

**STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF
THE DOW CHEMICAL COMPANY
(LOUISIANA OPERATIONS)**

*** SETTLEMENT TRACKING NO.
* SA-MM-09-0014**

AGENCY INTEREST NO. 1409

* ENFORCEMENT TRACKING NO.
* MM-CN-05-0058**

**PROCEEDINGS UNDER THE
LOUISIANA ENVIRONMENTAL
QUALITY ACT, LA. R.S. 30:2001, ET
SEQ.**

*** DAL DOCKET NO. 2007-1701-EQ
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SETTLEMENT AGREEMENT

The following Settlement is hereby agreed to between The Dow Chemical Company, Louisiana Operations, (Respondent) and the State of Louisiana through the Louisiana Department of Environmental Quality, (Department), under authority granted by the Louisiana Environmental Quality Act, LSA- R.S. 30:2001, et seq., (the "Act").

I.

Respondent owns and/or operates a chemical manufacturing facility in Iberville and West Baton Rouge Parishes, which is located off Louisiana Highway 1, near the city of Plaquemine, Iberville Parish, Louisiana (the Facility). The facility is a large quantity generator and a permitted TSD facility, which operates under the EPA facility identification number LAD0081807080.

II.

A Consolidated Compliance Order and Notice of Potential Penalty (CO/NOPP), Enforcement No. MM-CN-05-0058, a copy of which is attached hereto and made a part hereof as "Exhibit A", was served upon The Dow Chemical Company (Dow) on February 17, 2006, by the Department. According to the Order, on or about April 7, 2005, the Department conducted an inspection of Dow's Plaquemine facility. Following the inspection, the Department noted a number of areas of concern and alleged certain violations based thereon.

III.

The allegations which form the basis of the enforcement action covered by this Settlement Agreement are as follows:

A.

LDEQ Item I. The Respondent owns and/or operates Dow Chemical Company located at 21255 La. Highway 1 in Plaquemine, Iberville Parish, Louisiana. The facility is a large quantity generator and a permitted TSD facility, which operates under the EPA facility identification number LAD0081807080.

B.

LDEQ Item II.A. The Respondent failed to provide adequate secondary containment for permitted tanks, in violation of LAC 33:V.1907.E.1.d and permit condition V.A.1.b. Specifically, the secondary containment for the permitted tanks consists of bare concrete.

C.

LDEQ Item II.B. The Respondent stored hazardous waste for a period greater than ninety (90) days, in violation of LAC 33:V.1109.E.1. Specifically, a 5-gallon container of perchloroethylene

with the accumulation start date of August 18, 2004, was found in the Solvents Plant less than 90-day container storage area outside the Process Lab Area.

D.

LDEQ Item II.C. The Respondent failed to label a container of hazardous waste with the accumulation start date, in violation of LAC 33:V.1109.E.1.d. Specifically, two drums, one in the less than 90-day container storage area of Block 17, and one in the less than 90-day container storage area of the Chlorine Plant, were not marked with the accumulation start date.

E.

LDEQ Item II.D. The Respondent failed to maintain a container of used oil in good condition, in violation of LAC 33:V.4013.C.1. Specifically, one container of used oil located in the Chlorinated Methanes Plant had a badly corroded roof.

F.

LDEQ Item II.E. The Respondent failed to label waste batteries, in violation of LAC 33:V.3845.A.1. Specifically, ten (10) lead-acid batteries located in the Block 30 Maintenance Shop were not labeled.

G.

LDEQ Item II.F. The Respondent failed to maintain all records of inspections, in violation of LAC 33:V.3007.J.4. Specifically, inspection round sheets for the Vinyl 2 Unit, the weekly check for trips for the F-420 Boiler were missing for the week of April 28, 2004, and the week of October 27, 2004 for the Glycol I Boiler.

H.

LDEQ Item II.G. The Respondent failed to take a tank out of service when it failed a tank

shell thickness test, which could have lead to an emergency condition or release of hazardous waste, in violation of LAC 33 :V. 1511 .B and Permit Condition V.A.2.c.3. Specifically, Tank D-15 failed a minimum shell thickness test in November 2004.

I.

LDEQ Item II.H. The Respondent failed to request a permit modification to operate their permitted RCRA tanks at different temperatures and pressures from those listed in the permit in V.A.2.Table 2, in violation of LAC 33:V.322.G.4.

J.

LDEQ Item II.I. The Respondent failed to update the Waste Analysis Plan, in violation of LAC 33:V.1519.B and permit condition III.B.1.

K.

LDEQ Item II.J. The Respondent failed to notify the Department within one (1) year after the receipt of the most recent volume of hazardous waste of the partial closure or final closure of a permitted tank, specifically, Tank T-401 in the Environmental Operations Block, in violation of LAC 33:V.3511.D.2.a.

L.

LDEQ Item II.K. The Respondent failed to test an AWFCO system in violation of Permit Condition V.D.2.c.vi of the RCRA Permit. Specifically, there was not an AWFCO test associated with the loss of combustion air at the Solvents Incinerator.

M.

LDEQ Item II.L. The Respondent failed to identify the limits on operating parameters in violation of 40 CFR 63.1211(c)(2). Specifically, the DOC did not contain a limit on the absorber

pressure drop.

N.

LDEQ Item II.M. The Respondent failed to perform an engineering evaluation to determine that the limit for the maximum flue gas flowrate in the DOC ensures compliance with the HWC MACT emission standards, in violation of 40 CFR 63.1211(c)(3)(ii).

O.

LDEQ Item II.N. The Respondent failed to include information in the training manual such as a list of people to be trained, including job titles and position descriptions, so that it can be determined whether the training programs are of a technical level commensurate with the person's job duties, in violation of 40 CFR 63.1206(c)(6)(i). This violation was noted at both the Solvents Incinerator and the Rotary Kiln.

P.

LDEQ Item II.O. The Respondent failed to give operators a site specific, source developed training program which includes written material covering the training course topics that may serve as reference material following completion of the course, in violation of 40 CFR 63.1206(c)(6)(v)(C). Specifically, the operators of the Solvents Incinerator and Rotary Kiln had not been given written training material.

Q.

LDEQ Item II.P. The Respondent failed to specify the parameters in each feedstream and the sampling and analysis methods to be used in the FAP for the Rotary Kiln and the Solvents Incinerator, in violation of 40 CFR 63.1209(c)(2).

R.

LDEQ Item II.Q. The Respondent failed to indicate how analyses are used to document compliance with feedrate limits in the FAP for the Rotary Kiln and the Solvents Incinerator, in violation of 40 CFR 63.1209(c)(2)(iii). Specifically, the plan must include information on how non-detect values are handled for compliance demonstrations. Also, the Solvents Incinerator's FAP states that chloride levels in vents can vary and will be monitored; however, there is no information on how often this is monitored, how the frequency is adequate, or by what methods this is monitored.

S.

LDEQ Item II.R. The Respondent failed to describe procedures for corrective action for a malfunctioning CMS in the written quality control program, in violation of 40 CFR 63.8(d). Specifically, the Solvents Incinerator and Rotary Kiln's CMS PEP references the SSMP, but must also detail what is done if a calibration attempt fails or if the CMS is not properly working.

T.

LDEQ Item II.S. The Respondent failed to include quality assurance responsibilities for keeping records, preparing reports, or reviewing reports in the quality assurance program for the Solvents Incinerator's CEMS, in violation of 40 CFR 63 Subpart EEE Appendix.

U.

LDEQ Item II.T. The Respondent failed to test all feeds to the incinerator in the Waste Analysis Plan, in violation of 40 CFR 1209(c)(1) and Permit Condition V.D.4.a.i. Specifically, the analysis provided for the Rotary Kiln's trash waste stream is not detailed and does not include information on how the analysis was developed.

V.

LDEQ Item II.U. The Respondent failed to perform an engineering evaluation determining that the limits for the maximum hazardous waste feedrate and maximum ash feedrate in the DOC to ensure compliance with the HWC MACT emission standards, in violation of 40 CFR 63.1211(c)(3)(ii).

W.

LDEQ Item III On or about August 25, 2005, the Department received a deviation report from the Respondent which self-disclosed the following violation:

The Respondent's automatic waste feed cutoff system failed to shut off when the atomization pressure was below the operating limit, in violation of 40 CFR 63.1206(c)(3)(i)(D) and permit condition V.D.2.b.vi.

IV.

Respondent submitted a written response and report on the alleged violations cited in paragraph III and timely requested an administrative hearing. Thereafter, the Department and Respondent entered into negotiations under a dispute resolution agreement and held several meetings in attempt to resolve the disputed findings of law and fact cited in the CO/NOPP. On April 20, 2007, the Department granted Respondent's hearing request and this matter was thereafter docketed with the Division of Administrative Law. Since that time, the parties have continued to work towards resolution of the enforcement matter, and this Settlement Agreement represents such resolution.

V.

The Department acknowledges that Dow adequately addressed the violations noted in Paragraph III C, D, E, F, L, M, N, P, S, T, and U prior to the Department's issuing the subject

Compliance Order and Notice of Potential Penalty resolved herein.

VI.

By entering into this Settlement Agreement, Respondent does not admit that it committed any violations or that it is liable for any fines, forfeitures and/or penalties. Furthermore, with specific regard to Findings of Fact paragraph II, item A., Dow and the Department agree to resolve this allegation by deferring to ongoing discussion of adequate secondary containment requirements and the language contained in the recently issued RCRA permit. As to this and all other issues, Respondent and the Department agree that settlement of the violations alleged in the CO/NOPP without further litigation or trial of any issues is fair, reasonable and in the public interest and that this settlement is the most appropriate way of resolving the violations alleged by the Department.

VII.

Without making any admission of liability, Respondent agrees to undertake and make, and the Department agrees to accept, the civil penalty payment described in Paragraph VIII below, in full and complete settlement of any and all claims of noncompliance in the referenced CO/NOPP, through execution of this Settlement Agreement. After an examination of the "nine factors" pursuant to Louisiana Revised Statutes 30:2025 (E)(3), the Department has determined that the penalty payment should be and is accepted as a full and complete settlement.

VIII.

The civil penalty amount to be paid by Respondent shall be Six Thousand Five Hundred and 00/100 Dollars (\$6,500), plus Four Thousand and 00/100 Dollars (\$4,000) in enforcement costs, for a total of Ten Thousand Five Hundred and 00/100 Dollars (\$10,500).

IX.

Respondent further agrees that the Department may consider the inspection report, the CO/NOPP and this Settlement Agreement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history, but Respondent may present relevant mitigating factors for the Department's consideration.

X.

This agreement shall be considered a final order of the secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may be required for interpretation of this agreement in any action by the Department to enforce this agreement.

XI.

This Settlement Agreement is entered in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in LSA- R. S. 30:2025(E) of the Act.

XII.

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in the parishes of Iberville and West Baton Rouge. The

advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted a proof-of-publication affidavit to the Department and, as of the date this Settlement Agreement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

XIII.

Payment of the civil penalty set forth in Paragraph VIII is to be made within thirty (30) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. The payment set forth in Paragraph VIII, above, is to be made by check, payable to the Department of Environmental Quality, and mailed or delivered to the attention of Accountant Administrator, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303. Each payment shall be accompanied by a completed Settlement Payment Form (Exhibit B)

XIV.

In consideration of the above, any and all claims for penalties arising from the facts underlying the alleged violations in the CO/NOPP, referred to above are hereby compromised, released and settled in accordance with the terms of this Settlement Agreement.

XV.

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

THE DOW CHEMICAL COMPANY

BY: Sharon Cole
(Signature)

Sharon Cole
(Print)

TITLE: Site Director

THUS DONE AND SIGNED in duplicate original before me this 17th day of July, 20 09, at Plaquemine, LA.

Joseph M. Minadeo
NOTARY PUBLIC (ID # 31513)
BAR ROLL No.
Joseph M. Minadeo
(Print)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Harold Leggett, Ph.D., Secretary

BY: Peggy M. Hatch
Peggy M. Hatch, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 12th day of October, 20 09, at Baton Rouge, Louisiana.

Christopher A. Ratcliff
NOTARY PUBLIC (ID # 10149)
Christopher A. Ratcliff
(Print)

Approved: Peggy M. Hatch
Peggy M. Hatch, Assistant Secretary