STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:	*	**Settlement Tracking No.**
	*	**SA-HE-10-0073**
THE DOW CHEMICAL COMPANY	*	
	*	**Enforcement Tracking No.**
AI # 1409	*	**HE-CN-08-0214**
	*	**HE-CN-08-0214A**
	*	
PROCEEDINGS UNDER THE LOUISIANA ENVIRONMENTAL QUALITY ACT LA. R.S. 30:2001, ET SEQ.	*	

SETTLEMENT

The following Settlement is hereby agreed to between The Dow Chemical Company ("Respondent") and the Department of Environmental Quality ("DEQ" or "the Department"), under authority granted by the Louisiana Environmental Quality Act, La. 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 at 21255 Louisiana Highway 1,near the city of Plaquemine, Iberville Parish, Louisiana (the Facility). The facility is a large quantity generator and a permitted treatment, storage, and disposal (TSD) facility, which operates under the EPA facility identification number LAD0081807080.

II

On September 22, 2008, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. HE-CN-08-0214, which was based upon the following findings of fact:

On or about September 20, 2007, an inspection was conducted by members of the Department that revealed the following violations:

A. The Respondent exceeded the interim emission standard of 77ppm of hydrochloric acid/chlorine gas in the EDC-1 unit by having an emission of 103.6 ppm with no automatic waste feed cutoff (AWFCO), in violation of 40 CFR 63.1207(l)(1)(i). The facility had previously performed a Comprehensive Performance Test (CPT), in which test condition #2 failed and data from test condition #1 was required to be used to set the emission standard.

B. The Respondent operated the EDC-1 incinerator without having a flue gas monitoring device installed and calibrated, from September 20, 2005, to May 12, 2006, in violation 40 CFR 63.1206(b)(11). A second test was performed on May 12, 2006, to validate the two flue gas monitors.

C. The Respondent operated the EDC-1 incinerator without having set the liquid to gas (L/G) ratio as an AWFCO for C-720 (absorber) or C-730 (scrubber), in violation of 40 CFR 63.1206(c)(1)(iii).

D. The Respondent operated the EDC-1 incinerator at a maximum feed rate of 6,965 pph (pounds per hour) from August 23, 2005, to August 1, 2007, when according to the Comprehensive Performance Test (CPT) report Volume 1, Pages 1-6, the test rate was set at 5, 096 pph and was later reduced when problems with the injection pumps were noted during Condition 1, in violation of 40 CFR 63.1207(l)(1)(i).

E. The Respondent failed to submit a request for continued operations of the EDC-1 incinerator, per 40 CFR 63.1207(l)(3) even though the CPT Report submitted on September 30, 2005, reported a failure for correlating the combustion chamber retention time that forced the need to have flue gas monitoring, in violation of 40 CFR 63.1207(l)(1)(i) and (l)(3).

F. The Respondent failed to submit an alternative monitoring application for the use of air flow readings as an alternative to an hourly-rolling average flue gas monitoring limit, in violation of 40 CFR 60.1209(g).

G. The Respondent failed to notify the Department 30 days prior to the performance of 40 CFR 60, Appendix B, Performance Specification #6 test on the installed flue gas monitors, in violation of 40 CFR 60.8(d).

H. The Respondent failed to request a Class 1 Modification of the Hazardous Waste Permit to install flue gas monitors to enable Dow to define an hourly-rolling average flue gas flow rate as an operating parameter limit, in violation of LAC 33:V.322.L.3. This item has been addressed.

I. The Respondent failed to re-test the EDC-1 unit with the newly installed flue gas monitors to establish an hourly-rolling average flue gas flow rate as an operating parameter limit, as defined in 40 CFR 63.1209(b)(5), in violation of 40 CFR 63.1206(b)(5)(i)(B). Specifically, the operating parameter limits defined within the CPT Report were based upon non-continuous data (pitot tube readings) that did not match the definition of hourly-rolling average as specified within the regulations.

On November 3, 2009, the Department issued to Respondent an Amended Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. HE-CN-08-0214A, which amended Consolidated Compliance Order & Notice of Potential Penalty Enforcement No. HE-CN-08-0214, as follows:

" II.

On or about September 20, 2007, an inspection was conducted by members of the Department that revealed the following violations:

A. The Respondent exceeded the total hazardous waste feedrate of 6,965 pph (pounds per hour) hourly rolling average from 10:11 am until 1:26 pm, and again from 2:29 pm until 2:33 pm, on December 20, 2005, on the EDC-1 incinerator unit, in violation of 40 CFR 63.1209(j)(3). This is the total feed rate the Respondent was operating under at the time.

B. The Respondent operated the EDC-1 incinerator without having a flue gas monitoring device installed to establish an hourly rolling average flue gas rate as an operating parameter limit as specified in 40 CFR 63.1209(b)(5), in violation of 40 CFR 1209(j)(2). Specifically, the Respondent based the operating parameter in the CPT report on pitot tube readings which are non-continuous. The Respondent installed flue gas monitors on or about September 2, 2005, but did not have them operational until February 21, 2006. The validation test for the monitors was conducted on May 12, 2006.

C. The Respondent operated the EDC-1 incinerator without having measured the liquid to gas (L/G) ratio as an AWFCO for C-720 (absorber) or C-730 (scrubber), in violation of 40 CFR 63.1206(c)(1)(iii). Specifically, the gas flow could not be measured until the flue gas monitors were installed and operational; therefore, no monitoring of the L/G ratio for the AWFCO could be performed.

D. The Respondent operated the EDC-1 incinerator while the AWFCO maximum feed rate limit was set at 6,965 pph from August 23, 2005, to August 1, 2007, when according to the Comprehensive Performance Test

(CPT) report Volume 1, Pages 1-6, the test rate demonstrated that the maximum feed rate should have been set at 5,096 pph, in violation of 40 CFR 63.1207(l)(1)(i). Specifically, the AWFCO maximum feed rate needed to be reduced to match Condition #1 of the test burn, as documented in a letter from the Department dated August 22, 2005.

E. The Respondent failed to request a Class 1 Modification of the Hazardous Waste Permit to install flue gas monitors to enable Dow to define an hourly-rolling average flue gas flow rate as an operating parameter limit, in violation of LAC 33:V.322.L.9. This item has been addressed."

The Department incorporated all of the remainder of the original Compliance Order, Enforcement Tracking No. HE-CN-08-0214 and Agency Interest No. 1409 as if reiterated therein.

III

Respondent does not admit it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

IV

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of SIX THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($6,500.00) of which One Thousand Six Hundred Ninety-Six and 20/100 Dollars ($1,696.20) represents the Department's enforcement costs, in settlement of the claims set forth in this agreement. The total amount of money expended by Respondent on cash payments to the Department as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

V

Respondent further agrees that the Department may consider the inspection report(s), the Consolidated Compliance Order & Notice of Potential Penalty, the Amended Consolidated Compliance Order & Notice of Potential Penalty and this Settlement 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.

VI

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.

VII

This settlement is being made 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 La. R. S. 30:2025(E) of the Act.

VIII

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Iberville Parish, Louisiana. 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 an original proof-of-publication affidavit and an original public notice to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

IX

Payment is to be made within ten (10) 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. Payments are 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 A).

X

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XI

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

THE DOW CHEMICAL COMPANY

BY: _____
(Signature)

_____
(Print)

TITLE: _____

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20 _____, at _____.

_____
NOTARY PUBLIC (ID #_____)

_____
(Print)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Peggy M. Hatch, Secretary

BY: _____
Beau James Brock, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20_____, at Baton Rouge, Louisiana.

_____
NOTARY PUBLIC (ID # _____)

_____
(Print)

Preliminary Approval: _____
Beau James Brock, Assistant Secretary