



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
GREAT LAKES NATIONAL PROGRAM OFFICE  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

NOV 23 2009

(AE-17J)

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

*Jeffrey J. Toeppe*  
*Vice-President*  
Dow AgroSciences, L.L.C.  
305 N. Huron Avenue  
Harbor Beach, Michigan 48441

Re: In the Matter of: Dow AgroSciences, L.L.C.  
Docket No. **CAA-05-2010-0003**

Dear Mr. Toeppe:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves In the Matter of Dow AgroSciences, L.L.C., Docket No. **CAA-05-2010-0003** indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on NOV 23 2009

Pursuant to paragraph 39 of the CAFO, Dow AgroSciences, L.L.C. must pay the civil penalty within 30 days of [date CAFO filed]. Your [check][electronic funds transfer] must display the case name, case docket number **CAA-05-2010-0003**, and the billing document number 2751003A004.

Please direct any questions regarding this case to Christine Liszewski, Associate Regional Counsel, 312-886-4670.

Sincerely,

*William L. MacDowell*  
for Bonnie Bush,  
Chief, Section MI/WI  
AECAB

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )  
)  
Dow AgroSciences, L.L.C. )  
Harbor Beach, Michigan )  
Respondent. )

Docket No. CAA-05-2010-0003  
Proceeding to Assess a Civil Penalty  
Under Section 113(d) of the Clean Air  
Act, 42 U.S.C. § 7413(d)

Consent Agreement and Final Order

RECEIVED  
NOV 29 2009

Preliminary Statement

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Dow AgroSciences, L.L.C. (DAS), a limited liability company doing business in Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to entry of this CAFO and the assessment of the specified civil

penalty, and agrees to comply with the terms of the CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO. Respondent denies the legal conclusions alleged in the CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right (in this proceeding only) to contest the allegations in this CAFO, and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. Under Section 112 of the Act, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production at 40 C.F.R. Part 63, Subpart MMM.

10. The NESHAP for PAI Production, at 40 C.F.R. at 40 C.F.R. § 63.1360(a), provides that an affected source is the facility-wide collection of PAI process units that process, use, or produce hazardous air pollutants (HAPs), and are located at a plant site that is a major source, as defined in Section 112(a) of the Act.

11. The NESHAP for PAI Production, at 40 C.F.R. § 63.1364(a), requires the owner or operator of an existing affected source to comply with the requirements of this NESHAP by December 23, 2003.

12. The NESHAP for PAI Production, at 40 C.F.R. § 63.1368(a), requires the owner or operator of an affected source to comply with the reporting requirements of, among other things, paragraphs (f) and (h) of this section.

13. Section 63.1368(f) requires the Notification of Compliance Status Report to be

submitted no later than 150 calendar days after the compliance date and to include, among other things, the information specified in paragraph (f)(4) of this section.

14. Section 63.1368(f)(4) requires the Notification of Compliance Status Report to include operating scenarios.

15. Section 63.1368(h)(iii) requires the owner or operator to submit revisions to any of the information reported in the original Notification of Compliance Status Report whenever a process change is made or any of the information submitted in the Notification of Compliance Status Report changes with the next Periodic Report.

16. The NESHAP for PAI Production, at 40 C.F.R. § 63.1362(d), requires the owner or operator of each affected source to comply, with certain specified differences, with the wastewater requirements in the NESHAP for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater at §§ 63.132 through 63.147.

17. Section 63.132(a)(1) requires the owner or operator to determine whether each wastewater stream requires control for Table 9 compounds.

18. The NESHAP for PAI Production, at 40 C.F.R. § 63.1365(c), requires the owner or operator of an affected source to demonstrate compliance with the process vent standards in § 63.1362(b) using the procedures described in paragraphs (c)(1) through (3) of this section.

19. Section 63.1365(c)(2) requires the owner or operator referred to from paragraphs (c)(1)(i) through (v) of this section to calculate uncontrolled emissions according to the procedures described in paragraph (c)(2)(i) or (ii) of this section, as appropriate.

20. Section 63.1365(c)(2)(i)(D)(3) provides that while boiling, the vessel must be operated with a properly operated process condenser. An initial demonstration that a process

condenser is properly operated is required for vessels that operate process condensers without secondary condensers that are air pollution control devices. The owner or operator must either measure the condenser exhaust gas temperature and show it is less than the boiling point of the substance(s) in the vessel, or perform a material balance around the vessel and condenser to show that at least 99 percent of the material vaporized while boiling is condensed. Uncontrolled emissions are assumed to be zero under these conditions. The initial demonstration shall be conducted for all appropriate operating scenarios and documented in the Notification of Compliance Status Report as specified in §63.1368(f).

21. The Administrator of EPA (the Administrator) 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 through January 12, 2009 and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

22. Section 113(d)(1) 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 the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

23. 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 CAFO.

#### **Factual Allegations and Alleged Violations**

24. Respondent owns and operates a facility at 305 North Huron Avenue in Harbor

Beach, Michigan at which it produces “pesticide active ingredients” as defined at 40 C.F.R. § 63.1361 including Spinosad Technical Grade, Spinosad Pharmaceutical Grade and Spinosyns J/L Intermediate (the Facility).

25. Respondent generates methanol and uses xylene, both of which are HAPs, in the manufacturing of pesticide active ingredients at the Facility.

26. In 2002 and 2003, emissions of methanol from the Facility exceeded 10 tons per year.

27. Based on the facts described in paragraph 26, above, EPA alleges that the Facility is a major source of HAPs as defined in Section 112(a) of the Act, 42 U.S.C. § 7412(a).

28. Based on the facts described in paragraphs 24, 25 and 26, above, EPA alleges that the Facility is an “affected source” as defined at 40 C.F.R. § 63.1360(a).

29. Based on the facts described in paragraphs 24, 25 and 26, above, EPA alleges that the Facility is subject to the NESHAP for PAI Production at 40 C.F.R. Part 63, Subpart MMM.

30. In May 2004, Respondent submitted a Notification of Compliance Status Report for PAI Production for the Facility to EPA. This report included operating scenarios for Spinosad Technical Grade and Spinosad Pharmaceutical Grade.

31. In February 2008, Respondent submitted a revised Notification of Compliance Status Report for PAI Production for the Facility to EPA. This report included operating scenarios for Spinosad Technical Grade and Spinosyns J/L Intermediate. Respondent removed the operating scenario for Spinosad Pharmaceutical Grade from this report. In September 2009, Respondent submitted a revised Notification of Compliance Status Report which includes, among other things, an operating scenario for Spinosad Pharmaceutical Grade.

32. Based on the facts described in paragraphs 30 and 31, above, EPA alleges that from

February 2008 until September 2009, Respondent failed to include the operating scenario for Spinosad Pharmaceutical Grade in the Notification of Compliance Status Report for PAI Production as required by 40 C.F.R. § 63.1368(f)(4).

33. In the Notification of Compliance Status Report submitted by Respondent in May 2004, Respondent identified two aggregate wastewater streams from the Spinosad manufacturing process.

34. In the revised Notification of Compliance Status Report submitted by Respondent in February 2008, Respondent identified each individual “point of determination” as defined at 40 C.F.R. § 63.1361 where a wastewater stream exits the Spinosad manufacturing process.

35. Based on the facts described in paragraphs 33 and 34, above, EPA alleges that from May 2004 until February 2008, Respondent failed to identify each point of determination for the wastewater streams exiting the Spinosad manufacturing process and failed to determine whether each wastewater stream requires control for Table 9 compounds as required by 40 C.F.R. §§ 63.1362(d) and 63.132(a)(1).

36. On June 27, 2008, Respondent completed initial compliance demonstrations on five process condensers as required by 40 C.F.R. § 63.1365(c)(2)(i)(D)(3).

37. Based on the facts described in paragraph 36, above, EPA alleges that Respondent failed to complete initial compliance demonstrations on all process condensers in the Spinosad manufacturing process by December 23, 2003 as required by 40 C.F.R. §§ 63.1364(a) and 63.1365(c)(2)(i)(D)(3).

#### **Civil Penalty**

38. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and cooperation of the Respondent, Complainant has determined

that an appropriate civil penalty to settle this action is \$70,000.00.

39. Within 30 days after the effective date of this CAFO, Respondent must pay a \$70,000.00 civil penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read:  
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, Respondent must state the case name, the docket number of this CAFO and the billing document number.

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

41. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

42. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15.00 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties

and nonpayment penalties accrued from the beginning of the quarter.

### **General Provisions**

43. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO including the violations alleged by EPA in the June 3, 2009 Finding of Violation.

44. The effect of the settlement described in paragraph 43, above, is conditioned upon the following action: Respondent's submittal, within thirty (30) days after the effective date of this CAFO, of a revised form A1-001 in connection with the renewal and revision of its Title V permit to the Air Quality Division of the Michigan Department of Environmental Quality which identifies the Facility as being subject to the PAI MACT from the date of the revised Renewable Operating Permit.

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

46. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 43, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

47. Respondent reserves all of its rights and defenses in connection with any other actions or proceedings brought against Respondent by EPA or any other person or entity, including any actions or proceedings referred to in paragraphs 45 and 46, above, and nothing in this CAFO shall affect or prejudice those rights and defenses. Respondent reserves the right to contest any of the allegations in paragraphs 24 through 37, above, in any other action or proceeding.

48. Respondent certifies that, as of the effective date of this CAFO, it is complying fully with NESHAP for PAI Production at 40 C.F.R. Part 63, Subpart MMM.

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

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

51. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

52. Each party agrees to bear its own costs and attorneys' fees in this action.

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

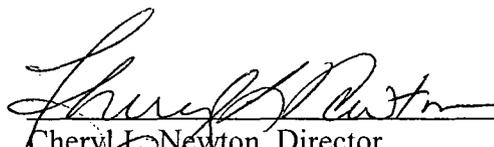
**Dow AgroSciences, L.L.C., Respondent**

November 17, 2009  
Date

  
\_\_\_\_\_  
William W. Wales  
Vice President, Secretary and General Counsel  
Dow AgroSciences, L.L.C.

**United States Environmental Protection Agency, Complainant**

11/20/09  
Date

  
\_\_\_\_\_  
Cheryl L. Newton, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5

**CONSENT AGREEMENT AND FINAL ORDER**

**In the Matter of:**

**Dow AgroSciences, L.L.C.**

**Docket No.**

**CAA-05-2010-0003**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

11/20/09  
Date

Walter W. Kordulski  
for  
Bharat Mathur  
Acting Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5

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NOV 23 2009

**REGIONAL HEARING CLERK  
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PROTECTION AGENCY**

In the Matter of:  
Dow AgroSciences, L.L.C.  
Docket No. CAA-05-2010-0003

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PROTECTION AGENCY

Certificate of Service

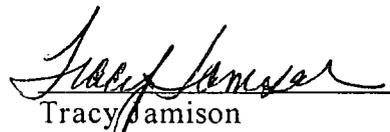
I certify that I filed the original and one copy of the Consent Agreement and Final Order in this matter with the Regional Hearing Clerk (E-13J), United States Environmental Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that mailed by Certified Mail, Receipt No. [ ], the second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

Jeffrey J. Toeppe  
Vice-President  
Dow AgroSciences, L.L.C.  
305 N. Huron Avenue  
Harbor Beach, Michigan

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

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

On the 24<sup>th</sup> day of November 2009.

  
Tracy Jamison  
Office Automation Assistant  
AECAS, Section MI/WI

CERTIFIED MAIL RECEIPT NUMBER: 7009 1630 0000 76273402