

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0122-AIR-E **TCEQ ID:** RN102414232 **CASE NO.:** 37067

RESPONDENT NAME: The Dow Chemical Company

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Dow Chemical La Porte Site, 550 Battleground Road, La Porte, Harris County</p> <p>TYPE OF OPERATION: Chemical manufacturing plant</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on June 1, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732 TCEQ Enforcement Coordinator: Ms. Miriam Hall, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-1044; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Ms. Tamara Coppens, Responsible Care Leader, The Dow Chemical Company, 550 Battleground Road, La Porte, Texas 77571 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: December 10, 2008</p> <p>Date of NOV/NOE Relating to this Case: January 5, 2009 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>AIR</p> <p>Failure to prevent a leak on the recycle pipeline of the Monochlorobenzene ("MCB") Recovery Unit Feed Tank R-200A on August 24, 2008, resulting in the release of 301 pounds of MCB during an event lasting one hour and 45 minutes. The cause of the leak was internal corrosion. Because these emissions could have been foreseen and avoided by better maintenance practices, the demonstrations for an affirmative defense in 30 TEX. ADMIN. CODE § 101.222 could not be met [30 TEX. ADMIN. CODE § 116.115(b)(2)(F), Permit No. 48189, General Condition No. 8, and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$3,000</p> <p>Total Deferred: \$600 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$1,200</p> <p>Total Paid to General Revenue: \$1,200</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:</p> <p>a. On September 16, 2008, completed X-ray inspection of the failed pipeline to find areas of concern in the recycle circuit of the MCB Recovery Unit Feed Tank R-200A, and replaced all of the piping that was an area of concern; and</p> <p>b. On October 28, 2008, updated the site mechanical integrity program to include additional annual inspections including X-ray inspections on associated MCB piping in the unit to prevent recurrence of similar events as that of August 24, 2008.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p>

Additional ID No(s): HG07690

Attachment A
Docket Number: 2009-0122-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: The Dow Chemical Company

Payable Penalty Amount: Two Thousand Four Hundred Dollars (\$2,400)

SEP Amount: One Thousand Two Hundred Dollars (\$1,200)

Type of SEP: Pre-approved

Third-Party Recipient: Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program

Location of SEP: Harris County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent will contribute to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program in Harris County. The contribution will be used in accordance with the *Supplemental Environmental Project Agreement between the Houston-Galveston AERCO and the Texas Commission on Environmental Quality*. SEP monies will be used to aid local school districts and area transit agencies in reaching local match requirements mandated by the Federal Highway Administration's ("FHWA") Congestion Mitigation/Air Quality funding program. SEP monies will be disbursed to school districts and transit agencies in need of funding assistance in the Houston-Galveston non-attainment area. Those SEP monies will be used exclusively by the school districts and transit agencies as supplements to meet the local match requirements of the EPA. SEP monies will be used to pay for the cost of replacing older diesel buses with alternative fueled or clean diesel buses. The old buses will be permanently retired and only sold for scrap. The schools and transit agencies will also use the SEP monies to retrofit more buses to reduce emissions. Houston-Galveston AERCO will send the TCEQ verification in the form of paid invoices and other documentation to show that the retrofits were completed. Retrofit technologies include particulate matter traps, diesel particulate matter filters, NOx reduction catalyst technology in combination with diesel particulate filters, and other emission control technologies that are developed and approved by EPA or the California Air Resources Board.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing particulate emissions on buses by more than 90% below today's level and reducing hydrocarbons below measurement capability.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Houston-Galveston Area Council
Houston-Galveston AERCO
P.O. Box 22777
Houston, Texas 77227-2777

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to ATexas Commission on Environmental Quality@ and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	12-Jan-2009		
	PCW	2-Feb-2009	Screening	26-Jan-2009
			EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	The Dow Chemical Company		
Reg. Ent. Ref. No.	RN102414232		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	37067	No. of Violations	1
Docket No.	2009-0122-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Miriam Hall
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,500
---	-------------------	---------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	45.0% Enhancement	Subtotals 2, 3, & 7	\$1,125
---------------------------	-------------------	--------------------------------	---------

Notes The penalty was enhanced for one similar NOV, two other NOVs, and two 1660 orders. The penalty was reduced for four notices of audit.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
--------------------	----	------------------	-------------------	-----

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$625
--	-------------------	-------

Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts \$66
 Approx. Cost of Compliance \$7,403
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,000
-----------------------------	-----------------------	---------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	\$3,000
-----------------------------	---------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,000
-----------------------------------	-------------------------------	---------

DEFERRAL	20.0% Reduction	Adjustment	-\$600
-----------------	-----------------	-------------------	--------

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$2,400
------------------------	---------

Screening Date 26-Jan-2009	Docket No. 2009-0122-AIR-E	PCW
Respondent The Dow Chemical Company		<small>Policy Revision 2 (September 2002)</small>
Case ID No. 37067		<small>PCW Revision October 30, 2008</small>
Reg. Ent. Reference No. RN102414232		
Media [Statute] Air		
Enf. Coordinator Miriam Hall		

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	<small>Enter Number Here</small>	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	2	40%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	4	-4%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<small>Please Enter Yes or No</small>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 45%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

The penalty was enhanced for one similar NOV, two other NOVs, and two 1660 orders. The penalty was reduced for four notices of audit.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 45%

Screening Date 26-Jan-2009	Docket No. 2009-0122-AIR-E	PCW	
Respondent The Dow Chemical Company	<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 37067	<small>PCW Revision October 30, 2008</small>		
Reg. Ent. Reference No. RN102414232			
Media [Statute] Air			
Enf. Coordinator Miriam Hall			
Violation Number	1		
Rule Cite(s)	30 Tex. Admin. Code § 116.115(b)(2)(F), Permit No. 48189, General Condition No. 8, and Tex. Health & Safety Code § 382.085(b)		
Violation Description	Failed to prevent a leak on the recycle pipeline of the Monochlorobenzene ("MCB") Recovery Unit Feed Tank R-200A on August 24, 2008, resulting in the release of 301 pounds of MCB during an event lasting one hour and 45 minutes. The cause of the leak was internal corrosion. Because these emissions could have been foreseen and avoided by better maintenance practices, the demonstrations for an affirmative defense in 30 Tex. Admin. Code § 101.222 could not be met.		
	Base Penalty	\$10,000	
>> Environmental, Property and Human Health Matrix			
OR	Harm		
	Major	Moderate	Minor
	Actual	Potential	Percent
	x		25%
>> Programmatic Matrix			
	Major	Moderate	Minor
			Percent
			0%
Matrix Notes	Human health or the environment has been exposed to an insignificant amount of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.		
	Adjustment	\$7,500	
		\$2,500	
Violation Events			
	Number of Violation Events	1	Number of violation days
		1	
<small>mark only one with an x</small>	daily		Violation Base Penalty \$2,500
	weekly		
	monthly		
	quarterly	x	
	semiannual		
	annual		
	single event		
One quarterly event is recommended.			
Good Faith Efforts to Comply		25.0% Reduction	\$625
		Before NOV	NOV to EDRP/Settlement Offer
Extraordinary			
Ordinary	x		
N/A			(mark with x)
Notes	The corrective actions were completed on October 28, 2008, and the NOE was issued on January 5, 2009.		
	Violation Subtotal	\$1,875	
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	\$66	Violation Final Penalty Total	\$3,000
		This violation Final Assessed Penalty (adjusted for limits)	\$3,000

Economic Benefit Worksheet

Respondent The Dow Chemical Company
Case ID No. 37067
Reg. Ent. Reference No. RN102414232
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$7,403	24-Aug-2008	28-Oct-2008	0.18	\$66	n/a	\$66

Notes for DELAYED costs

The actual cost, supplied by the Respondent, for inspecting and replacing MGB piping and updating the mechanical integrity program to include additional annual inspections to prevent recurrence from the date of the emissions event to the date the corrective actions were completed.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$7,403

TOTAL

\$66

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600356976 The Dow Chemical Company	Classification: AVERAGE	Rating: 2.51
Regulated Entity:	RN102414232 DOW CHEMICAL LA PORTE SITE	Classification: AVERAGE	Site Rating: 2.17

ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	HG07690
	AIR OPERATING PERMITS	PERMIT	1365
	AIR OPERATING PERMITS	PERMIT	2983
	AIR OPERATING PERMITS	PERMIT	2890
	AIR OPERATING PERMITS	PERMIT	3028
	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	1010650
	WASTEWATER	PERMIT	WQ0000663000
	WASTEWATER	PERMIT	TPDES0002933
	WASTEWATER	PERMIT	TX0002933
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD000017756
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	30464
	AIR NEW SOURCE PERMITS	AFS NUM	4820100053
	AIR NEW SOURCE PERMITS	REGISTRATION	72072
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HG07690
	AIR NEW SOURCE PERMITS	PERMIT	52993
	AIR NEW SOURCE PERMITS	PERMIT	52995
	AIR NEW SOURCE PERMITS	PERMIT	47833
	AIR NEW SOURCE PERMITS	PERMIT	48189
	AIR NEW SOURCE PERMITS	PERMIT	50131
	AIR NEW SOURCE PERMITS	PERMIT	49948
	AIR NEW SOURCE PERMITS	PERMIT	9801
	AIR NEW SOURCE PERMITS	PERMIT	9970
	AIR NEW SOURCE PERMITS	PERMIT	4221A
	AIR NEW SOURCE PERMITS	PERMIT	16854
	AIR NEW SOURCE PERMITS	PERMIT	1056A
	AIR NEW SOURCE PERMITS	PERMIT	10619A
	AIR NEW SOURCE PERMITS	PERMIT	5835A
	AIR NEW SOURCE PERMITS	PERMIT	1460A
	AIR NEW SOURCE PERMITS	PERMIT	1501A
	AIR NEW SOURCE PERMITS	PERMIT	6181A
	AIR NEW SOURCE PERMITS	PERMIT	19921
	AIR NEW SOURCE PERMITS	PERMIT	22054
	AIR NEW SOURCE PERMITS	PERMIT	23253
	AIR NEW SOURCE PERMITS	PERMIT	23399
	AIR NEW SOURCE PERMITS	PERMIT	23657
	AIR NEW SOURCE PERMITS	PERMIT	23898
	AIR NEW SOURCE PERMITS	PERMIT	24195
	AIR NEW SOURCE PERMITS	PERMIT	24692
	AIR NEW SOURCE PERMITS	PERMIT	24657
	AIR NEW SOURCE PERMITS	PERMIT	27082
	AIR NEW SOURCE PERMITS	PERMIT	28424
	AIR NEW SOURCE PERMITS	PERMIT	31892
	AIR NEW SOURCE PERMITS	PERMIT	32718
	AIR NEW SOURCE PERMITS	PERMIT	39326
	AIR NEW SOURCE PERMITS	PERMIT	39492
	AIR NEW SOURCE PERMITS	PERMIT	39986
	AIR NEW SOURCE PERMITS	PERMIT	40712
	AIR NEW SOURCE PERMITS	PERMIT	43475
	AIR NEW SOURCE PERMITS	PERMIT	43528
	AIR NEW SOURCE PERMITS	PERMIT	45102
	AIR NEW SOURCE PERMITS	PERMIT	45849
	AIR NEW SOURCE PERMITS	PERMIT	46465
	AIR NEW SOURCE PERMITS	PERMIT	71075
	AIR NEW SOURCE PERMITS	REGISTRATION	72851
	AIR NEW SOURCE PERMITS	REGISTRATION	73226
	AIR NEW SOURCE PERMITS	REGISTRATION	73776
	AIR NEW SOURCE PERMITS	PERMIT	77713
	AIR NEW SOURCE PERMITS	PERMIT	78856
	AIR NEW SOURCE PERMITS	REGISTRATION	79448

AIR NEW SOURCE PERMITS	REGISTRATION	79295
AIR NEW SOURCE PERMITS	REGISTRATION	80269
AIR NEW SOURCE PERMITS	REGISTRATION	80023
AIR NEW SOURCE PERMITS	REGISTRATION	86659
AIR NEW SOURCE PERMITS	REGISTRATION	82810
AIR NEW SOURCE PERMITS	PERMIT	83785
AIR NEW SOURCE PERMITS	REGISTRATION	82817
AIR NEW SOURCE PERMITS	REGISTRATION	82509
WATER LICENSING	LICENSE	1010650
IHW CORRECTIVE ACTION	SOLID WASTE REGISTRATION # (SWR)	30464
INDUSTRIAL AND HAZARDOUS WASTE COMPLIANCE PLANS	PERMIT	50253
INDUSTRIAL AND HAZARDOUS WASTE STORAGE	PERMIT	50202
INDUSTRIAL AND HAZARDOUS WASTE STORAGE	PERMIT	50253

Location: 550 BATTLEGROUND RD, LA PORTE, TX, 77571

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: January 22, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 22, 2004 to January 22, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Miriam Hall Phone: (512) 239-1044

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 10/11/2004 ADMINORDER 2003-1507-AIR-E
Classification: Major
Citation: 30 TAC Chapter 113, SubChapter C 113.130
30 TAC Chapter 115, SubChapter D 115.356
40 CFR Chapter 63, SubChapter C, PT 63, SubPT H 63.181(d)
5C THC Chapter 382, SubChapter A 382.085(b)
Description: Failed to maintain fugitive emission records that contained the minimum information required by the regulation.
Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
5C THC Chapter 382, SubChapter A 382.085(b)
Rqmt Prov: SC 5 PERMIT
Description: Failed to conduct quarterly ammonia sampling on the inlet wastewater flow to the wastewater treatment facility.

Effective Date: 08/10/2007 ADMINORDER 2006-1752-AIR-E
Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
5C THC Chapter 382, SubChapter D 382.085(b)
Rqmt Prov: TCEQ Air Permit No. 22054, SC 1 PERMIT
Description: Failed to prevent unauthorized emissions.
Classification: Minor
Citation: 30 TAC Chapter 101, SubChapter F 101.201(a)

Description: Failed to properly notify the TCEQ of an emissions event that occurred on May 9, 2006.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	01/23/2004	(294480)
2	01/27/2004	(260901)
3	02/23/2004	(294459)
4	03/05/2004	(250819)
5	03/29/2004	(294462)
6	04/27/2004	(294463)
7	06/01/2004	(294465)
8	06/25/2004	(294467)
9	07/26/2004	(351717)
10	08/30/2004	(351718)
11	09/01/2004	(284811)
12	09/28/2004	(351719)
13	09/30/2004	(280341)
14	10/25/2004	(336352)
15	10/26/2004	(351720)
16	11/29/2004	(338779)
17	11/29/2004	(351721)
18	12/28/2004	(381673)
19	01/21/2005	(342603)
20	01/24/2005	(381674)
21	02/28/2005	(601464)
22	03/14/2005	(372475)
23	03/29/2005	(381672)
24	04/29/2005	(419469)
25	05/26/2005	(419470)
26	06/09/2005	(341900)
27	06/29/2005	(419471)
28	07/08/2005	(395323)
29	07/21/2005	(440620)
30	08/15/2005	(440621)
31	09/20/2005	(440622)
32	10/24/2005	(440623)
33	11/21/2005	(468094)
34	12/22/2005	(468095)
35	01/18/2006	(468096)
36	01/20/2006	(451074)
37	02/22/2006	(468091)
38	02/28/2006	(457223)
39	03/17/2006	(457346)
40	03/17/2006	(457465)
41	03/21/2006	(468092)
42	04/11/2006	(460634)
43	04/19/2006	(468093)
44	05/12/2006	(461887)
45	05/24/2006	(497971)
46	06/21/2006	(497972)
47	07/21/2006	(497973)
48	08/18/2006	(497103)
49	08/22/2006	(509279)
50	08/23/2006	(519987)

51 08/30/2006 (509481)
 52 09/01/2006 (478665)
 53 09/01/2006 (510406)
 54 09/01/2006 (510415)
 55 09/21/2006 (519988)
 56 10/23/2006 (519989)
 57 10/26/2006 (516938)
 58 11/21/2006 (544233)
 59 12/14/2006 (544234)
 60 01/19/2007 (544235)
 61 02/21/2007 (544232)
 62 03/22/2007 (574855)
 63 04/18/2007 (518803)
 64 04/19/2007 (574856)
 65 05/14/2007 (574857)
 66 06/14/2007 (574858)
 67 07/19/2007 (574859)
 68 07/20/2007 (564656)
 69 08/14/2007 (543655)
 70 08/21/2007 (601465)
 71 09/24/2007 (601466)
 72 10/15/2007 (601467)
 73 11/19/2007 (598336)
 74 11/20/2007 (619379)
 75 12/10/2007 (619380)
 76 01/09/2008 (619381)
 77 01/30/2008 (612348)
 78 02/18/2008 (671877)
 79 02/29/2008 (613177)
 80 03/13/2008 (671878)
 81 03/24/2008 (616751)
 82 04/17/2008 (671879)
 83 05/15/2008 (689806)
 84 06/23/2008 (689807)
 85 07/22/2008 (689808)
 86 08/08/2008 (687903)
 87 08/12/2008 (710562)
 88 08/14/2008 (636947)
 89 09/01/2008 (710563)
 90 10/14/2008 (710564)
 91 12/08/2008 (682484)
 92 01/05/2009 (706087)

E. Written notices of violations (NOV). (CEEDS Inv. Track. No.)

Date: 02/29/2004 (294462) CN600356976
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 06/09/2005 (341900) CN600356976
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 5C THC Chapter 382, SubChapter A 382.085(b)
 Permit No. 1501A, SC 3 PERMIT
 Description: Failed to address excessive vibration of the exchanger (which was caused by a design
 flaw) prior to the occurrence of this incident.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 101, SubChapter F 101.201(a)(1)(B)
 Description: Failure to determine the correct leak rate when the leak was first discovered on August
 16, 2004, and submit the Initial Notification at that time.
 Date: 08/13/2007 (543655) CN600356976

Self Report?	NO	Classification:	Moderate
Citation:	1501A, SC 6B PERMIT 30 TAC Chapter 116, SubChapter B 116.115(c) 30 TAC Chapter 122, SubChapter B 122.143(4) 5C THC Chapter 382, SubChapter D 382.085(b) O-01365, SC No. 15 OP		
Description:	Failure to perform a Relative Accuracy Test Audit (RATA) for the L-Plant Pressure Swing Adsorption Unit (PSA) Continuous Emissions Monitoring System (CEMS).		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 122, SubChapter B 122.143(4) 5C THC Chapter 382, SubChapter D 382.085(b) O-01365, SC No. 3A(iii) OP		
Description:	Failure to conduct a quarterly visible emissions observation for the fourth quarter of year 2005.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 122, SubChapter B 122.145(2)(A) 5C THC Chapter 382, SubChapter D 382.085(b) O-01365, General Terms and Conditions OP		
Description:	Failure to report two deviations from FOP O-01365.		
Self Report?	NO	Classification:	Minor
Citation:	22054, SC 5A PERMIT 30 TAC Chapter 116, SubChapter B 116.115(c) 30 TAC Chapter 122, SubChapter B 122.143(4) 5C THC Chapter 382, SubChapter D 382.085(b) O-01365, SC No. 15 OP		
Description:	Failure to document AVO checks for HCl leaks within the muriatic acid storage and loading areas.		
Self Report?	NO	Classification:	Moderate
Citation:	1365, SC 1A OP 30 TAC Chapter 117, SubChapter B 117.219(d) 30 TAC Chapter 122, SubChapter B 122.143(4) 5C THC Chapter 382, SubChapter D 382.085(b)		
Description:	Failure to submit the semi-annual report to TCEQ for units complying with 30 TAC 117.213 no later than 30 days after the end of the calendar semiannual period.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 115, SubChapter D 115.352(4) 30 TAC Chapter 116, SubChapter B 116.115(c) 30 TAC Chapter 122, SubChapter B 122.143(4) 48189, SC No. 3E PERMIT 5C THC Chapter 382, SubChapter D 382.085(b) O-01365, SC No. 15 OP O-01365, SC No. 1A OP		
Description:	Failure to ensure that each open-ended line was equipped with a cap or plug.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 122, SubChapter B 122.145(2)(C) 5C THC Chapter 382, SubChapter D 382.085(b) O-01365, General Terms and Conditions OP		
Description:	Failure to submit six-month deviation report no later than 30 days after end of deviation period.		

F. Environmental audits.

Notice of Intent Date:	01/12/2007.	(541175)
No DOV Associated		
Notice of Intent Date:	10/19/2007	(600861)
No DOV Associated		
Notice of Intent Date:	04/30/2008	(681866)
No DOV Associated		
Notice of Intent Date:	11/19/2008	(722253)
No DOV Associated		

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
THE DOW CHEMICAL COMPANY
RN102414232

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-0122-AIR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding The Dow Chemical Company ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a chemical manufacturing plant at 550 Battleground Road in La Porte, Harris County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 10, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Three Thousand Dollars (\$3,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Two Hundred Dollars (\$1,200) of the administrative penalty and Six Hundred Dollars (\$600) is deferred contingent upon the Respondent's timely and satisfactory

compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty. One Thousand Two Hundred Dollars (\$1,200) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:
 - a. On September 16, 2008, completed X-ray inspection of the failed pipeline to find areas of concern in the recycle circuit of the Monochlorobenzene ("MCB") Recovery Unit Feed Tank R-200A, and replaced all of the piping that was an area of concern; and
 - b. On October 28, 2008, updated the site mechanical integrity program to include additional annual inspections including X-ray inspections on associated MCB piping in the unit to prevent recurrence of similar events as that of August 24, 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have failed to prevent a leak on the recycle pipeline of the MCB Recovery Unit Feed Tank R-200A on August 24, 2008, resulting in the release of 301 pounds of MCB during an event lasting one hour and 45 minutes, in violation of 30 TEX. ADMIN. CODE § 116.115(b)(2)(F), Permit No. 48189, General Condition No. 8, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on December 10, 2008. The cause of the leak was internal corrosion. Because these emissions could have been foreseen and avoided by better maintenance practices, the demonstrations for an affirmative defense in 30 TEX. ADMIN. CODE § 101.222 could not be met.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: The Dow Chemical Company, Docket No. 2009-0122-AIR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall implement and complete a Supplemental Environmental Project ("SEP") in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, One Thousand Two Hundred Dollars (\$1,200) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Sullivan
For the Executive Director

5/5/2009
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Tamara Coppens
Signature

April 5/09
Date

Tamara Coppens
Name (Printed or typed)
Authorized Representative of
The Dow Chemical Company

Responsible Care Leader
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

Attachment A
Docket Number: 2009-0122-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: The Dow Chemical Company

Payable Penalty Amount: Two Thousand Four Hundred Dollars (\$2,400)

SEP Amount: One Thousand Two Hundred Dollars (\$1,200)

Type of SEP: Pre-approved

Third-Party Recipient: Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program

Location of SEP: Harris County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent will contribute to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program in Harris County. The contribution will be used in accordance with the *Supplemental Environmental Project Agreement between the Houston-Galveston AERCO and the Texas Commission on Environmental Quality*. SEP monies will be used to aid local school districts and area transit agencies in reaching local match requirements mandated by the Federal Highway Administration's ("FHWA") Congestion Mitigation/Air Quality funding program. SEP monies will be disbursed to school districts and transit agencies in need of funding assistance in the Houston-Galveston non-attainment area. Those SEP monies will be used exclusively by the school districts and transit agencies as supplements to meet the local match requirements of the EPA. SEP monies will be used to pay for the cost of replacing older diesel buses with alternative fueled or clean diesel buses. The old buses will be permanently retired and only sold for scrap. The schools and transit agencies will also use the SEP monies to retrofit more buses to reduce emissions. Houston-Galveston AERCO will send the TCEQ verification in the form of paid invoices and other documentation to show that the retrofits were completed. Retrofit technologies include particulate matter traps, diesel particulate matter filters, NOx reduction catalyst technology in combination with diesel particulate filters, and other emission control technologies that are developed and approved by EPA or the California Air Resources Board.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

The Dow Chemical Company
Agreed Order – Attachment A

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing particulate emissions on buses by more than 90% below today's level and reducing hydrocarbons below measurement capability.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. **Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Houston-Galveston Area Council
Houston-Galveston AERCO
P.O. Box 22777
Houston, Texas 77227-2777

3. **Records and Reporting**

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. **Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Dow Chemical Company
Agreed Order - Attachment A

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

