

DOW CHEMICAL FINED \$1.75 MILLION OVER PERQUISITE DISCLOSURES

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Practices & Industries

Employee Benefits

The Dow Chemical Co., while neither admitting nor denying wrong doing, will pay a \$1.75 million fine imposed by the Securities and Exchange Commission (SEC) regarding claims that Dow did not properly disclose approximately \$3.0 million of executive compensation in the form of perquisites. While not completely detailed, Dow was claimed to have not disclosed company authorized perquisites including personal use of the Dow aircraft and other expenses. According to the Order of the Securities and Exchange Commission, Dow incorrectly applied a standard whereby a business purpose related to the executive's job is sufficient to determine that a benefit would not be a perquisite requiring disclosure. That standard had been rejected by the SEC in its rulemaking in 2006. Under the SEC's standard, an item is not a perquisite or personal benefit only if it is integrally and directly related to the performance of the executive's duties. Unless an item is generally available on a non-discriminatory basis to all employees, an item is a perquisite if it confers a direct or indirect benefit that has a personal aspect without regard to whether it may be provided for some business reasons or the convenience of the company.

Clients should review their internal standards for disclosure of perquisites to be certain that it complies with the standard announced by the SEC. SEC *Administrative Proceeding Order, In the Matter of The Dow Chemical Company*, 2018.