

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



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In the Matter of )  
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**The Dow Chemical Company,** )  
 )  
 a corporation, and )  
 )  
**Union Carbide Corporation,** )  
 )  
 a corporation. )  
\_\_\_\_\_

Docket No. C-3999

**PETITION OF THE DOW CHEMICAL COMPANY FOR APPROVAL OF A CERTAIN  
AMENDMENT TO THE HUNTSMAN AGREEMENT**

Pursuant to Section 2.41 of the Federal Trade Commission ("Commission") Rules of Practice and Procedure, 16 C.F.R. §2.41, the Dow Chemical Company ("Dow") hereby petitions the Commission to approve an amendment to the Huntsman Agreement, which is incorporated into the Decision and Order (the "Order") in the above-captioned matter.<sup>1</sup>

The proposed amendment (the "Deep Well Amendment") to the Amended and Restated Environmental Systems Separation and Services Agreement (the "ARESSA") was executed by Dow and Huntsman International LLC ("Huntsman") in December 2010 and has been reviewed and accepted by Richard M. Klein, the Commission-appointed Monitor Trustee.<sup>2</sup> This petition describes the terms of the Deep Well Amendment and explains how the Deep Well Amendment satisfies the purposes of the Commission's Order.<sup>3</sup>

<sup>1</sup> All capitalized terms used but not otherwise defined in this petition have the meanings ascribed to them in the Commission's Order.

<sup>2</sup> The Deep Well Amendment is provided as Confidential Exhibit A to this petition.

<sup>3</sup> Dow is filing this petition based on discussions with Commission Staff. However, Dow does not believe that a petition to approve this amendment is required by the Order. The Deep Well Amendment does not modify the underlying terms of the ARESSA and is not inconsistent with that agreement. The Deep Well Amendment

For the convenience of maintaining the public record, Dow is submitting this petition in two versions – one that includes confidential and proprietary information (the “Confidential Version”) and another that is the same as the Confidential Version, but with Confidential Appendix A and certain confidential information redacted (the “Public Version”). Pursuant to Section 21 of the Federal Trade Commission Act, 15 U.S.C. §57b-2, and the Commission’s Rules of Practice 4.10-4.11, 16 C.F.R. §§4.10-4.11, Dow hereby requests that all of the redacted information, including Confidential Appendix A, be treated by the Commission as strictly confidential and not be made available to the public. The redacted portions (including Confidential Appendix A) contain commercially and competitively sensitive information of Dow and Huntsman and disclosure of the information to the public will prejudice Dow and Huntsman.

**I. Proposed Amendment to Huntsman Agreement**

Pursuant to paragraph II.A of the Order, on February 9, 2001, Dow divested, absolutely and in good faith, as an ongoing business, the Dow Global Ethyleneamines Business to Huntsman in accordance with the Huntsman Agreement. Since the divestiture, Dow believes it has complied with its obligations under the Huntsman Agreement, including the ARESSA, which prescribes the separation of Dow and Huntsman’s environmental systems at Dow’s Freeport, Texas site, where Huntsman operates an ethylenamines plant that is part of the divested Dow Global Ethyleneamines Business.

As stated in paragraph II.C of the Order, the purpose of the divestiture of the Dow Global Ethyleneamines Business is to ensure the continued operation of the Dow Global Ethyleneamines Business in the same businesses in which the assets and businesses of the Dow Global Ethyleneamines Business were engaged at the time of the acquisition by Dow of Union Carbide Corporation, and to

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memorializes the parties’ mutually agreed understanding of the meaning of certain otherwise undefined terms in the ARESSA. Neither the Order nor the ARESSA requires that Dow seek Commission approval of modifications to

remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint. As explained below, the proposed amendment to the ARESSA satisfies the purposes of the Commission's Order.

As part of the divestiture of the Dow Global Ethyleneamines Business, Dow and Huntsman entered into the ARESSA, which contemplated the separation of environmental systems at the Freeport site. Given the historical interconnections between the ethyleneamines plant and the other Dow businesses at the Freeport site, the ARESSA provided that Dow would undertake certain environmental projects to effectuate the separation of these environmental systems. These projects included the Wastewater Projects (as defined in the ARESSA), the goal of which was that effluent generated by Huntsman and by Dow be separately treated and discharged "to the extent technically feasible and economically practicable."<sup>4</sup>

After the ARESSA was executed, the parties developed a potential Wastewater Project comprised of dual deep wells and a related filtration system (the "Deep Well Project," as defined in the Deep Well Amendment), which could be implemented pursuant to the ARESSA if it were "technically feasible and economically practicable."

However, the terms "technically feasible" and "economically practicable" were not further defined in the ARESSA. Given the high cost involved and the uncertainty of success of the Deep Well Project, it could not be determined with certainty that the project was either "economically practicable" or "technically feasible." In the face of this ambiguity, Dow and Huntsman negotiated a common understanding of the circumstances under which the Deep Well Project would be "technically

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divestiture agreements. Indeed, the ARESSA itself – which is incorporated into the Order – states that Dow and Huntsman may modify the ARESSA at any time. *See* ARESSA, §19.1.

<sup>4</sup> ARESSA, Section 2.1(a).

feasible” and “economically practicable.” The Deep Well Amendment reflects this understanding. More specifically, the Deep Well Amendment expresses Dow and Huntsman’s agreement that the deepwell injection of the wastewater stream is a technically feasible solution to the Wastewater Projects if there is a filtration system to filter solids from the wastewater stream that meets certain enumerated standards. Dow and Huntsman also agree that the expenditure of [REDACTED] [REDACTED] is “economically practicable.” [REDACTED]

The Deep Well Amendment also reflects Dow and Huntsman’s agreement on other terms for the implementation of the Deep Well Project, including the property where the Deep Well Project will be conducted and the procedure for obtaining the necessary permits.

By reducing to writing the terms of the Deep Well Project and Dow and Huntsman’s understanding of the conditions under which the Deep Well Project is “technically feasible” and “economically practicable,” the Deep Well Amendment will advance the parties’ pursuit of the Deep Well Project as a Wastewater Project pursuant to the ARESSA and in so doing will facilitate the separation of the environmental systems at the site and satisfy the Commission’s goals of protecting competition.

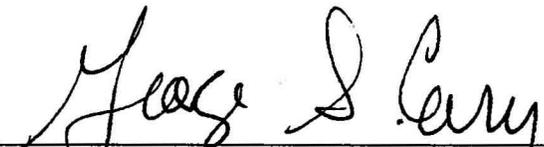
For the sake of completeness, we note that the Deep Well Amendment also contains the parties’ agreement regarding another Wastewater Project, the Storm Water Segregation Sumps (as defined in the Deep Well Amendment), which Dow has agreed to undertake, and the Pond Closure Project (as defined in the ARESSA), which was contemplated in the ARESSA. As with the Deep Well

Project, the Deep Well Amendment's provisions regarding these environmental projects will facilitate the completion of these projects and thereby support the purposes of the Commission's Order.

**II. Conclusion**

The terms of the Deep Well Amendment accomplish the purposes of the Commission's Order. Accordingly, Dow respectfully requests that the Commission approve the proposed amendment as expeditiously as possible.

Respectfully submitted,

  
George S. Cary  
Elaine Ewing  
Cleary, Gottlieb, Steen & Hamilton LLP  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Counsel for The Dow Chemical Company

CONFIDENTIAL EXHIBIT A

Deep Well Amendment  
(Redacted)

