

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of)
)
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 CERTAIN AMENDMENTS

[REDACTED]

TO THE INEOS AGREEMENT

Pursuant to Section 2.41 of the Federal Trade Commission ("Commission") Rules of Practice and Procedure, 16 C.F.R. §2.41 (2005), The Dow Chemical Company ("Dow") hereby petitions the Commission to approve certain amendments to the Ineos Agreement which

...tain any fiduciary, proprietary information, and Confidential Appendices A through

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...the continued operation of these businesses in the same businesses in which they

were engaged at the time of the acquisition by Dow of Union Carbide Corporation, and to

total volume from these sites.⁵ Indeed, as early as July 2001, Ineos joined the ranks of the Global Top 50 chemical producers (ranked by Chemical & Engineering News).⁶

4. ~~Summary of GAS/SPEC Supply Agreement~~

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entered into the GAS/SPEC Supply Agreement under which Dow supplies Ineos with GAS/SPEC solvent, solvent additive, and solvent and MDEA. Dow believes that the GAS/SPEC Supply Agreement, which was reviewed and incorporated into the Order by the Commission, is

in the production of ethanolamines at Ineos' ethanolamines plant in Plaquemine, Louisiana.

Dow believes that the EO Supply Agreement, which was reviewed and incorporated into the

Order by the Commission, is consistent with the language and purposes of the Order. At the

agreement of Ineos in October 2001. Dow agreed to amend various terms of the EO Supply

Agreement (dated as of July 21, 2000) resulting in the "October 2001 Amended EO Supply

II. Proposed Amendments Strengthen Ineos as a Reliable Ethanolamines and MDEA Competitor

The amendments proposed herein are the result of extensive good faith

negotiations between Dow and Ineos, communications with the Monitor Trustee, and early

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- revising the capital contribution mechanism;
- improving the dispute resolution system;
- adjusting certain contract terms annually, which provides a substantial

economic benefit to Ineos.

- responding to Ineos' desire to reduce its purchases of MMEA (a by-product of MDEA production);
- increasing Ineos' flexibility to access other supply options;
- narrowing the conditions under which force majeure may be declared; and

improving communication and reporting transparency between the parties.

budgeting and reporting, periodic meetings, and full reconciliation on accounts and calculations.

As described more fully below, highlights of the amendments to the *EO Supply*

Agreement are:

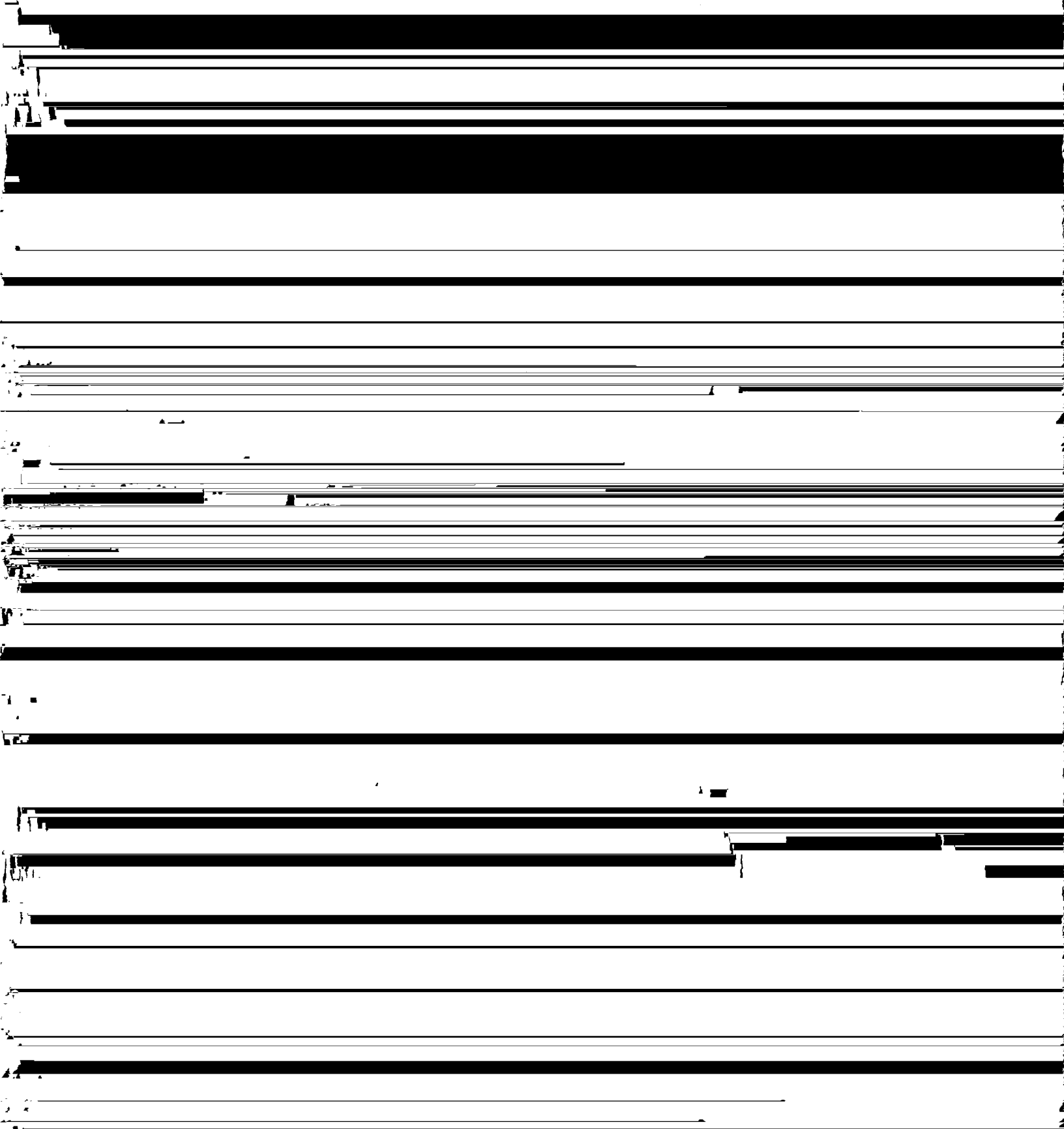
In both Agreements, transparency is enhanced through changes to how prices are

determined. In particular, several of these pricing formulas are now more objective and readily

verifiable, and thus less likely to lead to suspicion and disputes.

unscheduled outages by taking on additional obligations. For example, the amendments allow

to more easily secure EO supply during such an event (amended EO Section 2.1.2.2)



The protections for Ineos built into the Unplanned Outage provision are intended to make Ineos whole if such circumstances occur. And Dow certainly has its own strong

incentives for keeping the Plaquemine EO plant operational outside of Unplanned Outage

any other decrease or interruption in supply. Specifically, Dow relies on the Plaquemine plant for a key input into Dow's EO derivatives businesses.

C Negotiated Dispute Resolution

Ineos as a change from the prior language, "for the duration," of the event (amended GAS/SPEC Section 14.1; amended EO Section 16.1).

The amendments to the *EO Supply Agreement* go even further with additional

protections for Ineos during Force Majeure Events. The proposed amendment to Section 16.0

strengthens the protections granted to Ineos in the October 2001 amendment to that Section.

experienced by Ineos when it missed an important adjustment deadline, an oversight for which Dow has agreed to make a retroactive adjustment not required by the existing Agreements.

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Supply Agreement for added clarity, eliminating the opportunity for ambiguity and suspicion between the Parties.

In a significant economic concession by Dow, the Parties have agreed to a new

~~recalculations to the prices Ineos pays for product (amended CAS/SDS Section 20.1) (2) +~~

participate in an annual review and reconciliation process where payments are reconciled with certain costs for the previous year, which could result in a credit back to Ineos if the amount it was charged exceeds the recalculated amount (or a credit to Dow if the opposite is true)

~~(amended Section 20.2) and (2) to review Dow's annual accounting plan for the Product MDEA~~

H. EO Supply Agreement—Increased Flexibility and Control for Ineos

Several amendments provide Ineos with increased flexibility and control over its purchases and payments under the EO Supply Agreement.

Ineos' right to access other supply options during times of diminished EO supply from Dow has been expanded in order to respond to Ineos' goal of increasing the practicality of the swap option under the Agreement. An expanded set of circumstances under which Ineos can seek other EO supply options, a significantly reduced (from seven days to two days) notice period for Ineos to alert Dow that it is pursuing such an option, and a timeframe for the other supply option that runs through the *expected* (if later than actual) duration of reduced supply will ~~minimize the effects on Ineos of any problem with Dow's supply (amended EO Supply Agreement 2.1)~~

I. Summary

The proposed amendments to both Agreements further enhance Ineos' already

~~strong position as an ethanolamines and branded MDEA competitor. The acquisition of Dow's~~

III. Conclusion

Agreement with Ineos and February 2005 Amendment No. 1 to the EO Supply Agreement with

Ineos further the purposes of the Commission's Order. Accordingly, Dow respectfully requests

that the Commission approve the proposed amendments as expeditiously as possible.

Respectfully submitted,

CONFIDENTIAL APPENDIX A

February 2005 Amendment No. 1 to the GAS/SPEC Supply Agreement

[REDACTED]

CONFIDENTIAL APPENDIX B

Proposed Amendments to GAS/SPEC Supply Agreement

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CONFIDENTIAL APPENDIX C

February 2005 Amendment No. 1 to the EO Supply Agreement

[REDACTED]

CONFIDENTIAL APPENDIX E
Existing GAS/SPEC Supply Agreement

[REDACTED]

CONFIDENTIAL APPENDIX F

Existing EO Supply Agreement as Amended October 2001

[REDACTED]

CONFIDENTIAL APPENDIX G

Proposed Settlement Agreement (February 24, 2005)

[REDACTED]



