UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

May 7, 2013

Mr. Joe Minadeo, Sr. Attorney
Dow AgroSciences LLC
9330 Zionsville Road
Indianapolis, IN 46268

Re: In the Matter of: The DOW Chemical Company
Freeport, Brazoria County, Texas
Docket No. CAA-06-2013-3326

Dear Mr. Minadeo,

Please find enclosed a copy of the fully-executed Complaint and Consent Agreement and Final Order (CAFO) that was filed today with the Regional Hearing Clerk in EPA Region 6. The DOW Chemical Company (DOW) will have thirty (30) days from the effective date of the CAFO to pay the civil penalty of Eighty-Two Thousand Dollars ($82,000). DOW must also comply with the Additional Terms of Settlement under the timetable described in the document.

Should you need to reach me, my telephone is (214) 665-8144. Thank you for your assistance with this matter.

Sincerely yours,

Andrea Carrillo
Assistant Regional Counsel

Enclosure

Cc: Johnny Chavez
Responsible Care Leader
Dow Texas Operations
2301 N. Brazosport Blvd., Building APB
Freeport, TX 77541

The Corporation Trust Company
Registered Agent for The DOW Chemical Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

FILED
2013 MAY -7 PM 2:37
REGIONAL HEARING CLERK
EPA REGION VI

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	§	DOCKET NO. CAA 06-2013-3326
The DOW Chemical Company	§	COMPLAINT AND CONSENT AGREEMENT AND FINAL ORDER
Freeport, Texas	§	

COMPLAINT AND
CONSENT AGREEMENT AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 ("EPA") ("Complainant"), and The DOW Chemical Company located in Freeport, Texas ("Respondent" and "DOW"), in the above referenced action, have agreed to resolve this matter, through issuance of this Complaint and Consent Agreement and Final Order ("Complaint" and "CAFO").

I.
PRELIMINARY STATEMENT

1. This proceeding is the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act, as amended (CAA or the Act), 42 U.S.C. § 7413(d), and for additional terms of settlement as agreed to by Respondent. This proceeding was instituted by the issuance of a Complaint and Notice of Opportunity for Hearing ("Complaint") incorporated herein, and is simultaneously concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), 22.18(b)(3), and 22.34.

2. This Complaint alleges that Respondent has violated the provisions governing Chemical Accident Prevention, and specifically the requirements to maintain a complete Risk

Management Plan (RMP) as required by 40 C.F.R. Part 68 and Section 112(r) of the Act, 42 U.S.C. § 7412(r), at its Freeport, Texas, facility. Furthermore, this CAFO serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this Complaint; however, Respondent neither admits nor denies the specific factual allegations contained in this Complaint.

4. Respondent waives any right to contest the allegations in the CAFO and its right to appeal the Final Order set forth herein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

6. Respondent consents to the issuance of this CAFO hereinafter recited, consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO, and consents to the additional terms of settlement, including the implementation of the Supplemental Environmental Project (SEP) described in Paragraphs 53-68 below and the Appendix to this CAFO.

7. Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not alleged in this Complaint.

8. Nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

9. Respondent hereby certifies that as of the date of execution of this CAFO, the Facility has corrected the violation alleged herein, and is now, to the best of its knowledge, in compliance with all the requirements of 40 C.F.R. Part 68 and Section 112(r) of the Act, 42 U.S.C. § 7412(r).

10. Respondent represents that the undersigned representative is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind the Respondent to the terms and conditions of this CAFO.

11. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns, but not limited to, subsequent purchasers. Nothing in the previous sentence shall adversely affect any right of EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee, even if not owned in whole or in part, directly or indirectly, by Respondent.

12. The U.S. Department of Justice and EPA have jointly determined that an administrative action is appropriate for the violations alleged herein and have, therefore, waived the limit on the age of the violations, pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

II.
STATUTORY AND REGULATORY BACKGROUND

13. Pursuant to CAA § 112(r)(7), 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate release prevention, detection, and correction requirements.

14. On June 20, 1996, the EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the Act. These regulations require owners and operators of stationary

sources, as defined in 40 C.F.R. § 68.3, that have more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process, to develop, implement, and submit a RMP.

15. The regulations in 40 C.F.R. Part 68 set forth the requirements for the RMP that must be followed at each applicable stationary source, including the requirements regarding a complete registration form and the associated hazard assessments.

16. Pursuant to 40 C.F.R. § 68.160(a), "the owner or operator shall complete a single registration form and include it in the RMP. The form shall cover all regulated substances handled in covered processes."

17. Pursuant to 40 C.F.R. § 68.160(b)(7), "the registration shall include the following data: for each covered process, the name and Chemical Abstracts Service (CAS) number of each regulated substance held above a threshold quantity in a process, the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits, the five- or six- digit North American Industry Classification Systems (NAICS) code that most closely responds to the process, and the Program level of the process."

18. "Owner or operator" shall mean any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7412(a)(9).

19. "Stationary source" shall mean any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur. The term stationary source does not apply to transportation, including storage incident to transportation, of

any regulated substance or any other extremely hazardous substance under the provisions of this part. A stationary source includes transportation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary source for loading or unloading. 40 C.F.R. § 68.3; CAA § 112(r)(2)(C).

20. "Threshold quantity" shall mean the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Act, as amended in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source, as specified in 40 C.F.R. § 68.115. 40 C.F.R. § 68.3.

21. "Regulated substance" shall mean any substance listed pursuant to Section 112(r)(3) of the Act, as amended in 40 C.F.R. § 68.130. 40 C.F.R. § 68.3.

22. "Process" shall mean any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process. 40 C.F.R. § 68.3.

III.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

23. Respondent is incorporated in the state of Delaware and is authorized to do business in the State of Texas.

24. Respondent is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. §7413(d).

25. At all times relevant to this CAFO, Respondent owns and operates a chemical manufacturing facility located at 2301 Brazosport Boulevard, Freeport, Texas ("Facility").

26. Respondent is the owner and operator of a stationary source producing, handling, or storing substances listed pursuant to CAA § 112(r)(3) or extremely hazardous substances, as published and listed in the Emergency Planning and Community Right-to-know Act of 1986 [42 U.S.C.A. § 11001 et seq.].

27. The Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, apply to owners and operators of stationary sources that have more than a threshold quantity in a process of a substance listed pursuant to CAA § 112(r)(3).

28. On July 14-17, 2008, EPA conducted an unannounced CAA § 112(r) inspection of the Facility.

29. EPA discovered during the July 14-17, 2008, inspection of the Facility that the Respondent failed to list the railcar storage process containing more than the threshold quantity of 2,500 pounds of the listed substance chlorine, in the maximum intended inventory of their RMP.

30. In the October 15, 2008 inspection report, Section III, Areas of Concern, (1) notes that Dow Chemical failed to list the railcar storage of chlorine in their maximum intended inventory.

31. On September 29, 2009, EPA received an email from DOW's RMP Site Coordinator, which confirmed that the Facility used the railcars for storage of chlorine and that the estimated maximum intended inventory in the railcars was 5,400,000 pounds of chlorine.

32. On February 23, 2010, the Respondent submitted an updated RMP.

33. According to the RMP updated on February 23, 2010, the actual amount of chlorine listed in the Land Tran Storage (railcars) was 5,040,000 pounds of chorine.

34. The Facility failed to list the railcar storage of 5,040,000 pounds of chlorine in their maximum intended inventory of their RMP prior to February 23, 2010.

35. EPA discovered during the follow-up of the July 14-17, 2008, inspection of the Facility that Respondent failed to list methyl chloride in the maximum intended inventory of their RMP.

36. In Respondent's letter to EPA on June 24, 2009, DOW's RMP Coordinator stated that methyl chloride was, and is, held above the threshold quantity of 10,000 pounds.

37. On September 29, 2009, EPA received an email from DOW's RMP Coordinator which confirmed the estimated maximum intended inventory of methyl chloride to be 6,900,000 pounds.

38. According to the updated February 23, 2010, RMP, the actual amount of methyl chloride listed was a total of 7,030,000 pounds of methyl chloride. The updated RMP listed 4,180,000 pounds of methyl chloride in A-18 CMP (process unit storage) and 2,850,000 pounds of methyl chloride in Land Tran Storage (railcars).

39. The Facility failed to list the process unit storage and railcar storage of 7,030,000 pounds of methyl chloride in the maximum intended inventory of their RMP prior to February 23, 2010.

40. Therefore, the Facility failed to comply with the registration requirements of 40 C.F.R. § 68.160 (b)(7) by not including railcar storage of chlorine or process unit storage and railcar storage of methyl chloride in their RMP.

IV.
VIOLATIONS

41. From the date of the inspection identified above through February 23, 2010,

Respondent failed to include regulated chemicals (chlorine, methyl chloride) held above the threshold quantity in covered process(es) in the Facility's RMP in violation of 40 C.F.R. § Part 68.160(b)(7).

V.
CIVIL PENALTY AND TERMS OF SETTLEMENT

42. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), which authorizes EPA to assess a civil penalty of up to twenty-five thousand dollars ($25,000) per day for each violation of the CAA.[1]

43. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, specific facts and equities, litigation risks, and other factors as justice may require, INCLUDING the Respondent's agreement to perform the additional terms of settlement and the SEP set forth below, it is ORDERED that Respondent be assessed a civil penalty in the amount of Eighty-Two Thousand Dollars ($82,000).

44. Respondent agrees to comply with the additional terms of settlement, including the SEP described in Paragraphs 53-68 below and the Appendix to this CAFO.

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1 The Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701 provides for increases in the statutory penalty provisions ($25,000) cited in the Clean Air Act Stationary Source Civil Penalty Policy dated October 25, 1991 (CAA Penalty Policy). It provides for up to $25,000 per day of violation for violations occurring on or before January 30, 1997; up to $27,500 per day for each violation occurring after January 30, 1997 through March 15, 2004; up to $32,500 per day for each violation occurring after March 15, 2004 through January 12, 2009; and up to $37,500 per day for each such violation occurring after January 12, 2009.

45. Within thirty (30) days of this fully executed CAFO, Respondent shall pay Eighty-Two Thousand Dollars ($82,000) by cashier's check, certified check, or wire transfer made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of five (5) ways: regular U.S. Postal Service mail, to include certified mail; overnight mail; wire transfer; Automated Clearinghouse for receiving US currency; or On Line Payment. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. FedEx), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact – Jesse White (301) 887-6548

For On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in search field
Open form and complete required fields.

PLEASE NOTE: The docket number CAA 06-2013-3326 shall be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following:

Carlos Flores
Enforcement Officer (6EN-AT)
Toxics Enforcement Section
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue Suite 1200
Dallas, Texas 75202-2733;

Lorena Vaughn
Region 6 Hearing Clerk (6RC-D)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

46. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction

or credit covering all or any part of the civil penalty paid to the United States Treasurer.

47. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

48. EPA will also assess a fifteen dollar ($15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional fifteen dollars ($15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

49. Pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis, a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to

pay persists. Such nonpayment penalty shall be ten (10) percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

50. By signing this CAFO, Respondent certifies that the Facility's RMP registration form includes all regulated substances held above the threshold quantity in covered processes and that the Facility has completed and updated the RMP to include all required analyses of worst case scenarios, alternative scenarios, and all other requirements flowing from such changes to the registration form.

51. This CAFO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of any equipment or technology installed by the Respondent in connection with any additional settlement terms undertaken pursuant to this CAFO. Nothing in this CAFO shall be construed to prohibit or prevent the federal, state, or local government from developing, implementing, and enforcing more stringent standards through rulemaking, the permit process, or as otherwise authorized or required.

52. This document is a "Final Order" as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of "prior such violations."

VI.
SUPPLEMENTAL ENVIRONMENTAL PROJECT

53. Respondent shall undertake the following SEP, which the parties agree is intended to secure significant environmental or public health protection and improvement.

54. Within thirty (30) days of the effective date of this CAFO, Respondent shall

establish an escrow account with a federally-insured financial institution or agent for the sole benefit of the SEP and shall deposit One Hundred and Five Thousand Dollars ($105,000) in the account. The funds in this escrow account, and any interest that may accrue, shall be designated for exclusive use by Respondent to purchase the HAZMAT and other emergency response equipment listed in the Appendix to this CAFO for the Brazoria County Sheriff's Office or its lawful designee. Within thirty (30) days of the effective date of this CAFO, Respondent shall also provide EPA with copies of the escrow account documents or any other evidence showing that the funds were placed in the escrow account for the purpose of purchasing the equipment listed in the Appendix to this CAFO.

55. Respondent's performance of the SEP activity described above will enable the Brazoria County Sheriff's Office to better respond to chemical emergencies. As such, this SEP will improve the environment and/or the public health of the surrounding communities.

56. The SEP's purpose is to assist in enabling the local emergency response entity under the Emergency Planning and Community Right-to-Know Act to collect information, to assess the dangers of hazardous chemicals present at facilities within its jurisdiction, to develop emergency response plans, to train emergency response personnel, to better respond to chemical spills, and to prevent further environmental contamination in the event of an emergency.

57. Respondent's total expenditure for the SEP shall not be less than One Hundred and Five Thousand Dollars ($105,000).

58. Respondent shall not deduct as a business expense in its income tax return(s) and shall not derive any tax deduction or benefit from the SEP expenditure specified in Paragraphs 54 and 57 above.

59. Respondent hereby certifies that, as of the effective date of this CAFO, Respondent

is not required to perform or develop the SEP, or any part thereof, by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP, or any part thereof, by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP, or any part thereof.

60. Respondent hereby certifies the following:

> "I certify that I am not party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired."

61. Respondent shall submit Partial SEP Completion Reports no later than June 30, 2013, and no later than September 30, 2013. Each Partial SEP Completion Report shall contain the following information: (i) a detailed description of the SEP as implemented to that date and (ii) a certification of the amount of the SEP that has been fully implemented pursuant to the provisions of this CAFO to that date.

62. Respondent shall spend all the funds in the escrow account in completing the SEP activities, as agreed to herein and as described in Paragraph 54 above and the Appendix to this CAFO, by no later than December 31, 2013.

63. No later than thirty (30) days after all the funds in the escrow account have been spent for the intended purpose of the SEP, as agreed to herein and as described in Paragraph 54 above and the Appendix to this CAFO, Respondent shall submit a Final SEP Completion Report.

The Final SEP Completion Report shall contain the following information: (i) a detailed description of the SEP as implemented, (ii) a certification that the SEP has been fully implemented pursuant to the provisions of this CAFO with itemized final costs and copies of receipts for all expenditures, (iii) a certification upon completion of the SEP that the Respondent has not, and will not, deduct the SEP expenditures from its income taxes, and (iv) a description of the environmental, emergency preparedness, and/or public health benefits resulting from implementation of the SEP.

64. In itemizing its costs in the Final Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible costs. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

65. For each Partial SEP Completion Report and the Final SEP Completion Report, submitted to EPA pursuant to this CAFO, Respondent shall, by its representative who is fully authorized by Respondent to legally commit and bind Respondent, sign and certify under penalty of law that the information contained in such documents or reports are true, accurate, and not misleading, by signing the following statement:

> "I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."

Each Partial SEP Completion Report and the Final SEP Completion Report shall be sent to:

Esteban Herrera
Chief, Air Toxics Section (6EN-AT)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue Suite 1200
Dallas, TX 75202-2733
Attention: Carlos Flores

66. After receipt of the Final SEP Completion Report described in Paragraph 63 above, EPA will notify Respondent, in writing, regarding: (i) any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days, from receipt of that notification, for Respondent to correct any deficiencies in the SEP Completion Report; or (b) indicate that EPA concludes that the project has been completed satisfactorily; or (c) determine that the project has not been completed satisfactorily.

67. If Respondent fails to implement the SEP, or halts or abandons work on the SEP, or if Respondent fails to satisfactorily complete the SEP, described in Paragraphs 54-65 above and the Appendix to this CAFO, by the deadlines set forth in Paragraphs 62 and 63 above, the Respondent shall pay a stipulated penalty of $52,500, except as provided in Paragraph 68 below.

68. If the SEP is not completed in accordance with Paragraphs 54-65 and the Appendix to this CAFO, but EPA determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, the Respondent shall not be liable for any stipulated penalty.

69. If the SEP is completed in accordance with Paragraphs 54-65 and the Appendix to

this CAFO, but the Respondent certifies, with supporting documentation, that Respondent spent less than 90 percent of the amount of money required to be spent for the project, the Respondent shall pay a stipulated penalty to the United States in the amount of $13,125.

70. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be at the sole, reasonable discretion of EPA.

71. Nothing herein shall obligate Respondent to publicize its involvement in the SEP; however, any public statement, oral, or written, made by Respondent to publicize its participation in SEP activities shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Air Act and the regulations promulgated thereunder."

VII.
RETENTION OF ENFORCEMENT RIGHTS

72. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of federal laws, regulations, statutes, or permitting programs.

73. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA.

VIII.
COSTS

74. Each party shall bear its own costs and attorneys fees.

Re: The Dow Chemical Company
Docket No. CAA-06-2013-3326

IT IS SO AGREED:

FOR THE RESPONDENT:

Date: 4-24-2013

Johnny Chavez
Responsible Care Leader
The DOW Chemical Company

FOR THE COMPLAINANT:

Date: 5.7.13

John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement, including the assessment of civil penalties and completion of the SEP. In accordance with 40 C.F.R. Part 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 5-7-13

Patrick Rankin
Regional Judicial Officer
U.S. EPA, Region 6

Re: The Dow Chemical Company
Docket No. CAA-06-2013-3326

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of May, 2013, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order ("Complaint and CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Joe Minadeo 70070710000213852023
Sr. Attorney
Dow AgroSciences LLC
7330 Zionsville Rd., Bldg 308, 1-B105
Indianapolis, IN 46268

Johnny Chavez 70070710000213852030
Responsible Care Leader
Dow Texas Operations
2301 N. Brazosport Blvd., Building APB
Freeport, TX 77541

The Corporation Trust Company 70070710000213852047
Registered Agent for The DOW Chemical Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

ELECTRONIC COPY

Michael De La Cruz, Air Enforcement Section Manager
Texas Commission on Environmental Quality (TCEQ)

Claudio Galli, Acting Air Section Manager
TCEQ Region 12

Sandra Hardy
Sandra Hardy
U.S. EPA Region 6, Dallas, Texas

APPENDIX

Supplemental Environmental Project

The DOW Chemical Company (DOW) shall provide the Brazoria County Sheriff's Department (BCSD) with the HAZMAT and emergency response equipment described below. DOW shall spend a total amount of at least $105,000 for this Supplemental Environmental Project (SEP), as outlined by, and with the documentation required by, the corresponding Complaint and Consent Agreement and Final Order.

The purpose of the SEP is to assist in enabling the local emergency response entity, BCSD, under the Emergency Planning and Community Right-to-Know Act to collect information, to assess the dangers of hazardous chemicals present at facilities within its jurisdiction, to develop emergency response plans, to train emergency response personnel, to better respond to chemical spills, and to prevent further environmental contamination in the event of an emergency. The BCSD provides key emergency preparedness and response functions to the local community which are focused on identifying threats, providing the essential resources needed, and restoring the community back to an acceptable status, with disaster planning being the cornerstone of successfully carrying out these duties.

DOW shall provide the following listed equipment to BCSD that fall into five categories integral to these duties: 1) Communications/Readiness Resources, 2) Emergency Response Resources, 3) Risk Management/Risk Recognition Equipment, 4) Remediation Resources, and 5) Protection of Emergency Responder Health (Personal Protective Equipment).

1) Communications and Readiness Resources
    a. Hanna GPS-Multi Water Meter
    b. General Water Meter
    c. F150 Extenda Bed Command/Storage
    d. Toughbook Laptop and Mount
    e. Cell Card, 1 year Service Laptop
    f. Cell Service, Camera 1
    g. Cell Service, Camera 2
    h. Raptor Cell, Metal enc.w/solar no glow, RAP-006-XIR
    i. Raptor Cell, Metal enc.w/solar no glow, RAP-002-XIR
    j. 12 v 3.4 AH SLA Battery (4 units)
    k. Raptor GPS Receiver (2 units)
    l. Masterlock Python Cable (4 units)
    m. 6 x10 Loadrunner Single Axle Cargo Trailer
    n. Columbia Weather 9530-B-1 Orion Nomad (portable HAZMAT weather station)
    o. Quincy Air Master Compressor

2) Emergency Response Resources
    a. Canopy Shelter 10 ft x 10 ft (5 units)
    b. Side Wall 2 Pack White (5 units)
    c. Tarp, Polyethylene Blue/Green (10 units)
    d. HAZMAT Tool Kit
    e. Leak Repair Kit Pipe Patch
    f. Leak Repair Putty 4 oz (10 units)
    g. Drum String

h. Ratchet Straps (5 units)
i. HAZMAT ICS Worksheet 25 pack
j. Orange Reflective Cone (25 units)
k. Camper Shell F150
l. Pelican 9470 RALS (2 units)
m. Command Center (2 units)
n. Make Up Kit – Standard
o. Law Enforcement Tag Set (2 units)
p. Haz-Mat Assignment Tag Set (2 units)
q. Fire Assignment Tag Set (2 units)
r. Public Works Assignment Tag Set (2 units)
s. 12 Piece Writable Tag Set (5 units)
t. Gopro Hero3 Black Edition Camera
u. Sandisk Ultra 64 gb MicroSDXC (2 units)
v. Gopro Head Strap Mount
w. Gopro Battery Backpack
x. Bushnell Fusion Arc 1600 12 x 50
y. Emergency Mylar Blanket 10 Pack (10 units)
z. Bayco XPR-9862E Intrinsically Safe Flashlight (2 units)
aa. Barricade Tape “Danger HazMat” Red (10 units)
bb. Barricade Tape “Caution HazMat” Yellow (10 units)
cc. PowerPack 24 Pack LED Flares (2 units)

3) Risk Management/Risk Recognition Equipment
   a. Jumbo pH Test Paper (5 units)
   b. Hanna Waterproof pH ep5 Tester (2 units)
   c. Hanna Replacement Electrode (2 units)
   d. Replacement Battery 1.5 v 6 pack
   e. Oakton pH Buffer Pouches 20 pack (2 units)
   f. Portable Radiation M Kit
   g. Divermag1 Ferrous Metal Detector
   h. FLIR M-324XP

4) Remediation Resources
   a. Portable Decontamination Kit (4 units)
   b. Decon in a Bag (4 units)
   c. Eagle 20 gal Salvage Drum (5 units)
   d. Poly-Overpack Drum (3 units)
   e. SPC Oil-Plus Sorbent Pads 15 x 19 (10 units)
   f. SPC Oil-Plus Sorbent Pads 30 x 30 (10 units)
   g. SPC Oil-Plus Sorbent Roll (5 units)

5) Protection of Emergency Responder Human Health (Personal Protective Equipment)
   a. Hazmat Vest Kit
   b. HyperKewl Cooling Vest Med (5 units)
   c. HyperKewl Cooling Vest Large (10 units)
   d. HyperKewl Cooling Vest X-Large (10 units)
   e. HyperKewl Cooling Vest XX-Large (5 units)

f. NEOS 36” Hip Boots Med
g. NEOS 36” Hip Boots Large
h. NEOS 36” Hip Boots X-Large
i. Proline 3 Ply Hip Boots Size 10
j. Proline 3 Ply Hip Boots Size 11
k. Tychem QC Deluxe Coveralls Med (25 units)
l. Tychem QC Deluxe Coveralls Large (50 units)
m. Tychem QC Deluxe Coveralls X-Large (50 units)
n. Tychem QC Deluxe Coveralls XX-Large (25 units)
o. FoxFury Discover Fire Helmet Light (4 units)
p. Umbilical 250 w/ Connectors (2 units)
q. Superlite Dive Helmet (2 units)
r. Viking Pro Dry Suit w/ Rings, Gloves, Cuff (2 units)