

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 55281 / February 13, 2007

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2555 / February 13, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12567

In the Matter of	:	ORDER INSTITUTING CEASE-AND-
	:	DESIST PROCEEDINGS, MAKING
THE DOW CHEMICAL	:	FINDINGS AND IMPOSING A
COMPANY,	:	CEASE-AND-DESIST ORDER
Respondent.	:	PURSUANT TO SECTION 21C OF
	:	THE SECURITIES EXCHANGE ACT
	:	OF 1934

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against The Dow Chemical Company (“Respondent” or “Dow”).

II.

In anticipation of the institution of these proceedings, the Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting

Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934, as set forth below (“Order”).¹

III.

On the basis of this Order and Respondent’s Offer, the Commission finds² that:

Summary

This matter involves Dow’s violations of the books and records and internal controls provisions of the Foreign Corrupt Practices Act (“FCPA”) through numerous improper payments made by DE-Nocil Crop Protection Ltd. (“DE-Nocil”), a fifth-tier subsidiary of Dow, from 1996 to 2001, to Indian government officials to register several agro-chemical products slated for marketing in time for India’s growing season. DE-Nocil paid an estimated \$200,000 in improper payments and gifts to Indian government officials at the state and federal levels. None of these payments were accurately reflected in Dow’s books and records. Additionally, Dow’s system of internal accounting controls failed to prevent the payments.

Respondent

1. Dow is a Delaware corporation with corporate headquarters in Midland, Michigan, that manufactures and sells chemicals, plastic materials, agricultural and other specialized products and services. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange.

Other Relevant Entities

2. During the time period 1996 to 2001, DE-Nocil, headquartered in Mumbai, India, was a fifth-tier subsidiary of Dow that manufactured and marketed pesticides and other products primarily for use in the Indian agriculture industry. DE-Nocil was established in 1994 as a joint venture when a majority-owned Dow subsidiary, DowElanco, acquired a 51% ownership interest in the agro-chemicals business of a local Indian company, National Organic Chemicals Industry Ltd. (“Nocil”) owned by a prominent Indian family. In 1997, DowElanco became a wholly-owned subsidiary of Dow and was re-named Dow AgroSciences LLC (“DAS”), a Delaware limited liability company. As of March 2001, DAS’ stake in DE-Nocil was 75.7%. On January

¹ The Commission has contemporaneously filed a complaint in the United States District Court for the District of Columbia against Dow alleging violations of Section 13(B)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 (“Exchange Act”) and seeking a civil penalty. Without admitting or denying the Commission’s allegations, Dow has consented to the entry of a final judgment by the Court that requires Dow to pay a \$325,000 civil penalty. *See SEC v. The Dow Chemical Company*, Case No. 07CV00336 (D.D.C.) (filed February 13, 2007).

² The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

13, 2005, Dow attained 100% ownership of DE-Nocil, and on March 31, 2005, DE-Nocil changed its name to Dow AgroSciences India Pvt. Ltd.

Facts

A. The Indian Government Regulatory Framework Affecting DE-Nocil

3. Before it could market its products in India, DE-Nocil was required by Indian law to obtain government registration for its products. This process involved registration both at the federal and state levels. At the federal level, the principal regulator was an agency called the Central Insecticides Board (“CIB”). The CIB was comprised of twenty-nine officials charged with examining safety and health issues related to agricultural chemicals. Within the CIB was a Registration Committee composed of six persons that recommended whether to grant registrations and when they would be granted. A key member of the Registration Committee (the “CIB Official”) held considerable influence within the Committee. He was able to determine if and when a company’s agricultural chemical product would be registered and, in fact, the CIB Official would refuse or delay registrations unless he received financial payments. This individual left the CIB in 2000. Dow is not aware of any similar requests made by CIB officials after the CIB Official left.

4. In addition to the CIB, there were a number of state government officials in India that had some regulatory and enforcement authority regarding agro-chemical businesses like DE-Nocil. These included “licensing officers” in each state, whose approval was necessary for producing, warehousing and selling product in a particular state. The state officials also included inspectors, 30,000 to 40,000 in number, who could prevent the sale of a product by drawing samples and falsely claiming that the samples were misbranded or mislabeled. Misbranding or mislabeling carried significant potential penalties. Companies could challenge accusations of misbranding or mislabeling in court. However, rather than face a suspension in sales of products caused by the false accusations, companies would make petty cash payments to state inspectors.

B. DE-Nocil’s Improper Payment Practice and Improper Accounting

5. DE-Nocil’s commercial vice-president, who later became a consultant to DE-Nocil, and DE-Nocil’s technical development leader, developed an improper payment practice to facilitate the registration of DE-Nocil’s products to the CIB. The practice involved directing improper payments to the CIB Official through the use of consultants and unrelated companies.

6. Beginning in 1996, DE-Nocil personnel began accumulating funds off DE-Nocil’s books to be available to pay the CIB Official contemporaneously with DE-Nocil’s product registration applications. DE-Nocil personnel enlisted one of DE-Nocil’s contractors, an Indian product formulator that mixed and packaged products for DE-Nocil, to accumulate funds on DE-Nocil’s behalf. The contractor, through agreement with DE-Nocil, added fictitious charges called “incidental charges” on its bills to DE-Nocil. The contractor agreed to accumulate and

segregate the funds representing these “incidental charges” and to disburse these funds as directed by DE-Nocil. When needed, DE-Nocil contacted the contractor and asked it to disburse funds to third party “consultants” who delivered the funds to the CIB Official. DE-Nocil made approximately \$20,000 in improper payments to the CIB Official through this contractor.

7. DE-Nocil also made an improper payment to the CIB Official through a second contractor, which was also one of DE-Nocil’s product formulators. In this case, the second contractor, through an agreement with DE-Nocil, issued DE-Nocil a false invoice for \$12,000 in capital equipment. DE-Nocil paid the contractor the \$12,000, which was then delivered to the CIB Official. The payment was authorized by DE-Nocil’s Managing Director.

8. None of the payments that were ultimately made to the CIB Official were properly recorded in DE-Nocil’s books. The payments resulted in the expedited registration of three DE-Nocil products: “Pride (NI-25),” “Nurelle-D,” and “Dursban 10G,” products which used active ingredients that were widely used, and registered by Dow or other pesticide manufacturers, in other countries, including the United States. As a result of the expedited registrations, Dow estimated that DE-Nocil generated \$435,000 in direct operating margin from the accelerated sales of these products, 75.7% (or \$329,295) of which, based on Dow’s ownership interest, went to Dow.

9. DE-Nocil also made improper payments at the state level. DE-Nocil routinely used money from petty cash to pay state officials in order to distribute and sell its products. These payments were transmitted to state officials through DE-Nocil’s distributors in the field. Although the payments were in small amounts – well under \$100 per payment – the payments were numerous and frequent. Dow estimates that from 1996 to 2001, \$87,400 in payments were made to state inspectors and other state officials. None of these payments were properly recorded in DE-Nocil’s books.

10. In sum, over a six-year period, DE-Nocil distributed an estimated \$200,000 in improper payments through federal and state channels. An independent auditor retained by Dow identified approximately \$75,600 of payments and, through a process of extrapolation, estimated an additional \$125,000, for a total of approximately \$200,000. From this amount, an estimated \$39,700 was used by DE-Nocil to register its products and an estimated \$87,400 was paid to state level agriculture inspectors. The remainder of improper payments consisted of an estimated: \$37,600 for gifts, travel, entertainment and other items; \$19,000 to government officials; \$11,800 to sales tax officials; \$3,700 to excise tax officials; and \$1,500 to customs officials. The payments were made without knowledge or approval of any Dow employee.

C. Dow’s Internal Investigation

11. Dow conducted an internal investigation of DE-Nocil and, upon its completion, voluntarily approached Commission staff and presented the results. Dow also undertook certain remedial actions relating to the DE-Nocil matter, including employee disciplinary actions. Dow

retained an independent auditor to conduct a forensic audit of the books and records and internal controls at DE-Nocil; reported its internal investigation to the Audit Committee of the Board of Directors; and provided FCPA compliance training to employees at DE-Nocil, as well as to employees at DAS. In addition to the remedial actions relating to DE-Nocil, Dow restructured its global compliance program; improved and expanded FCPA compliance training for employees of Dow and its subsidiaries worldwide; trained its internal auditors to recognize FCPA issues; and joined a non-profit association specializing in anti-bribery due diligence that, among other things, screens potential partners and other third parties that work with multinational corporations and provides FCPA training to them. Dow also hired an independent consultant to review and assess its FCPA compliance program.

D. Violations

12. The FCPA, enacted in 1977, added Exchange Act Section 13(b)(2)(A) to require public companies to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer, and Section 13(b)(2)(B) of the Exchange Act to require such companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; and (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets.

13. As detailed above, because DE-Nocil did not properly record the payments that it made to Indian government officials in its books, its books, records and accounts did not, in reasonable detail, accurately reflect its transactions and disposition of assets.

14. As a result of the conduct described above, Dow violated Section 13(B)(2)(A) of the Exchange Act.

15. In addition, DE-Nocil failed to take steps to ensure that its employees and consultants complied with the FCPA and to ensure that the payments it made to Indian government officials were accurately reflected on its books and records.

16. As a result of the conduct described above, Dow violated Section 13(b)(2)(B) of the Exchange Act.

Dow's Remedial Efforts

In determining to accept the Offer, the Commission considered the remedial acts undertaken by Dow and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to accept the Respondent's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that Dow cease and desist from committing or causing any violations and any future violations of Section 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

By the Commission.

Nancy M. Morris
Secretary