



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1201 ELM STREET, SUITE 500
DALLAS, TX 75270

SEP 27 2019

SENT VIA CERTIFIED MAIL: 7009 2820 0001 8284 2917

David Wilson
Responsible Care Leader
The Dow Chemical Co. – Louisiana Operations
P.O. Box 150
Plaquemine, LA 70765-0150

RE: In the Matter of The Dow Chemical Company; Plaquemine, Louisiana
CAA-06-2019-3368

Mr. Wilson,

Please find enclosed a copy of the fully-executed Administrative Compliance Order on Consent ("AOC"). Please note the timeframes that apply to The Dow Chemical Company under the AOC.

If you have any questions, please contact Erin Tanimura, Assistant Regional Counsel, by phone at 214-665-8181 or by email at Tanimura.Erin@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to be "C", followed by a long horizontal line.

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Enclosure (1)

ecc:

Celena Cage, LDEQ (celena.cage@la.gov)
Zenille Saunders, The Dow Chemical Company (ZSaunders@dow.com)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
The Dow Chemical Company	)	EPA Docket No. CAA-06-2019-3368
Louisiana Operations	)	
Plaquemine, Louisiana	)	
	)	
Respondent.	)	
	)	

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

The following Administrative Compliance Order on Consent ("Consent Order") is issued pursuant to the authority of Section 113(a)(1)(A) of the Clean Air Act, 42 U.S.C. § 7413(a)(1)(A) (hereinafter referred to as "CAA" or "the Act"). Section 113(a)(1) of the Act authorizes the Administrator of the United States Environmental Protection Agency ("EPA") to issue an order requiring compliance to any person whom the Administrator finds to be in violation of the Act. The authority to issue this Consent Order has been delegated to the Regional Administrator of EPA Region 6, and re-delegated to the Director of the Enforcement and Compliance Assurance Division, EPA Region 6.

STATUTORY AND REGULATORY BACKGROUND

1. The Act is designed to protect and enhance the quality of the nation's air so as to promote public health and welfare and the productive capacity of its population. CAA § 101(b)(1), 42 U.S.C. § 7401(b)(1).

2. Section 109(a) of the CAA, 42 U.S.C. § 7409(a), requires the Administrator of EPA to publish national ambient air quality standards ("NAAQS") for certain pollutants. The NAAQS

establish primary air quality standards to protect public health and secondary standards to protect public welfare.

3. To achieve the objectives of the NAAQS and the CAA, Section 110(a) of the CAA, 42 U.S.C. § 7410(a), requires each State to adopt a state implementation plan (“SIP”) that provides for the implementation, maintenance, and enforcement of the NAAQS, and submit it to the Administrator of the EPA for approval.

4. The State of Louisiana has adopted a SIP that has been approved by EPA. *See* 40 C.F.R. Part 52, Subpart T.

5. The provisions of LAC 33:III.919 of the federally-approved Louisiana SIP govern the state emissions inventory and provide requirements for facility owners and operators to report emissions inventory data to the appropriate office of the Louisiana Department of Environmental Quality (“LDEQ”). The provisions of LAC 33:III.919 of the Louisiana SIP relevant to this Consent Order were approved by EPA on July 5, 2011. *See* 76 Fed. Reg. 38977 (July 5, 2011).

- a. LAC 33:III.919.A.1–5 of the Louisiana SIP provides that the owner or operator of any facility located in Louisiana must submit emissions inventory data to LDEQ if the facility: is located in an 8-hour ozone nonattainment parish or listed adjoining parishes and emits or has the potential to emit at or above threshold levels; is located in an attainment parish and emits or has the potential to emit at or above threshold levels; is defined as a major stationary source of hazardous air pollutants (“HAPs”) in Section 112(a)(1) of the CAA; is defined as a major stationary source of toxic air pollutants in LAC 33:III.51; and/or that has a 40 C.F.R. Part 70 (Title V) Operating Permit (regardless of emissions limits).
- b. LAC 33:III.919.B.1 of the Louisiana SIP requires that the identified facilities submit an Annual Emissions Statement (“AES”) containing “an inventory of actual emissions and the allowable (permitted) emissions limits” of volatile organic compounds (VOCs), nitrous oxides (NO_x), carbon monoxide (CO), sulfur dioxide (SO₂), lead (Pb), particulate matter (PM₁₀ and PM_{2.5}), and ammonia. *Id.* This emissions inventory “may be an initial emissions inventory for facilities submitting their first emissions inventory, or an annual emissions inventory update for facilities that have previously submitted an emissions inventory.” *Id.*

- c. In the emissions inventory, “[a]ctual emissions shall be reported for all sources of emissions at a facility, including fugitive emissions, flash gas emissions, insignificant sources . . . , and excess emissions occurring during maintenance, start-ups, shutdowns, upsets, and downtime.” *Id.* (emphasis added). Actual emissions are to be calculated or estimated in accordance with LAC 33:III.919.C for the calendar year. *Id.*
- d. LAC 33:III.919.B.1 of the Louisiana SIP further requires that the AES include an annual Certification Statement. *Id.* Pursuant to LAC 33:III.919.B.5.a, the Certification Statement “shall accompany each emissions inventory to attest that the information contained in the inventory is true and accurate to the best knowledge of the certifying official.”

6. EPA is authorized by Section 113 of the Act, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements. These include requirements promulgated by EPA and those contained in federally enforceable SIPs or permits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. The Dow Chemical Company (“Dow” or “Respondent”) is a corporation doing business in the state of Louisiana. Respondent is a “person” within the meaning of Section 113(a) of the Act, 42 U.S.C. § 7413(a), and as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

8. At all times relevant to this Consent Order, Respondent has owned and/or operated the Louisiana Operations Complex located at 21255 Highway 1, Plaquemine, Louisiana 70765 (“the Facility”).

9. The Facility is a “stationary source” within the meaning of Section 112(a)(3) of the Act, 42 U.S.C. § 7412(a)(3), and LAC 33:III.502.

10. At all times relevant to this Consent Order, the Facility operated under various Title V permits issued by the Louisiana Department of Environmental Quality (“LDEQ”), including, *inter alia*: Permit No. 2255-V7, issued August 23, 2016, for the Light Hydrocarbon II Plant; Permit No. 2179-V12, issued August 5, 2016, and subsequently Permit No. 2179-V13, issued May 3,

Re: The Dow Chemical Co.
Docket No. CAA-06-2019-3368

2017, for the Polyethylene B Plant; Permit No. 2203-V4, issued September 11, 2015, for the Glycol II Plant; Permit No. 2190-V4, issued January 4, 2016, and subsequently Permit No. 2190-V5, issued April 28, 2017, for the Environmental Operations Plant; and Permit No. 2024-V9, issued November 30, 2015, for the Light Hydrocarbon III Plant.

11. At all times relevant to the Consent Order, Respondent was required by LAC 33:III.919.B.1 of the Louisiana SIP to submit annual emissions inventories to LDEQ stating the Facility's actual emissions of VOC, NO_x, CO, SO₂, Pb, PM₁₀, PM_{2.5}, and ammonia for all sources of emissions at the Facility.

12. As part of an Emission Inventory Permit Consistency Review, EPA reviewed the Facility's emissions inventory for criteria pollutant and HAP emission totals for reporting year 2017, as reported to LDEQ.

13. On July 5, 2019, EPA sent Respondent a preliminary letter regarding this review and stating that the Facility's reported annual emission totals exceeded its permit authorization limits.

14. Respondent provided further information regarding the annual emission totals to EPA via an in-person meeting on July 22, 2019, and via email on July 31, 2019.

15. Based on its review of the data reported to LDEQ and the information provided by Respondent, EPA Region 6 notified Respondent and LDEQ of a violation of the Louisiana SIP on August 28, 2019.

16. On August 28, 2019, Respondent and EPA Region 6 conferred regarding the Louisiana SIP violation.

17. EPA has conducted a comprehensive review of the information referenced above in Paragraphs 12 and 14. Based on its review, EPA finds that Respondent violated LAC 33:III.919.B.1 of the Louisiana SIP by failing to report actual emissions in the annual

Re: The Dow Chemical Co.
Docket No. CAA-06-2019-3368

emissions inventory for VOCs, NO_x, PM₁₀, and PM_{2.5} for reporting year 2017 as to various emissions sources at the Facility.

18. Respondent provided information to EPA that it has taken corrective action measures at the Facility to address compliance issues discovered by EPA's review. Specifically, Respondent notified EPA that it submitted the corrected annual emissions inventory for reporting year 2017 to LDEQ via the Electronic Reporting and Inventory Center ("ERIC") and provided to EPA its Certification Statement (signed August 5, 2019) submitted to LDEQ for the corrected annual emissions inventory.

19. More than thirty (30) days before the issuance of this Consent Order, Respondent was notified of the violations alleged herein. On August 28, 2019, Respondent and the State of Louisiana were notified of the violations alleged herein, in accordance with Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1).

20. All parties to this Consent Order agree that an opportunity to confer has been satisfied in accordance with Section 113(a)(4) of the Act, 42 U.S.C. § 7413(a)(4).

21. The parties further agree that in order to avoid protracted litigation, and in the best interest of all the parties and the environment, this Administrative Compliance Order will be entered into on Consent and by mutual agreement of the parties.

22. Only for the purposes of this proceeding, including any subsequent proceeding by EPA to enforce this document, Respondent admits the jurisdictional allegations contained herein; however, Respondent neither admits nor denies the specific findings of fact and conclusions of law contained in this Consent Order.

23. Respondent also consents to and agrees not to contest EPA's jurisdiction to either issue this Consent Order or enforce its terms. Further, Respondent will not contest EPA's jurisdiction to

Re: The Dow Chemical Co.
Docket No. CAA-06-2019-3368

either compel compliance with this Consent Order in any subsequent enforcement proceedings, whether administrative or judicial, or require Respondent's full compliance with the terms of this Consent Order or impose sanctions for violations of this Consent Order. Respondent consents to the terms of this Consent Order.

ORDER ON CONSENT

24. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides in pertinent part that the Administrator may issue an Order requiring compliance with any requirement of a state implementation plan. Pursuant to this authority, EPA has decided to issue this Consent Order after investigating all relevant facts, taking into account Respondent's compliance history and efforts made by Respondent to comply with applicable regulations, and based upon the foregoing Findings of Fact and Conclusions of Law herein.

25. Respondent has consented to, and is hereby ordered to satisfy, the following requirements regarding the Facility:

- a. Within sixty (60) days of the Effective Date of this Consent Order, Respondent shall review its procedures for submitting annual emissions inventories to LDEQ under the Louisiana SIP requirements and update the procedures as necessary to ensure future accurate emissions reporting. If Respondent does not have such procedures, it shall create such procedures.
- b. Within sixty (60) days of the Effective Date of this Consent Order, Respondent shall submit to EPA:
 - i. Microsoft Excel workbook file(s) containing the corrected annual emissions inventory data downloaded from the Emissions Reporting and Inventory Center website, with all revised data cells highlighted in the Microsoft Excel workbook.
 - ii. Certification of the following: (1) completion of the actions described in Paragraph 25, sub-paragraph a.; and (2) completion of submitting the corrected annual emissions inventory to LDEQ for reporting year 2017, including actual emissions for the pollutants listed in Paragraph 17 above. The signing representative shall be

Re: The Dow Chemical Co.
Docket No. CAA-06-2019-3368

fully authorized by Respondent to make such certification. The certification should include the following statement:

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

- c. Within one year of the Effective Date of this Consent Order, Respondent shall submit to EPA a copy of Respondent's signed Certification Statement submitted to LDEQ for reporting year 2019.

26. Any information or correspondence submitted by Respondent to EPA under this

Consent Order shall be addressed to the following:

Kevin Kim
Enforcement Officer (ECDAT)
Air Toxics Enforcement Section
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm Street, Suite #500
Dallas, Texas 75270-2102
Email: Kim.Kevin@epa.gov

27. To the extent this Consent Order requires Respondent to submit any information to EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. § 2.203. EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. *See* 41 Fed. Reg. 36,902 (Sept. 1, 1976). If Respondent does not assert a confidentiality claim, EPA may make the submitted information available to the public without further notice to Respondent. Emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. "Emission data" is defined in 40 C.F.R. § 2.301.

GENERAL PROVISIONS

28. Pursuant to Section 113(a)(4) of the Act, 42 U.S.C. § 7413(a)(4), this Consent Order shall be effective when fully executed, as set forth below in Paragraph 45, shall not exceed a term of one year, and shall be nonrenewable.

29. The provisions of this Consent Order shall apply to and be binding upon Respondent, its officers, directors, agents, and employees solely in their capacity of acting on behalf of Respondent.

30. Respondent neither admits nor denies any of the factual or legal determinations made by EPA in this Consent Order.

31. The provisions of this Consent Order shall be transferable to any other party, upon sale or other disposition of the Facility. Upon such action, the provisions of this Consent Order shall then apply to and be binding upon any new owner/operator, its officers, directors, agents, employees, and any successors in interest.

32. By signing this Consent Order, the undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute and enter into the terms and conditions of this Consent Order and has the legal capacity to bind Respondent to the terms and conditions of this Consent Order.

33. Nothing in this Consent Order 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 compliance, penalties, or injunctive relief under any applicable Federal, State, or local laws or regulations, including the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

34. Nothing contained in this Consent Order shall affect the responsibility of Respondent to comply with all other applicable Federal, State, or local laws or regulations, including Section 303 of the Act, 42 U.S.C. § 7603.

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

36. Any and all information required to be maintained or submitted pursuant to this Consent Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501 et seq., because it seeks to collect information from specific entities to assure compliance with this administrative action.

37. By signing this Consent Order, Respondent acknowledges that this Consent Order will be available to the public and agrees that this Consent Order does not contain any confidential business information.

38. By signing this Consent Order, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, to the best of its knowledge and belief, truthful, accurate, and complete for each submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

39. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Consent Order. This Consent Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil

Re: The Dow Chemical Co.
Docket No. CAA-06-2019-3368

or criminal, which EPA has under any statutory, regulatory, or common law authority of the United States.

40. This Consent Order does not resolve any civil or criminal claims of the United States for the violations alleged in this Consent Order; nor does it limit the rights of the United States to obtain penalties or injunctive relief under the Act or other applicable federal law or regulations.

41. Respondent has entered into this Consent Order in good faith without trial or adjudication of any issue of fact or law.

42. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1).

43. The parties shall bear their own costs and fees in this action, including attorneys' fees.

FAILURE TO COMPLY

44. Failure to comply with this Consent Order may result in an enforcement action for appropriate injunctive relief as well as civil penalties pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) or, in appropriate cases, criminal penalties.

Re: The Dow Chemical Co.
Docket No. CAA-06-2019-3368

EFFECTIVE DATE

45. This Consent Order shall become effective upon the later of the two signatures below.

9/13/19

Date



David Wilson
Responsible Care Leader
The Dow Chemical Co. – Louisiana Operations

SEP 27 2019

Date



Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Re: The Dow Chemical Co.
Docket No. CAA-06-2019-3368

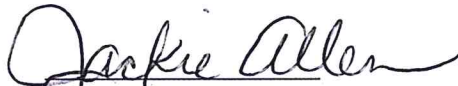
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Administrative Compliance Order on Consent was placed in the United States mail to the following by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David Wilson
Responsible Care Leader
The Dow Chemical Co. – Louisiana Operations
P.O. Box 150
Plaquemine, LA 70765-0150

Date: SEP 30 2019


U.S. EPA, Region 6
Dallas, Texas