

**REPLY TO DOW'S SUPPLEMENTAL INFORMATION
ON THE PROPOSED PERMIT MODIFICATION AND
EMISSION REDUCTION CREDITS FOR THE "ENGAGE PROJECT"**

INTRODUCTION

On March 7, 2001, Louisiana Environmental Action Network (LEAN) submitted two sets of public comments to Louisiana Department of Environmental Quality (LDEQ) on Dow Chemical Company's Title V (Part 70) Permit application for its "Engage Project." One set of comments focused on errors and omissions in the permit application while the other set questioned the validity of the emission reduction credits (ERCs) Dow was planning to use to offset the increased volatile organic compound (VOC) emissions. Dow prepared a modified permit application and a letter replying to LEAN's comments on May 1, 2001. LEAN now responds to Dow's reply letter and permit application modifications.

I. DOW'S EMISSION REDUCTION CREDITS FROM APPLICATION VOC-4 ARE INVALID

A. THE EMISSION REDUCTION CREDITS DOW SEEKS TO USE FOR THE "ENGAGE PROJECT" ARE INVALID BECAUSE THEY ARE NOT BASED ON VOLUNTARY REDUCTIONS OF EMISSIONS BELOW LEGAL LEVELS.

In Emission Reduction Credit Application VOC-4, Dow purported to establish a baseline of 559.56 tons per year (tpy) of VOC emissions, using the average of its actual emissions from the years 1988 and 1989.¹ Dow then claimed it earned 369.7 emission reduction credits by reducing its VOC emissions to 188.7 tpy. However, Dow's **allowable emissions** prior to the modernization of its Polyethylene B plant were far less

¹ In the public comments submitted to LDEQ, LEAN wrote that the VOC-4 emission reductions occurred in June 1994, taking this date from the "Analysis of Validity of Emission Reductions as ERCs" Dow included with its application. Thus, 1988 and 1989 could not have been used for the baseline because LAC 33:III.605 requires the baseline years to be within five years of the date the reductions took place.

than its **actual emissions**. Dow is wrongfully attempting to count this reduction from its actual levels for the purpose of obtaining emission reduction credits.

Dow was not operating in compliance with its air permit when it was emitting 559.56 tpy because Dow's actual VOC emissions **exceeded** the emission limits specified in Permit 2033, issued on September 1, 1990, which only allowed for 176 tpy. EPA's emission trading policy states that "...the lower of the actual or allowable emissions must usually be used as the baseline for emissions trades."² Thus, Dow cannot receive credit for reducing emissions to an amount greater than the level allowed by its permit.

EPA also states that "[a] source cannot receive emission reduction credit for reducing any portion of actual emissions which resulted because the source was operating out of compliance."³ When actual emissions exceed allowable limits, "[t]he creditable reduction...is the difference between what the emissions would have been...had the source been in compliance with its old allowable limits...and its revised allowable emissions level."⁴ Thus, Dow can only receive emission reduction credits by reducing its VOC emissions **below** its permitted levels at the time it filed the application to construct.

In the years Dow used to calculate its baseline emissions, Dow's actual VOC emissions exceeded the limits specified in the permit, so the allowable levels should have been used as the baseline. Using the allowable level from Permit 2033, 176 tpy, which applied before the modernization, shows that Dow's changes produced a net **increase** in emissions to 188.7 tpy. Since there is no reduction, Dow has no credits available from modification VOC-4 to offset the increased emissions from the "Engage Project." This also means that Dow cannot choose to avoid complying with Lowest Achievable

² 51 Fed. Reg. 43814 (Dec. 4, 1986).

³ EPA: New Source Review Workshop Manual III.B.4, p. A.41.

⁴ Id. at p. A.42.

Emission Rates (LAER) requirements by offsetting its emissions at the higher rate of 1.3 to 1 instead of the usual 1.2 to 1, as specified in Clean Air Act § 182(c)(8) and LAC 33:III.504.D.3. Dow's application must be vetoed, therefore, because it fails to comply with LAER.

B. LOUISIANA'S RULES FOR CALCULATING EMISSION REDUCTIONS DO NOT COMPLY WITH FEDERAL LAW.

Dow probably miscalculated its emission reductions in application VOC-4 because it was relying on a reading of Louisiana regulations that is not in harmony with federal law. LAC 33:III.607.G.2 states that "[t]he baseline emissions shall be calculated by determining the actual emissions during each year of the baseline period." LAC 33:III.607.G.4 further provides that "[t]he ERC shall be calculated by subtracting the allowable future emissions from the baseline emission level." This could be read to allow a plant, like Dow's Polyethylene B facility, operating out of compliance with its permit, to receive emission reduction credits for reducing its actual emissions to its permitted level, even if they were higher than the previous permit levels and would have produced a net increase in emissions if the plant had been complying with the law.

EPA regulations are clear that "...actual emissions just prior to either a physical or operational change are based on the lower of the actual or allowable emissions levels."⁵ When a plant is emitting emissions beyond what is permitted, the allowable emission levels should be used as the baseline, not the actual emissions. EPA must veto this permit to avoid a violation of federal law and policy.

II. EMISSION REDUCTION CREDITS FROM OTHER APPLICATIONS ARE ALSO INVALID.

A. DOW IS “DOUBLE DIPPING” SINCE MANY OF THE EMISSION REDUCTIONS DOW IS ATTEMPTING TO OBTAIN CREDIT FOR ARE ALREADY REQUIRED BY LAW.

Clean Air Act § 182(b)(1)(A) requires that states with ozone nonattainment areas classified as moderate or above must submit a State Implementation Plan revision describing how these areas will achieve an actual reduction of VOC emissions of at least 15% between November 15, 1990 and November 15, 1996.⁶ Louisiana’s plan included control measures, such as “Vents to Flare” and “Tank Fitting Controls”, that companies would be required to implement so that Louisiana could meet the total required reductions. Dow attempted to “double dip” by claiming these reductions as voluntary emission reductions and valid sources of credits. According to both § 173(c)(2) of the Clean Air Act and LAC 33:III.607, reductions otherwise required by law may not be sources of credits.

Louisiana’s Waste Gas Disposal Rule, LAC 33:III.2115, requires plants to install afterburners to burn off waste gasses and reduce the quantity of VOCs emitted into the atmosphere. Louisiana’s State Implementation Plan required four companies, including Dow, to install flares and took credit for a VOC reduction of 3.7 tons per day between 1990 and 1996. Dow added flares to its polyethylene facility, eliminated nearly 100 tpy of VOCs, and attempted to get credits for these modifications in applications VOC-6 and VOC-11. Dow argues that its facility is exempt from the control requirements under LAC 33:III.2115.H.3 so any reductions made were voluntary. It is a long-established legal principle that parties seeking an exception to a rule must prove that the exception

⁵ EPA: New Source Review Workshop Manual III.B.4, p. A.41.

⁶ Clean Air Act § 182(c)(2)(B) also requires ozone nonattainment areas classified as serious and above, such as the Greater Baton Rouge region, to demonstrate reductions of 3% each year averaged over three-year periods.

applies to them by a preponderance of evidence.⁷ Dow has failed to meet this burden regarding the alleged exception to the Waste Gas Disposal Rule.

Louisiana added Tank Fitting Control rules in LAC 33:III.2103 to control air emissions from guide pole wells and stilling well systems in external floating roof storage tanks. Louisiana's State Implementation Plan required five companies, including Dow, to add these controls and took credit for 7.9 tons per day of VOC emissions prevented. Many of Dow's applications attempt to claim these modifications as voluntary and Dow even admits to doing this in VOC-18. Emission reductions required by Louisiana's SIP are never voluntary and may not be used as sources of emission reduction credits.

B. DOW IS ATTEMPTING TO OBTAIN CREDIT FOR REDUCTIONS REQUIRED BY STATE REGULATIONS.

Louisiana promulgated LAC 33:III.2153, "Limiting Volatile Organic Compound Emissions From Industrial Wastewater," in 1995, several years after Dow closed down two environmental wastewater ponds in 1992 and replaced them with two five million gallon capacity tanks. According to regulations, affected VOC wastewater streams with "either a VOC concentration greater than or equal to 10,000 parts per million by weight (ppmw) or a VOC concentration equal to or greater than 1,000 ppmw and a flow rate greater than or equal to 10 liters per minute" must be controlled. Subsection G4 states that wastewater components may be exempt from this requirement if the VOC control rate is 90% less than 1990 baseline, although this must be checked every year in order to maintain the exception.

⁷ See SEC v. Ralston Purina Co., 346 .S. 119, 126 (1953); United States v. Northeastern Pharmaceutical and Chemical Company, 810 F.2d 726, 747 (8th Cir. 1986), cert. denied, 484 U.S. 848 (1987); McKelvey v. United States, 260 U.S. 353, 356-57 (1922).

Dow claims that it is operating at 93.6% efficiency and wishes to obtain credit for the entire reduction of 1,249 tpy in applications VOC-8 and VOC-10. Dow's previous position on emission reduction credits has been that it should receive credit for any reduction made above and beyond the legal requirement. Dow is required to maintain a 90% reduction in order to keep the exemption so only the 3.6% surplus could potentially qualify as a voluntary reduction.

In its reply letter, Dow erroneously assumes that all reductions should be creditable since they were made before the Industrial Wastewater rule was passed and were voluntary "at the time." Dow also suggests that the credits should only be considered "surplus when used" when they are actually used as offsets. However, LDEQ already needs to use the emission reduction credits stored in its bank as a contingency measure to satisfy the missed clean air milestone and credits cannot be used more than once.

Dow also spuriously claims in its reply that only the wastewater streams from Dow's cellulose plant met the definition of "affected volatile organic compounds wastewater" so reductions from all the other streams are voluntary and worth 601.04 credits. Yet, Dow never mentioned this stream anywhere in the original or amended permit applications, including VOC-8 and VOC-10. Both of these applications are for controls made at the collection point, after the cellulose stream has mixed with other streams, by replacing open holding ponds with fixed-roof above ground tanks. LAC 33:III.2153 defines "Volatile Organic Compound Wastewater" as "water which, as part of a facility process, has come into contact with VOC and is intended for treatment, disposal, or discharge without further use in a process unit." Once the other wastewater streams have mixed with the cellulose stream in the tanks, where they are treated by a biological reactor, they

have come into contact with VOCs and are considered “affected VOC wastewater.” Dow should not be allowed to claim this as a voluntary reduction.

C. DOW IS ATTEMPTING TO AVOID APPLICATION OF THE MARINE VAPOR RECOVERY RULE.

In application VOC-9, Dow requests credit for reductions involving ship and barge loading at Dock II. Dow believes that Dock II is not subject to the LAC 33:III.2108, the “Marine Vapor Recovery Rule,” since it has less than 100 tpy of uncontrolled emissions, even though Dow’s combined docking facilities exceed 100 tpy. The regulations define a “facility” as “the combination of all structures, buildings, equipment, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person.”⁸ Dow does not contest the fact that it owns and operates both docks located at the same Plaquemine facility and nothing in the marine vapor regulations suggests that Dow may subdivide its facility for this purpose.

Dow further claims that this definition of “facility” does not apply since it is found in the emission reduction credit banking section of Louisiana air quality regulations and is not referred to in the marine vapor rules. These rules define an “affected facility” as “...any marine loading operation...” and refer to LAC 33:III.111, which defines an “affected facility” as “any apparatus to which a standard is applicable.” In a strange application of regulatory construction, Dow claims that the qualifying word “any” means that the docks should be considered separately for the purposes of the marine vapor rules. Nothing in either definition supports this application, particularly since the words “operation” and “apparatus” refer to a complete facility that performs a

⁸ LAC 33:III.605

function, not individual parts of a facility. The word “any” only means that all facilities are affected by these regulations.

Dow’s suggestion that definitions may not be used from other sections of the air quality rules is clearly incorrect, since the rules are obviously meant to be read as a whole, supporting each other. The word “facility” was not defined separately in the marine vapor rules. The definition of “facility” in the emission reduction credit banking section defines the facilities to be affected by this rule. Thus, the Marine Vapor Recovery Rule applies to Dock II and Dow should not be allowed to bank credits obtained from reducing its VOC emissions.

III. LDEQ’S EMISSION REDUCTION BANK VIOLATES FEDERAL LAW.

A. LDEQ’S BANKING RULES ARE INVALID BECAUSE THEY ALLOW CREDITS TO BE “SURPLUS WHEN GENERATED” NOT “SURPLUS WHEN USED” AS REQUIRED BY LAW.

Dow mistakenly argues that LDEQ’s emission reduction credit banking rules, found in LAC 33:III Chapter 6, are not invalid because they do not explicitly state that credits must be surplus when they are used as offsets. “Surplus when used” means that banked credits must be discounted or eliminated at the time of their use to account for any emission reductions that would have been required by new regulations adopted after the credits were generated.⁹ Dow believes this requirement is implied by Louisiana Air Quality regulations such as LAC 33:III.504.F.10, which reads “[e]mission reductions otherwise required by the Federal Clean Air Act or by state regulations shall not be

⁹ See “Joint Motion for a Voluntary Remand,” LEAN v. EPA, 99-60570 (5th Cir. Oct. 9, 2000) at ¶7. This Joint Motion is submitted with this reply brief as part of Exhibit C.

credited for purposes of satisfying the offset requirement.”¹⁰ EPA agreed that “...the requirement that emission reductions be surplus when actually used is adequately addressed by the regulations.”¹¹

However, LDEQ does not follow the “surplus when used policy” and declared that “...the department intended, interprets, and has applied the rule to prohibit such a reduction in the quantity of emission reduction credits.”¹² LDEQ believes that the “...banking system for offsets of emission reduction credits does not require, and in fact prohibits, a review and adjustment of emission reduction credits at the time of use.”¹³ This interpretation of the emission banking rules contradicts federal law and harms the environment by allowing more air pollution to be emitted into the atmosphere.

EPA has specifically found LDEQ’s emission reduction banking program to be illegal, explaining:

“Under Clean Air Act § 173(c)(2), ERCs must be surplus at the time they are used as offsets. EPA approved Louisiana’s permitting and banking regulations (LAC 33:III.504.F.10 and 623.B.1) on the basis that the regulations required that ERCs must be surplus at the time of use as offsets. Any other interpretation would not have been consistent with § 173(c)(2) of the Act, which requires that ‘emission reductions otherwise required by the Act’ cannot be used as offsets.”¹⁴

LDEQ admits that the emission reduction bank is not following federal standards and that inconsistencies between LDEQ’s interpretation of the banking rules and the Clean Air Act need to be resolved.¹⁵ Even if Dow actually believes that the emission

¹⁰ Similar language is found in § 173(c)(2) of the Clean Air Act: “Emission reductions otherwise required by this chapter shall not be creditable as emission reductions for purposes of any such offset requirement.”

¹¹ 63 Fed. Reg. 44192, 44200 (Aug. 18, 1998).

¹² Letter from Bliss Higgins, Assistant Secretary of LDEQ, to Carl Edlund, Director of Multimedia Planning and Permitting Division, US EPA Region VI (10/5/00) at 1. This letter is submitted with this reply brief as part of Exhibit C.

¹³ Id. at 2.

¹⁴ In re Operating Permit, Formaldehyde Plant Borden Chemical, Inc., Petition No. 6-01-1 at p.18 (U.S. EPA, Dec. 22, 2000).

¹⁵ Letter from Bliss Higgins at 2.

reduction credit banking regulations imply a “surplus when used” policy,¹⁶ LDEQ has not been interpreting the rules that way. The bank remains illegal and may not be used until it has been revised to comply with federal law.

B. LDEQ HAS MISMANAGED THE EMISSION REDUCTION CREDIT BANK AND HAS DIFFICULTY KEEPING TRACK OF CREDITS.

After an examination, EPA found that “...it is difficult to access data documenting the amount of valid CAA offset credits in Louisiana’s bank and there are insufficiencies in the banking database.”¹⁷ Dow incorrectly claims that EPA’s statement is merely a conclusion from a “preliminary investigation” and not a “final determination.” This phrase was included in an official Fifth Circuit Court of Appeals document, signed by the parties, in which EPA specifically asked the court to take action. LDEQ signed the Joint Motion but has taken no steps to fix these problems since the motion was filed nine months ago. The bank’s poor record keeping has prevented LDEQ and Dow from proving the validity of their emission reduction credits.

C. DOW CANNOT RECEIVE A PERMIT WITHOUT NOTIFYING THE PUBLIC OF THE SPECIFIC CREDITS IT IS RELYING UPON.

Dow erroneously claims that EPA’s finding of the bank’s mismanagement is irrelevant since it specifically identified the 70.72 credits it is planning to use for the “Engage Project” as coming from its VOC-4 modification. However, Dow failed to

¹⁶ It is unclear if Dow actually holds this position, since later in the reply letter, Dow writes “Dow believes that in determining whether emission reductions should be certified as ERCs, the DEQ should only consider whether they were surplus when generated.” Letter from John A. Gray, Counsel, Gulf Coast Operations, Dow Chemical Company, to Toni Booker, LDEQ, Office of Environmental Services, Permits Division (5/1/01) at 9. Dow cannot have it both ways – if the banking regulations only require credits to be “surplus when generated” then the bank is illegal and may not be used.

¹⁷ Joint Motion at ¶8.

specify which of the 369.7 purported credits from the modification it is planning to rely upon. This inadequate identification was not included in the original permit application, which did not even specify which modification Dow was planning to use as a source of credits, and was certainly not clear from LDEQ bank records, which indicated that Dow had no approved emission reduction credits in the bank.

D. NO TRANSACTIONS SHOULD BE ALLOWED UNTIL THE BANK CONFISCATES THE CREDITS REQUIRED BY LAW.

The Clean Air Act requires State Implementation Plans (SIPs) to provide for contingency measures if an ozone nonattainment area fails to make reasonable further progress toward achieving a national ambient air quality standard by the required date.¹⁸ Whenever Louisiana misses a clean air “milestone,” LAC 33:III.621.B.1 demands that LDEQ confiscate sufficient emission reduction credits to offset the failure. This prevents air quality from deteriorating in regions that fail to achieve federal clean air standards.

EPA recently proposed to determine that the Greater Baton Rouge region failed to attain the one-hour standard for ozone by the November 15, 1999 deadline specified for serious ozone nonattainment areas.¹⁹ While the Clean Air Act requires that contingency measures take place without further action from LDEQ or EPA,²⁰ the State of Louisiana still has not confiscated the credits required to compensate for the missed milestone. No further transactions should be allowed until LDEQ confiscates the legally required credits, including those belonging to Dow.

¹⁸ See Clean Air Act § 172(c)(9) and § 182(c)(9).

¹⁹ See 66 Fed. Reg. 23646, 23648 (May 9, 2001).

²⁰ See CAA § 172(c)(9).

Dow objects to this and claims that “[i]t is likely that EPA will extend the attainment deadline and therefore no confiscation of emission credits will be required.”²¹ Whether or not EPA chooses to extend the deadline is irrelevant, since the Act requires that the State implement contingency measures immediately after EPA determines that the region has failed to attain an air quality goal, which happened on May 9, 2001. Congress required full implementation of these measures to take place within 60 days after notifying the state of its failure with minimal further action and no additional rulemaking.²²

IV. LDEQ SHOULD NOT BE GRANTING NEW AIR PERMITS IN AN OZONE NONATTAINMENT AREA.

A. GRANTING DOW THIS PERMIT WILL NOT CONTRIBUTE TO ACHIEVING REASONABLE FURTHER PROGRESS.

Section 171 of the Clean Air Act defines “reasonable further progress” as annual incremental reductions required by EPA to achieve national ambient air quality standards by a certain date. Requirements for reasonable further progress are included in Section 173(a)(1)(A), which states that a permit may only be granted if sufficient offsetting reductions have been obtained so that the total allowable emissions will be sufficiently less than the total emissions from existing sources by the time the plant opens.

Louisiana has made no incremental reductions in ozone-producing pollutants since failing to meet the attainment deadline in 1999 and has not demonstrated any progress in achieving national ambient air quality standards. Simply offsetting VOC emissions at a 1.2:1 ratio cannot qualify as reasonable further progress in a “serious” ozone nonattainment area that has missed its attainment deadline and already fails to meet health protection standards. More is required to make a real improvement in air quality.

²¹ Letter from John A. Gray at 2.

Dow clearly does not have sufficient offsetting credits from reducing emissions to represent reasonable further progress. Dow is currently emitting VOCs in excess of its permit so its emissions first must be reduced to permittable levels before the offset ratios may be applied to new emissions. Otherwise, “emission reductions” will never bring the actual VOC emissions to legal levels and national ambient air quality standards will never be achieved in the region.

B. LDEQ SHOULD NOT BE GRANTING AIR PERMITS BECAUSE LOUISIANA’S STATE IMPLEMENTATION PLAN IS NOT BEING ADEQUATELY IMPLEMENTED IN AN AREA THAT FAILS TO MEET AIR QUALITY STANDARDS.

Section 173(a)(4) of the Clean Air Act states that Title V air permits may only be granted if EPA “...has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified.” EPA has made several public determinations that Louisiana failed to properly implement its State implementation Plan so LDEQ must not grant any new permits until EPA determines that the deficiencies have been corrected.

LEAN identified four examples, in the public comments submitted to LDEQ, where EPA acknowledged that the plan was not being properly implemented. Dow unsuccessfully attempted to counter each example in its reply letter. The first and third examples were that LDEQ did not calculate the number of credits in its bank according to EPA’s expectations and that EPA agreed to remand its approval of Louisiana’s State implementation Plan.²³ Dow illogically asserts that these findings did not trigger Clean Air Act § 173(a)(4) because they did not involve inadequate implementation of the plan

²² See 63 Fed. Reg. at 44200.

²³ See Joint Motion at ¶9 and ¶10 respectively.

but attacked the validity of the plan itself. However, EPA specifically approved Louisiana's State implementation Plan with the understanding that credits would be "surplus when used."²⁴ LDEQ's interpretation of the emission reduction credit banking rules as "surplus when generated" is not proper implementation of this part of the plan. In the third example, Dow is confusing the cause and effect, as EPA agree to remand its approval of the plan primarily because the plan was not being properly implemented.

LEAN's second example of EPA's lack of faith in the plan's implementation was its finding of insufficiencies in LDEQ's emission reduction credit banking database and difficulty in accessing the amount of valid credits.²⁵ Dow seems to believe this is not a "finding" under § 173(a)(4) even though it was included in an official signed court document. It is unclear what more Dow would require for a finding to be considered an official EPA determination if this is not considered sufficient.

LEAN's fourth example was EPA's statement that Louisiana's State Implementation Plan was being improperly implemented because LDEQ was not applying the banking and permitting regulations to include a "surplus when used" requirement for using emission reduction credits.²⁶ Dow does not believe this is relevant for § 173(a)(4) purposes because it claims that the credits used for the "Engage Project" will be "surplus when used."²⁷ Even if the specific credits were valid, LDEQ is still not implementing the plan properly so long as it uses a "surplus when generated" policy.

²⁴ See 63 Fed. Reg. at 44200.

²⁵ See Joint Motion at ¶8.

²⁶ See In re Operating Permit at p. 24.

²⁷ Dow also advances two separate theories regarding this example, neither of which is correct. Dow repeats its argument that if the State Implementation Plan does not contain a "surplus when used" requirement, this would be an issue of the plan's invalidity, not its improper implementation. As we have already stated, EPA's approval of the plan was contingent on the adoption of a "surplus when used" policy and using a "surplus when generated" policy would be improper implementation under § 173(a)(4). Dow's other theory was that if the plan actually does contain a "surplus when used" requirement, implied from other air quality regulations, then LDEQ would not need to revise its regulations before granting permits.

There are at least two more examples of LDEQ failing to properly implement Louisiana's State Implementation Plan. LDEQ has failed to put the contingency measures into action and has not confiscated emission reduction credits to make up the missed milestone. LDEQ has also failed to follow an "upset" policy consistent with federal law. For all these reasons, LDEQ should not be granting air permits until it starts implementing the plan properly.

V. **DOW'S ORIGINAL PERMIT APPLICATION SUBMITTED TO LDEQ WAS INCOMPLETE AND MISLEADING.**

In the comments submitted to LDEQ, LEAN identified many instances where Dow had omitted required information or had supplied misleading responses in its Part 70 permit application. The fact that Dow later attempted to fix some of these defects in its amended application, after LEAN called its attention to them with the public comments, does not change the fact that the only permit provided to the public under § 503(e) of the Clean Air Act had insufficient information and mistakes.

For example, Dow claimed that it had omitted 119.91 tons per year (tpy) of VOC emissions from its Power II plant on the original application because it recalculated the emissions using a new approach. The fact that Dow had to recalculate its emissions is proof of its poor record keeping and the "discovery" of an additional 119 tpy suggests that more illegal emissions may be going unreported. Dow did a disservice to both LDEQ and the public by failing to provide complete and truthful information in its permit application.

However, if the plan actually did contain such a "surplus when used" requirement, this would be further evidence that LDEQ is not implementing it properly.

CONCLUSION

Dow has made errors and omissions on its Part 70 air permit application and does not have enough legitimate emission reduction credits to offset the increased VOC emissions from its “Engage Project.” Dow cannot use the offsets from application VOC-4 since it was already emitting pollutants above the allowable level and should be allowed to claim credit for any reductions until its emissions fall below required levels. Nor should LDEQ be granting air permits for additional emissions in an ozone nonattainment area that will not lead to reasonable further progress in achieving national ambient air quality standards, particularly when Louisiana’s State Implementation Plan is not being properly implemented. Finally, it is clear that LDEQ’s emission reduction credit bank is not in compliance with federal law and should not be performing transactions until it is fixed. For these and other reasons, EPA should prevent LDEQ from granting Dow a Part 70 air permit for its “Engage Project” and allowing it to increase the quantity of air pollution in Iberville Parish.

Respectfully Submitted,
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