



144 Fork Branch Road, Dover, DE 19904

302-736-9100

fax: 302-736-9271

Dow Reichhold Specialty Latex LLC
Bringing a world of experience to each application.™

Overnight Mail

July 16, 2008

Ms. Allison F. Gardner (3RC42)
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

**Re: Response to Administrative Complaint & Request for Hearing
EPA Docket No.: CERC-03-2008-0344 & EPCRA-03-2008-0344**

Dear Ms Gardner:

Attached please find Dow Reichhold Specialty Latex LLC's (DRSL) response to the referenced Administrative Order. In order to preserve DRSL's right to a hearing, we have requested said hearing. We are also requesting an informal settlement conference. DRSL proposes the formal hearing be postponed to give both parties an opportunity to negotiate a mutually agreeable settlement.

If you have questions or comments please contact me at 302-736-9197 or Louis.Graham@DowReichhold.com.

Best regards,

J. Louis Graham, QEP
EHS Operations Leader

cc: R. Emerson - DRSL, by e-mail
M Galbus - DRSL, by e-mail
R. Morton - Womble, Carlyle, by e-mail

P.O. Box 13906, Research Triangle Park, NC 27709 USA • 2400 Ellis Road, Suite 100, Durham, NC 27703 USA

800-451-9562 • (fax) 800-683-5455 • www.dowreichhold.com



In the Matter of:)	EPA Docket No.: CERC-03-2008-0344
)	EPA Docket No.: EPCRA-03-2008-0344
Dow Reichhold Specialty Latex, LLC)	
2400 Ellis Road)	
Durham, NC 27703)	
)	Answer to Administrative Complaint
Respondent,)	
)	<u>Hearing Requested</u>
Dow Reichhold specialty Latex, LLC)	
144 Fork Branch Road)	
Dover, Delaware 19904)	
)	
Facility.)	

RECEIVED
 JUL 17 11:03 AM '09

Dow Reichhold Specialty Latex, LLC ("DRSL") answers and responds to allegations of the Administrative Complaint as follows:

GENERAL ALLEGATIONS

1 – 11. DRSL admits the allegations of paragraphs 1 through 11.

**COUNT I – VIOLATION OF SECTION 103 OF CERCLA –
JULY 3, 2005 1,3-BUTADIENE RELEASE**

12. DRSL incorporates by reference its responses to paragraphs 1 through 11.

13. DRSL admits that the allegations of paragraph 13 contain legal conclusions to which no response is required. To the extent a response is required; DRSL denies the allegations of paragraph 13.

14. DRSL admits that, beginning at or about 1:07 AM on July 3, 2005 DRSL released 1,3-butadiene into the interior of a production building. The building ventilation system evacuated the butadiene out of the building over the next two hours. The quantity of the release was later determined to be approximately 1,154 pounds. Except as specifically admitted, DRSL denies the allegations of paragraph 14.

15. DRSL admits the allegations of paragraph 15.

16. DRSL admits the allegations of paragraph 16.

17. DRSL admits the allegations of paragraph 17.

18 DRSL admits that, at approximately 1:10 AM on July 3, 2005, it had knowledge of a butadiene release into the interior of a production building. At that time DRSL also knew the release would eventually be discharged out of the building in to the environment. DRSL further admits that its employees were completely consumed with responding to the release and attempting to mitigate its potential effects on people

and the environment. DRSL's Activities included evacuating non-essential personnel, shutting down the production equipment and commencing water fogging the area to knock down the vapors. When the detectors in the building started going off the remaining employees evacuated. Vehicular traffic and all other possible sources of ignition were shutdown. Butadiene operations in the raw material area were also shutdown. Except as expressly admitted, DRSL denies the allegations of paragraph 18.

19. DRSL admits that it notified the NRC of a butadiene release at or about 3:05 AM, July 3, 2005. DRSL also admits that, at the time of the release the actual quantity of butadiene released in to the building was not known. Further, the rate at which the butadiene would be evacuated from the building into the environment was not known. When employees were able to re-enter the building and have access to the butadiene flow meter it was determined that approximately 1,154 pounds of butadiene had been released in to the building. Except as expressly admitted, the allegations of paragraph 19 are denied.
20. DRSL admits that it acted in a proficient and appropriate manner to provide notification to the NRC, the LEPC and the SERC as quickly as was practicable after it had knowledge that a reportable quantity of butadiene had been released or that a reportable quantity of butadiene had escaped the building. DRSL further admits that it acted quickly and appropriately in mitigating the incident and protecting human health and the environment. Delaware regulation provides that "*delay in notification shall not be considered to be a violation of this Regulation when the act of reporting may delay the mitigation of the discharge and/or the protection of public health and the environment.*" Except as expressly admitted, DRSL denies the allegations of paragraph 20.
21. DRSL admits that it acted in a proficient and appropriate manner to ensure that the notification was made as quickly as was practicable after it had knowledge that a reportable quantity of butadiene had been released or that a reportable quantity of butadiene had escaped the building. DRSL further admits that it acted quickly and appropriately in mitigating the incident and protecting the community, human health and the environment. Except as expressly admitted, DRSL denies the allegations of paragraph 20.

**COUNT II – VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – SERC –
JULY 3, 2005 1,3 BUTADIENE RELEASE**

22. DRSL incorporates by reference its responses to paragraphs 1 through 21.
23. DRSL admits that 40 CFR 355.40 (b) provides that "Notice requirements. (1) The owner or operator of a facility subject to this section shall immediately notify the community emergency coordinator

for the local emergency planning committee of any area likely to be affected by the release and the State emergency response commission of any State likely to be affected by the release. If there is no local emergency planning committee, notification shall be provided under this section to relevant local emergency response personnel." Except as expressly admitted, DRSL denies the allegations of paragraph 23.

24. DRSL admits that DNREC is the SERC for the Dover facility. Except as expressly admitted, DRSL denies the allegations of paragraph 24.
25. DRSL admits that the allegations of paragraph 25 contain legal conclusions to which no response is required. To the extent a response is required; DRSL denies the allegations of paragraph 25.
26. DRSL admits that it notified the SERC and the LEPC of the butadiene release immediately after notifying the NRC. DRSL also admits that, at the time of the release the actual quantity of butadiene released in to the building was not known. Further, the rate at which the butadiene would be evacuated from the building into the environment was not known. When employees were able to re-enter the building and have access to the butadiene flow meter it was determined that approximately 1,154 pounds of butadiene had been released in to the building. Except as expressly admitted, the allegations of paragraph 26 are denied.
27. DRSL admits that it acted in a proficient and appropriate manner to provide notification to the NRC, the LEPC and the SERC as quickly as was practicable after it had knowledge that a reportable quantity of butadiene had been released or that a reportable quantity of butadiene had escaped the building. DRSL further admits that it acted quickly and appropriately in mitigating the incident and protecting human health and the environment. Delaware regulation provides that "*delay in notification shall not be considered to be a violation of this Regulation when the act of reporting may delay the mitigation of the discharge and/or the protection of public health and the environment.*" Except as expressly admitted, DRSL denies the allegations of paragraph 27.
28. DRSL admits that it acted in a proficient and appropriate manner to ensure that the notification was made as quickly as was practicable after it had knowledge that a reportable quantity of butadiene had been released or that a reportable quantity of butadiene had escaped the building. DRSL further admits that it acted quickly and appropriately in mitigating the incident and protecting the community, human health and the environment. Except as expressly admitted, DRSL denies the allegations of paragraph 28.

**COUNT III – VIOLATION OF SECTION 304(a) OF EPCRA – LEPC –
JULY 3, 2005 1,3 BUTADIENE RELEASE**

29. DRSL incorporates by reference its responses to paragraph 1 through 28.
30. DRSL admits the allegations of paragraph 30.
31. DRSL admits that it notified the SERC and the LEPC of the butadiene release immediately after notifying the NRC. DRSL also admits that, at the time of the release the actual quantity of butadiene released in to the building was not known. Further, the rate at which the butadiene would be evacuated from the building into the environment was not known. When employees were able to re-enter the building and have access to the butadiene flow meter it was determined that approximately 1,154 pounds of butadiene had been released in to the building. Except as expressly admitted, the allegations of paragraph 31 are denied.
32. DRSL admits that it acted in a proficient and appropriate manner to provide notification to the NRC, the LEPC and the SERC as quickly as was practicable after it had knowledge that a reportable quantity of butadiene had been released or that a reportable quantity of butadiene had escaped the building. DRSL further admits that it acted quickly and appropriately in mitigating the incident and protecting human health and the environment. Delaware regulation provides that "*delay in notification shall not be considered to be a violation of this Regulation when the act of reporting may delay the mitigation of the discharge and/or the protection of public health and the environment.*" Except as expressly admitted, DRSL denies the allegations of paragraph 32
33. DRSL admits that it acted in a proficient and appropriate manner to ensure that the notification was made as quickly as was practicable after it had knowledge that a reportable quantity of butadiene had been released or that a reportable quantity of butadiene had escaped the building. DRSL further admits that it acted quickly and appropriately in mitigating the incident and protecting the community, human health and the environment. Except as expressly admitted, DRSL denies the allegations of paragraph 33.

**COUNT IV – VIOLATION OF SECTION 304(c) OF EPCRA – SERC –
JULY 3, 2005 1,3 BUTADIENE RELEASE**

34. DRSL incorporates by reference its responses to paragraphs 1 through 33.
35. DRSL admits that the allegations of paragraph 35 contain legal conclusions to which no response is required. To the extent that a response is required, DRSL denies the allegations of paragraph 35.

36. DRSL admits that the allegations of paragraph 36 contain legal conclusions to which no response is required. To the extent that a response is required, DRSL denies the allegations of paragraph 36.
37. DRSL denies the allegations of paragraph 37. The 6028 report, which specifically references the Delaware regulation with the 30 day requirement concerning written follow-up reports to comply with EPCRA reporting, was e-mailed to Mr. Rich Antoff of the DNREC on July 13, 2005.
38. DRSL denies the allegations of paragraph 38. The 6028 report, which specifically references the Delaware regulation with the 30 day requirement concerning written follow-up reports to comply with EPCRA reporting, was e-mailed to Mr. Rich Antoff of the DNREC on July 13, 2005. DNREC confirmed in an e-mail dated July 13, 2005 that DRSL had 30 days to file the written report and that mailing it to the other recipients on Friday, July 15, 2005 was acceptable. See Attachment 1. DNREC regulations provide that *"Except for petroleum substances, sewage, or infectious waste releases, as soon as practical but no later than 30 days after a release of a DRQ of a listed substance, such person, owner or operator shall provide a written follow-up report to the Department..."* DNREC further provides that *"Sending this Report fulfills your obligation to submit a written report pursuant to 7 Del. C.; Section 6028, and the corresponding "Reporting of a Discharge of a Pollutant or an Air Contaminant Regulation, and the Emergency Planning and Community Right-to Know Act of 1986 (SARA, Title III), Section 304, Emergency Notification."*
39. DRSL denies the allegations of paragraph 39.

COUNT V – VIOLATION OF SECTION 103 OF CERCLA –
AUGUST 25, 2006 STYRENE RELEASE

40. DRSL incorporates by reference its responses to paragraphs 1 through 39.
41. DRSL admits that a styrene release did begin from a rail car at or about 6:30 PM, August 25, 2006. The release continued intermittently for the next 24 hours. During the first several hours of the incident the rail car could not be approached or observed and no estimate of the quantity released could be made. The determination as to the actual quantity of styrene released did not occur until the rail car cooled and the manway was opened to allow measurement of the quantity of polystyrene remaining in the car. Except as expressly admitted, DRSL denies the allegations of paragraph 41.
42. DRSL admits the allegations of paragraph 42.
43. DRSL admits the allegations of paragraph 43.
44. DRSL admits the allegations of paragraph 44.

45. DRSL admits that it was aware there was a styrene release that was creating an odor issue in and near the facility. DRSL was also aware the odor threshold of styrene is very low. It was not until sometime around 12 AM on Saturday, August 26, 2006 that entry teams approached the car closely enough to see polystyrene on the side of the car and DRSL then realized it was probable that the release had reached the 1,000 pound reportable quantity threshold. Even at that time, however, DRSL did not know the actual quantity released and did not have the ability to estimate the quantity released. Except as expressly admitted, DRSL denies the allegations of paragraph 45.

46. DRSL admits that it was aware there was a styrene release that was creating an odor issue in and near the facility. DRSL was also aware the odor threshold of styrene is very low. It was not until sometime around 12 AM on Saturday, August 26, 2006 that entry teams approached the car closely enough to see polystyrene on the side of the car and DRSL then realized it was probable that the release had reached the 1,000 pound reportable quantity threshold. It was then that DRSL immediately contacted the NRC. Even at that time, however, DRSL did not know the actual quantity released and did not have the ability to estimate the quantity released. Except as expressly admitted, DRSL denies the allegations of paragraph 46.

47. DRSL admits that it was active in appropriately responding to the release. It was not until sometime around 12 AM on Saturday, August 26, 2006 that entry teams approached the car closely enough to see polystyrene on the side of the car and DRSL then realized it was probable that the release had reached the 1,000 pound reportable quantity threshold. It was then that DRSL immediately contacted the NRC. Even at that time, however, DRSL did not know the actual quantity released and did not have the ability to estimate the quantity released. Except as expressly admitted, DRSL denies the allegations of paragraph 47.

48. DRSL denies the allegations of paragraph 48.

**COUNT VI – VIOLATION OF SECTION 304© OF EPCRA – SERC –
AUGUST 25, 2006 STYRENE RELEASE**

49. DRSL incorporates by reference its responses to paragraphs 1 through 48.

50. DRSL admits that the allegations of paragraph 50 contain legal conclusions to which no response is required. To the extent a response is required; DRSL denies the allegations of paragraph 50.

51. DRSL admits the allegations of paragraph 51.

52. DRSL admits that the allegations of paragraph 52 contain legal conclusions to which no response is required. To the extent a response is required; DRSL denies the allegations of paragraph 52.
53. DRSL admits that it provided a written follow up report to the SERC on September 27, 2006.
54. DRSL admits that it provided a written report to the DNREC regarding the styrene incident on September 27, 2006 as stipulated in DNREC Secretary's Order, Field Work Order dated August 27, 2006 issued by Mr. Jamie Bethard, the DNREC Representative/On-Scene-Coordinator. See Attachment B. Due to complications in the case, including the inability to open the rail car until it cooled, DNREC specifically allowed DRSL greater than 30 days to submit the report. Except as expressly admitted, the allegations of paragraph 54 are denied.
55. DRSL denies the allegations of paragraph 55.

Proposed CERCLA and EPCRA Penalties

DRSL's response to the proposed penalties rely, in part, on EPA document *"Enforcement Response Policy for Section 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act"* dated September 30, 1999 (the "ERP").

In the second paragraph in the Introduction to the ERP the following statement is made: "Although the application of this Policy is intended for typical cases, there may be circumstances that warrant deviation from the Policy." DRSL believes there are specific circumstances that should be taken in to consideration in determining proposed penalties for the identified allegations. The ERP delineates one such circumstance in Section B. Extent: "Extenuating circumstances may be considered in evaluating the immediate notification requirement, but should not be confused with poor emergency planning and/or facility internal operating procedures that include elaborate reporting systems which cause unnecessary delays."

DRSL firmly believes that it reported the release as quickly as practicable without jeopardizing human health or the environment in the case of the butadiene release and immediately on learning that the reportable quantity had probably been reached in the case of the styrene release. Therefore, DRSL does not agree that it delayed in reporting. To the extent that EPA considers DRSL may have delayed in reporting either of the releases, those delays were directly related to emergency response activities and were definitely not caused by poor emergency planning or internal procedures. The proposed penalties for each individual count are discussed below.

Count I:

The EPA assigned an Extent Level 2, Gravity Level A for this count. The notification to the NRC was made 17 minutes after employees were allowed back in the building and employees had access to telephones where they did not have to leave the immediate scene of the emergency response activities. A few minutes after being able to access

the butadiene flow meter and determining the actual quantity of butadiene released, DRSL notified the NRC. Prior to this time, DRSL's efforts were focused on the emergency response. Therefore, notifications were made as soon as they could be made without jeopardizing human health or the environment.

No penalty should be assessed.

Count V:

The EPA assigned an Extent Level 1, Gravity Level A for this count. The EPA states the notification should have been made at 7:30 PM. However, even now it is impossible to know when the quantity of styrene released reached the reportable quantity of 1,000 pounds. During the ongoing release, DRSL employees were actively participating with the Delaware Emergency Management Administration (DEMA), DNREC, members of the LEPC and several other organizations in responding to the release including preparing to re-enter the facility. It was not until entry teams approached the rail car closely enough to see polystyrene on the side of the car that DRSL realized it was probable that it had reached the 1,000 pound reportable quantity threshold. This occurred somewhere around 12:00 AM on August 26, 2006, and notification to the NRC was made immediately after that time. It was not until several days later that the actual quantity released could be determined by calculation.

The ERP states the following "*Immediate notification allows federal, state, and local agencies to determine what level of government response is needed and with what urgency the response must take place.*" State and local agencies were involved in the response from the very beginning. Incident Command had been transferred to DEMA by 7:30 – 8:00 PM. The stated purpose for immediate notification was in place from the very beginning of the incident.

DRSL believes that no penalty should be assessed. Notification to the NRC was made as soon as it was apparent the RQ had been exceeded.

Counts II & III:

The EPA assigned an Extent Level 1, Gravity Level A for these counts. The notifications to the SERC and LEPC were made immediately after the notification was made to the NRC. The notification to the NRC was made 17 minutes after employees were allowed back in the building and employees had access to telephones where they did not have to leave the immediate scene of the emergency response activities. A few minutes after being able to access the butadiene flow meter and determining the actual quantity of butadiene released, DRSL notified the NRC. Prior to this time, DRSL's efforts were focused on the emergency response. Therefore, notifications were made as soon as practicable without jeopardizing human health or the environment.

Notifications to the SERC are made by notifying the DNREC. DE Regulation 6028, Reporting of a Discharge of a Pollutant or an Air Contaminant, §2.1 A, states that "A delay in notification shall not be considered to be a violation of this Regulation when the act of reporting may delay the mitigation of the discharge and/or the protection of public health and the environment." DRSL fully complied with the notification regulations established by DNREC for SERC notifications. Therefore, DRSL was in compliance with the intent of 40 CFR 355.40(b) (1) & (2).

The ERP states that "A delay in the notification, or incomplete notification, could seriously hamper federal and state response activities and pose serious threats to human health and the environment. Thus, the extent factor focuses on the notification

and follow-up actions taken by the respondent, and the expediency with which those notifications occurred." In this incident delaying emergency response activity in order to make notifications would have posed a far greater risk to human health, the environment and the community.

DRSL believes no penalty should be assessed.

Count IV:

DE Regulation 6028: Reporting of a Discharge of a Pollutant or an Air Contaminant, §2.5 A states "Except for petroleum substances, sewage, or infectious waste releases, as soon as practical but no later than 30 days after a release of a DRQ of a listed substance, such person, owner or operator shall provide a written follow-up report to the Department..." On July 13, 2005, 10 calendar days, 5 working days, after the incident DRSL sent a copy of the written report to the DNREC. By return e-mail DNREC confirmed that we had 30 days to submit the report. See Attachment A.

The SERC has specified that reports to the SERC are to be submitted to the DNREC. The second page of the 6028 Report Document states: *Sending this Report fulfills your obligation to submit a written report pursuant to 7 Del. C.; Section 6028, and the corresponding "Reporting of a Discharge of a Pollutant or an Air Contaminant Regulation, and the Emergency Planning and Community Right-to Know Act of 1986 (SARA, Title III), Section 304, Emergency Notification.*

DRSL maintains that no penalty is warranted.

Count VI:

The SERC has specified that reports to the SERC are to be submitted to the DNREC. The second page of the 6028 Report Document states: *Sending this Report fulfills your obligation to submit a written report pursuant to 7 Del. C.; Section 6028, and the corresponding "Reporting of a Discharge of a Pollutant or an Air Contaminant Regulation, and the Emergency Planning and Community Right-to Know Act of 1986 (SARA, Title III), Section 304, Emergency Notification.*

DRSL provided a written report to the DNREC regarding the styrene incident on September 27, 2006 as stipulated in the Secretary's Order, Field Work Order dated August 27, 2006 issued by Mr. Jamie Bethard, the DNREC Representative/On-Scene-Coordinator. See Attachment B.


DRSL maintains that no penalty is warranted.

REQUEST FOR HEARING AND INFORMAL SETTLEMENT CONFERENCE

DRSL Requests a hearing so that it may contest the material facts alleged in the Administrative Order as well as the appropriateness of the penalty amount. DRSL also requests an informal settlement conference with regard to these matters in the hope that EPA and DRSL may negotiate a mutually acceptable settlement.

7-16-2008

Date


Respondent DRSL
J. Louis Graham, QEP
EHS Operations Leader

Graham, J Louis

From: Antoff Richard (DNREC) [Richard.Antoff@state.de.us]
Sent: Wednesday, July 13, 2005 9:27 AM
To: Graham, Louis
Cc: Lilly Tom (DNREC); Brabson Jay (DNREC); Horton Robert L. (DNREC); Malenfant Ellen D. (DNREC)
Subject: RE: July 3, 2005 Incident
Attachments: DowReichhold Incident Report 070305.pdf

Louis, you are correct the Reporting Reg. gives you 30 days for the written report. The 10 day requirement may be an air permit requirement. I don't have a problem with the mail copy being delayed but I can't speak for Tom Lilly. Many times, in similar situations, it may take longer than 10 days to complete the investigations. You have included the corrective actions in the email report and from both your voice mail and email, I assume that the core investigation is complete. Thanks for your diligence in completing the investigation so quickly. Jay will be in touch after 7/21 to set up a date to review your incident investigation. Please mail the original 6028 Report to Robert Horton in Dover with copies to Tom & Jay. Thanks.

Richard Antoff
Accidental Release Prevention Engineer
Phone: 302-323-4542 Fax: 302-323-4598
http://www.dnrec.state.de.us/air/AQM_page/ARP.htm

From: Graham, Louis [mailto:Louis.Graham@dowreichhold.com]
Sent: Wednesday, July 13, 2005 7:21 AM
To: Antoff Richard (DNREC)
Subject: July 3, 2005 Incident

Rich, Since the regulations said we had 30 days to submit the follow-up report I was going to wait until I got back to Cheswold on Friday, July 15. Even though the only requirement I could find was 30 days I keep thinking there was a 10 day requirement. I'm e-mailing you the report from our Georgia facility and will mail copies to the other required recipients when I get back Friday. My cell phone doesn't have a signal here but if you need to talk to me before Friday you can call the Kensington facility and have me paged. The telephone # is (706) 539-2282.

J. Louis Graham, QEP
EHS Operations Leader
Dow Reichhold Specialty Latex LLC
(302) 736-9100 ext. 197
(302) 423-9288 (Cell)
(302) 736-9271 (Fax)
louis.graham@dowreichhold.com
<<DNREC Incident Report 070305.pdf>>

*** Reichhold's Email Virus Scanner has scanned this email for malicious content. ***

*** IMPROVING: Do not open attachments from unrecognted senders. ***

Attachment #2

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

SECRETARY'S ORDER

For
Remediation Resulting from Environmental Violation
Issued pursuant to 7 Del. C. §6005

PERSONALLY SERVED BY A REPRESENTATIVE OF THE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL (DNREC) or ON-SCENE COORDINATOR

Dow Reichhold Spec. Latex LLC
(Name of Company or Representative)
(Known as Respondent)

8-27-06
(Date)

This is to inform you that a pollution release has occurred; or threatens to occur on 8-25-06 at 1744 Kent Beach Rd. Dover for which you may be legally and financially responsible. Title 7 Del. Code, Chapter 60, Section 6005 requires any person, who is found to have violated this Chapter, or a rule, or regulation or condition of a permit issued pursuant to Chapter 60, or an Order of the Secretary, shall be liable for all expenses incurred by the Department in:

- 1) Abating the violations, 2) Controlling a pollution incident related to the violation, and 3) Cleanup and restoration of the environment.

Such expenses shall include, but not be limited to, the costs of investigation, legal assistance, public hearings, materials, equipment, human resources, contractual assistance and appropriate salary and overtime pay for all state employees involved in the effort notwithstanding merit system laws, regulations or rules to the contrary.

In the event a liable person fails or refuses to pay any the expenses listed in the detailed billing; the Secretary may seek to compel payment through the initiation of a civil action.

The release of a regulated substance into the State's air/land/water is a violation of Title 7 Del. Code, Chapters 60, 62, 63, or 74A. This incident may present an immediate and substantial threat to human health and the environment. State law requires that the person(s) responsible for the release of the regulated substance respond appropriately and promptly clean up the released substance. The party responsible for a pollution release refuses to take prompt and adequate action to mitigate the pollution incident and restore the environment to protect human health and the environment, he/she is legally and financially responsible for actions taken by the State of Delaware to investigate, control the pollution incident, clean up and restore the environment, now and in the future.

Appropriate response and removal of the released substance(s) is adequate if it is in accordance with Federal and State statutes, regulations and procedures. The On-Scene-Coordinator for this incident is Sceme Balthard ((Title) SO III DNREC) Please note that provided you are taking appropriate action in this matter in order to protect human health and the environment, DNREC response action will be limited to approving and monitoring the progress of your activities and providing guidance as necessary. In any event, you agree to pay DNREC response and oversight costs associated with the release.

If it is determined that you are not taking prompt and appropriate actions to contain, clean up and properly dispose of the released substance(s) and restore the environment, State response may be initiated. You hereby agree to be responsible for all costs incurred in the State of Delaware in remedying this release. Additional remedial action on your part may be required by DNREC in relation to this incident in the future.

Should you require additional information concerning this matter, please contact Sceme Balthard at 102 Perry Lane Dover telephone number (302) 739-9404.

Sincerely,

John Hughes, Secretary
Department of Natural Resources and Environmental Control

DNREC Representative/On-Scene-Coordinator [Signature]

SECRETARY'S ORDER

For

Remediation Resulting from Environmental Violation

Issued pursuant to 7 Del. C. §6005

Page Two

RECEIVED AND ACKNOWLEDGED

1. _____ I will take cleanup action in accordance with Federal and State statutes and regulations and DNREC's policy and procedures.

2. _____ I will not take cleanup action.

Pursuant to Title 7 Del. Code Section 6028 you are hereby required to submit a report to the Department. The following release form must be completed and submitted to the Department within seven (7) days. Submission of a written report is not a waiver of required initial telephone reporting requirements.

(Name and Title) _____

(Signature) _____

(Date) _____ (Time) _____

_____ Potential Responsible Party refused to sign at this time.

Observed By DNREC

Representative _____ Date/Time _____

WAIVER OF STATUTORY RIGHT TO A HEARING

Respondent, _____, hereby agrees to the terms and conditions as set forth and waives all rights to a hearing and its opportunity to appeal or contest this Secretary's Order.

Date: _____

BY: _____

NAME: _____

TITLE: _____

DNREC/DAWM/EPRB

89 Kings Hwy.

Dover, DE 19901

(302)739-9404 Fax (302)739-5060

Agreement to Remediate-ERT-Sec's Order

07/20/06 JJ

DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
DIVISION OF AIR & WASTE MANAGEMENT
ENVIRONMENTAL RESPONSE BRANCH

FIELD WORK ORDER

INCIDENT NAME: Dow Reichhold styrene INCIDENT #: _____

As lead regulatory agency in this pollution incident, the Delaware Department of Natural Resources and Environmental Control (DNREC) requires that you perform the following actions to contain, mitigate and/or restore the environment to its original state. Please note that future additional actions on your part may be required by DNREC in relation to this incident.

If this Field Work Order is issued to a contractor performing incident-specific emergency services for the DNREC, that contractor will invoice DNREC within thirty days of being contracted for all actual costs incurred and estimated additional related costs such as those for laboratory analytical and waste disposal.

REQUIRED ACTIONS	COMPLETION DEADLINE
<u>Prevent further release from the release.</u>	<u>ASAP</u>
<u>Develop (IAP) Incident Action Plan for styrene leak</u>	<u>8-27-06</u>
<u>Continue community air monitoring and ensure early warning monitoring</u>	<u>8-27-06</u>
<u>Provide DNREC with IAP on incident plant objectives</u>	<u>8-27-06</u>
<u>Provide DNREC with IAP report within 30 days</u>	<u>9-27-06</u>
<u>Cleanup release styrene from air and adjacent areas</u>	<u>9-5-06</u>

Contractor's Signature Date Time

Potential Responsible Party's Signature Date Time

Potential Responsible Party refused to sign at this time

DNREC Representative's Signature Date Time

DNREC/DAWM/ERB
89 Kings Hwy.
Dover, DE 19901
(302)739-3694 Fax (302)739-5060

Original Copy - Environmental Response Branch
Yellow Copy - Potential Responsible Party
Pink Copy - Contractor