The start-up events on December 26, 2005 and May 30, 2006, occurred after the process equipment had been shut down for the Christmas and Memorial Day weekends, respectively. Respondent promptly initiated corrective action and reported the exit gas temperature exceedances in accordance with R 336.1912 of Michigan's SIP and Title V permitting program. The effectiveness of the corrective action is demonstrated by the fact that these unique malfunctions did not recur. Furthermore, Respondent asserts that these two temperature exceedances were short, unexpected, promptly corrected and did not result in emissions that exceeded permitted emission limits. Accordingly, Respondent pleads the affirmative defense afforded by R 336.1916 of Michigan's SIP and Title V permitting program.

Count II, Paragraph 26, EG2504-1

On August 16, 2004; September 12, 2005; and February 10 and April 25, 2006, the vent compressor condenser vapor outlet temperature exceeded 65 degrees Fahrenheit only during malfunction conditions. During these malfunction events, Respondent promptly initiated corrective action by shutting down process equipment until the malfunction was corrected and reported the vent compressor condenser vapor outlet temperature exceedances in accordance with R 336.1912 of Michigan's SIP and Title V permitting program. Furthermore, Respondent asserts that the temperature exceedances recorded during this period were each the result of a sudden, unavoidable breakdown that was beyond the reasonable control of the Respondent, and corrective action and repairs were expeditiously performed. The malfunctions did not result in any emissions that exceeded permitted emission limits. Accordingly, Respondent seeks enforcement discretion afforded by R 336.1915 of Michigan's SIP and Title V permitting program.

Count III, Paragraph 29, EG322-02

The alleged deviations from the 10 gallon per minute liquid flow rate through the scrubber were caused by malfunction conditions. These deviations were reported promptly in accordance with R 336.1912 of Michigan's SIP and Title V permitting program. These conditions were the result of unexpected conditions that were beyond the reasonable control of the Respondent, and corrective actions were properly implemented. The malfunctions did not result in

any emissions that exceeded permitted emission limits. Accordingly, Respondent seeks enforcement discretion afforded by R 336.1915 of Michigan's SIP and Title V permitting program.

As described in the response to Paragraph 28, during the July through December 2005 period alleged, flow meter data and pump operations data confirm that the scrubber operated appropriately at all times. During the 2005 period, recycled water made up 90 percent of the flow through the scrubber. Any recorded measurements below 10 gallons per minute during this period were the result of flow meter malfunctions caused when recycled water fouled the flow meter's sensor, causing it to record lower than actual flow rates. Corrective action consisted of cleaning the flow meter and ultimately eliminating the use of recycled water and replacing it with 100 percent clean water from the city water supply system.

Replacing the recycled water with clean water resulted in two lines feeding city water to the scrubber, each complete with its own distinct flow meter. During the second alleged period of January through May 2006, Respondent's two flow meters recorded periodic episodes where the combined flow rate dropped slightly below 10 gallons per minute, but Respondent denies this slight fluctuation impaired the operation of the scrubber in any way or constituted a violation of the ROP for which assessment of civil penalty is appropriate. The average continuous flow rate over this period was 11.3 gallons per minute, comfortably above the 10 gallons per minute rate specified in the ROP. Even during the

periods of deviation, the average continuous flow rate was 9.7 gallons per minute—very near the 10 gallons per minute flow rate in Table E-1.31 EG322-02, Condition VI of the ROP.

The slight flow reductions below 10 gallons per minute were caused by episodic fluctuations in city water pressure. The variations were not immediately detected because the slight reductions were masked by the fact that they were spread over two flow monitors with distinct displays. However, the replacement of the 90 percent recycled water stream with 100 percent clean water significantly increased the control efficiency of the scrubber during this period. Thus any theoretical reductions in scrubber efficiency due to the slight reduction in flow rate would have been more than offset by the increased scrubber efficiency associated with the switch to clean water.

Corrective actions included installation of a control valve to control water flow to the scrubber, creation of a display combining the two liquid flows to the scrubber, creation of an alarm set point of 10.5 gallons per minute, and programming of an interlocked shutdown of process feeds when water flow to the scrubber falls below 10 gallons per minute.

Finally, mass emissions data confirms that no emissions in excess of permit limits occurred due to the slight variations in liquid flow rate through the scrubber. A mass flow meter in the vent line monitors total emissions from EG322-02 in the vent stream through the scrubber. Mass flow meter data conclusively confirm that actual emissions were typically 10 pounds per hour,

with a high of 25 pounds per hour of VOC - well below the 41.2 pounds per hour permit limit - during all times alleged (July-December 2005/January-May 2006).

Count IV, Paragraph 31, EG304-04

The January 11 and July 25, 2004 deviations from the -76 degrees Celsius limit for the exhaust gas from condenser #2044 were caused by 2 separate and distinct malfunctions. The January 11, 2004 temperature exceedance was caused by an electrical surge that caused the loss of signal from the liquid nitrogen meter. The automated control system responded by opening the nitrogen control valve. When the flow signal was brought back the control system responded to the high flow by closing the valve which caused a 15 minute spike in the temperature to minus 73 degrees Celsius. The July 25, 2004 deviation was caused when the pressure regulator for the plant nitrogen system reached its limit and closed stopping the flow of the coolant (liquid nitrogen) to the 304 vent recovery. A vent valve was opened to resume coolant flow but not in time to prevent a brief temperature deviation.

During both malfunction events, Respondent promptly initiated corrective action and reported the deviations in accordance with R 336.1912 of Michigan's SIP and Title V permitting program. The temperature exceedances recorded during this period were each the result of a sudden, unavoidable breakdown that was beyond the reasonable control of the Respondent, and corrective action and repairs were expeditiously performed. The malfunctions did not result in any

emissions that exceeded permitted emission limits. Accordingly, Respondent seeks enforcement discretion afforded by R 336.1915 of Michigan's SIP and Title V permitting program.

C. Some or all of the claims are or may be barred by the affirmative defense that Respondent operated in a manner consistent with good air pollution control practices for minimizing emissions, as provided in R 336.1912-1916, as approved by EPA in the Michigan SIP and Title V permitting program. Specifically, Respondent incorporates the affirmative defenses in Section B, above as if restated here.

D. Some or all of the claims are for deviations on interim controls redundant of further controls within the same, sealed system, such that a slight deviation (e.g. exit gas temperature elevation) was of no importance because it was easily accommodated by additional controls farther down the pipe. Such deviations are not appropriately assessed an administrative penalty where proper corrective action followed to improve Respondents processes, specifically:

Count IV, Paragraph 31, EG304-04

The 304 vent recovery process uses cryogenic condensation to recover chlorosilanes for re-use as raw materials. Liquid nitrogen is the cooling media. This 'control device' generates no solid or liquid waste stream, as its purpose is to capture materials that can be reused in the process. The exit flow from the condenser vents through the 337 scrubber, which removes any residual chlorosilanes from the exhaust stream, regardless of the exhaust stream's

temperature. Of the five reported deviations alleged to be violations, three lasted no more than 15 minutes and the temperature rose to only -70 degrees Celsius, a slight exceedance by any measure. Taken together, these reported deviations constitute a tiny fraction of the time when the equipment was operating and resulted in no emissions in excess of permitted limits. Only one episode, on July 25, 2004, lasted for up to 75 minutes, and the temperature rose to -23 degrees Celsius. Evaluation of this episode indicates that, at most, 94 pounds of emissions occurred, and these emissions were not in excess of permit limits.

Appropriate corrective action followed in each case, and the 337 scrubber worked at all times to remove any residual chlorosilanes from the exhaust stream.

E. Respondent objects to Complainants inclusion in its calculation of the proposed penalty, amounts not appropriate under its own Stationary Source Civil Penalty Policy, under the applicable rules, and under the circumstances

F. Respondent reserves the right to file further affirmative defenses upon the completion of discovery.

Dated: November 8, 2007

MILLER, CANFIELD,
PADDOCK AND STONE, PLC

By:



Ronald E. Baylor (P31677)
Paul M. Collins (P69617)
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Kalamazoo, MI 49007
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the matter of:

Docket No. CAA-05-2007-0034

DOW CORNING CORPORATION,
Midland, Michigan,

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

Respondent.

_____ /

PROOF OF SERVICE

STATE OF MICHIGAN)
)ss.
COUNTY OF INGHAM)

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The undersigned, being first duly sworn, deposes and says that she is employed by MILLER, CANFIELD, PADDOCK and STONE, P.L.C., and that on November 8, 2007, at Lansing, Michigan, she served a copy of Respondent's Answer to Administrative Complaint and Affirmative Defenses upon:

Sabrina Argentieri (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Service was made by Federal Express overnight delivery service, Tracking No. 7988-0507-4736, with postage prepaid.

Crystal L. Abbott
Crystal L. Abbott

Subscribed and sworn to before me on November 8, 2007.

Jeri L. Clevenger
Jeri L. Clevenger, Notary Public
State of Michigan, Clinton County
Acting in Ingham County
My Commission Expires: October 8, 2008