

STATEMENT OF CONSIDERATIONS

REQUEST BY DOW CHEMICAL COMPANY FOR AN ADVANCE WAIVER OF U.S. AND FOREIGN RIGHTS UNDER PROPOSED NREL SUBCONTRACT NO. ZAL-3-11191-03-107195 UNDER DOE PRIME CONTRACT NO. DE-AC02-83CH10093, WAIVER NO. W(A)-93-007, CH0758.

The attached petition by Dow Chemical Company (hereafter Dow) is for an advance waiver of patent rights under proposed NREL Subcontract ZAL-3-11191-03-107195, under DOE Contract No. DE-AC02-83CH10093. Dow requests that the Department of Energy grant an advance waiver for the domestic and foreign rights to inventions made in the performance of work under the above identified proposed subcontract and that these rights vest in Dow subject to the standard march-in, preference for U.S. industry, and the patent rights provisions of the subcontract.

The scope of work under the above subcontract involves using proprietary technology in the preparation and in the evaluation of polymeric reflecting films for use as solar collecting materials. Hard surface coatings used to enhance abrasion resistance will also be evaluated. As a result, the work will further the development of polymeric reflecting films as solar collecting materials.

As is indicated in answer 3, Dow proposes a 50% cost sharing with Dow's share amounting to \$80,328 out of the total dollar value of the subcontract of \$160,656. Further communication with the Subcontracting Officer at NREL, Dan Lavergne, indicated that Dow has proposed increasing its cost sharing position to 56% or \$101,362.


Answer 4 represents that Dow is a leader and innovator in the field of polymeric reflecting films for use as solar collectors. It has listed several patents which it represents as being applicable to the subject field of solar collection. Dow, in answer 6, contends that it has spent millions of dollars to date perfecting its position in this field, and it has spent \$300,000 in 1992 to upgrade its facilities to accomplish the work proposed under the subject subcontract.

Dow contends that granting the waiver will not place it in a dominant commercial position since solar collecting devices developed by other commercial entities use different approaches and materials. In Answer 9, Dow cited an NREL prediction that the commercial market for solar collectors will not develop before the end of the century and even then, the commercial market for plastic film solar collectors will be very small. According to Dow, this would probably mean that the production of solar film collectors will probably evolve as a spin off of the larger overall market for plastic films. Since Dow does not have a preferred position in the area of plastic films, it contends that its work under this subcontract would not lead to its dominance of the use of polymeric reflecting films as solar collectors.

The subject subcontract is contingent on approval of the requested advance waiver. Approval of the advance waiver will more effectively promote the development and commercial utilization of the subject technology by providing Dow with the incentive to further develop and commercialize polymeric reflecting films for use as solar collectors.

To promote U.S. Competitiveness, Dow has agreed to the attached U.S. Competitiveness provisions, subject to the approval of the requested waiver.

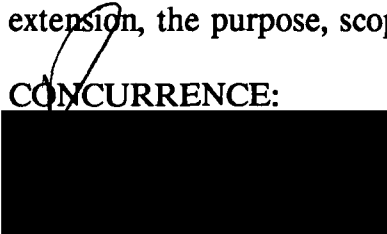
Upon evaluation of the Waiver Petition and in view of the objectives and considerations set forth in 41 CFR 9-9.109-6, all of which have been considered, it is recommended that the requested waiver be granted.


Bradley W. Smith
Office of Intellectual
Property Counsel

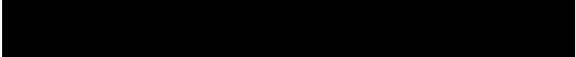
Date: 7/14/93

Based on the foregoing Statement of Considerations and the representations in the waiver request, it is determined that the interests of the United States and the general public will best be served by a waiver of the patent rights of the scope described above and therefore the waiver is granted. This waiver shall not apply to any modification or extension of this subcontract where through such modification or extension, the purpose, scope, or cost of the agreement is substantially altered.

CONCURRENCE:


Robert H. Annan
Director Office of
Solar Energy Conversion

APPROVAL:


Richard E. Constant
Assistant General Counsel
for Patents, HQ

8/10/93