

Lone Tree Council

P.O. 1251, Bay City, Michigan 48706

(Fighting for environmental justice since 1978)

Abbreviated history of Dow activities 2007-2009

A Special Notice was issued on 12/15/08 by USEPA Region V to again enter into closed-door negotiations with Dow Chemical using the Superfund Alternative Site (SAS) agreement process.

Unlike CERCLA or RCRA, an SAS agreement is guidance. The guidance has not been through rulemaking and the efficacy of the guidance is unknown at best. SAS was developed in response to companies/PRP's who wanted to avoid being placed on the NPL (National Priorities List) and all the negative ramification that come with the NPL listing. It is not Superfund. More information can be found on SAS at the EPA website: <http://www.epa.gov/oecaerth/cleanup/superfund/saa.html>.

This will be the third time since the issuance of Dow's RCRA corrective action license in 2003 that the agencies have gone behind doors with the company to explore a new and different path forward to address the chemical company's dioxin contamination in the Saginaw Bay Watershed,---52 miles of river, thousands of acres of floodplain and the Saginaw Bay of Lake Huron are impacted.

It is unclear why the SAS guidance is being implemented. Dow's RCRA license remains in force and viable. Unlike the SAS process RCRA for years has permitted transparency. It (RCRA) is the mechanism by which the public was told in June of 2003 that the remediation by Dow Chemical would take place. It is in fact a Corrective Action License. Dow signed this agreement along with state after almost 8 years of negotiations. It is a federal regulatory program with EPA oversight. EPA gave the State of Michigan authority to execute the RCRA program in 1996 but has remained heavily involved in the execution of the license. The license can be found at http://www.michigan.gov/documents/deq/deq-whm-hwp-Dow-final-6-12-03-OpLic_248064_7.pdf .

EPA's heaviest involvement occurred during the summer of 2007 when Region V Administrator, Mary Gade imposed a series of consent orders for substantial endangerment and public health risks associated with extraordinarily and unprecedented levels dioxin, furans and other chemicals at various reaches of the river system. In late fall of 2007 the highest concentrations of dioxin in the nation were found in the river about 30 miles downriver from Dow's world headquarters. Again, RA Gade issued consent orders for removal of these sediments.

Sampling and characterization of soils and sediments required under Dow's RCRA license uncovered these high concentrations. Sampling and thorough characterization of the rivers and floodplain has been the driver for response activities and further investigation and monitoring. Dow Chemical has on many occasions been resistant and obstinate in delivering on response activities, which required Region V to demand action in 2007. In 2007 Region V EPA created two documents which articulated clearly Dow's penchant for delays and deficient work plans.

Dow has never wanted the Saginaw River and Bay listed for cleanup in their RCRA license. In violation of their RCRA license Dow has failed to provide work plans to characterize the Saginaw River and Bay. On

numerous occasions, behind closed doors (CACO 2002 and Framework 2005) the company has sought for the removal of the above regions from their license. It is likely they will pursue this under the SAS agreement. Dow was required under their RCRA license to begin addressing the Saginaw River and Bay in June of 2007--- to date very little activity has taken place commensurate with the company's obligations under RCRA.

In September 2007 after the Consent Orders compelling Dow to cleanup hotspots in the river and EPA's issuance of a 44 page document critical of Dow Chemical, Dow sought out a meeting at EPA headquarters with Administrator Johnson. Midland's Congressman, Dave Camp asked for a conversation with Region V EPA. Dow stated publicly they would not answer to two masters: It was either EPA or MDEQ but not both.

September 2007 Region V also pulled out of NRDA process at this time because Dow Chemical was secreting information away under a dispute resolution process. The information was public according to Region V. The RA also demanded soil sampling from the City of Midland—much of this public information (RCRA) was secreted away with a private law firm not subject to FOIA.

October 2007 RA Gade, Region V EPA, ordered Dow Chemical into negotiations. MDEQ administration told Lone Tree Council, Dow Chemical has sent their lobbyists to the Governor's office (again). The company wants EPA to take over the cleanup.

In December 2007 Region V extended negotiations with Dow until January 2008 at which time RA Gade terminated those negotiations for failure on Dow's part to address negotiations and public health issues in good faith. In December EPA HQ revoked RA Gades' authority to impose further consent orders on Dow Chemical.

January 2008 Dow pressured EPA HQ's. On retainer for Dow is Steven Herman former head of EPA office of Enforcement and Tom Skinner former EPA interim Regional Administrator at Region V. Dow published two full-page color ads in the Tri-Cities' three daily newspapers feigning ignorance as to why RA Gade terminated negotiations. Dow stated in those full page ads that the best way to proceed was to deal exclusively with EPA using a series of Administrative Orders on Consent to resolve the dioxin issue.

February 8, 2008 Dow complained to MDEQ Director Chester that the "bifurcation" of duties between MDEQ RCRA authority and Regions V's imposing consent orders was confusing and not productive. The company wanted only one master. Dow met with EPA HQ's in late February. RA Mary Gade and MDEQ Director Steve Chester attended this meeting. Dow was told MDEQ would maintain their RCRA authority with oversight and support from Region V.

February 2008 EPA Region V supported MDEQ's rewrite of Dow's very deficient work plans for the Saginaw River. RA Gade was increasingly a problem for Dow Chemical.

March 2008 Director Chester and Region V Administrator Gade sent a letter to Dow stating RCRA was the lead corrective action process and that their collaborative efforts would lead to a "**final remedy**," one which is "**more likely to be final and durable**" as a result of the coordination between state and federal programs. On the public relations front Dow had local chambers of commerce and units of government sending letters to EPA asking for the agency to take over. Dow lobbied Michigan's Governor too.

April 2008 MDEQ's Director as, well as EPA sources, confirmed that Dow continued to pursue EPA HQ's. In an April 23rd 2008 letter to Dow Chemical, Region V admonished the company for once again pursuing EPA HQ's without the involvement of Region V. In a memo from RA Gade to EPA HQ's Granta Nakayama (Office of Enforcement), the RA voiced her strong objections to HQ's entertaining Dow at an upcoming meeting.

May 1 2008 Mary Gade was terminated. The same week Director Steve Chester was taken off the Dow issue by Governor Granholm and replaced by Policy Advisor, Frank Ruswick. RA Gade stated she spent much of her time running interference with EPA HQ and Dow during the last months of her tenure. In an interview with *The Chicago Tribune* Gade stated her termination was a result of the enforcement actions against Dow Chemical. Of course, EPA HQ had no comment.

May 13 2008 Governor Granholm sent a letter to EPA Administrator, Steven Johnson, asking for his assistance because she felt they are at a point in the process where they can begin conversations about next steps leading to a cleanup. This is a bizarre position given: 1. Little sampling on the Saginaw River had taken place; 2. Dow filed suit against the state for requiring testing in the Saginaw Bay; 3. Dow had numerous deficient work plans outstanding; and 4. Dow resisted response activities to protect impacted residents from dioxin. It would be revealed in August meetings that the Governor was concerned about her legacy.

July 2008 Lyn Buhl from EPA HQ's office of enforcement (Nakayama's office) appointed RA at Region V.

August 2008 MDEQ Policy Advisor Frank Ruswick informed Lone Tree Council that the Governor had assigned him the task of finding a new direction forward on the cleanup. He stated that the Governor wanted this issue behind her when she left in 2010. Mr. Ruswick stated that there are "political realities." He also agreed that Dow did not want to deal with the Saginaw River and Bay and that indeed it is a sticking point.

September 2008 Lone Tree Council and Ecology Center met with Governor Granholm's Policy Advisor Kelly Keenan. Mr Keenan stated that neither he nor the Governor were familiar with the Dow's obligations under RCRA but a new path forward could be justified by 2010 to avoid a Republican Governor (Michigan has never seated a democratic Governor three terms running) being seated who would expect nothing from Dow.

October 2008 EPA Region V staff, including newly appointed RA Lyn Buhl, came to Lansing to propose the SAS process to the environmental community and to MDEQ (which frankly already bought it)

November 2008 At the quarterly Dioxin Meeting in Saginaw, MDEQ and EPA announced and defended the SAS process with little or no detail. The agencies could not or would not state the genesis of this new SAS process. (See January 8, 2009 below for the answer)

December 15 2008 With a perfectly viable RCRA corrective action in place EPA Region V issued Special Notice to Dow Chemical to begin negotiations under the SAS behind closed doors.

December 19 2008 Residents and environmental groups sent a letter to Administrator Johnson objecting to the SAS process and its closed-door policy.

December 31, 2008 The public was notified by the EPA that the quarterly public meetings had been suspended (no input from the public) and a meeting would take place on January 15th to discuss the SAS process.

JANUARY 8 2009 A Freedom of Information Act (FOIA) obtained by CREW in Washington DC showed an e-mail marked *confidential* by Dow Chemical with attached letter, dated **March 4, 2008** to EPA HQ's asking that the company and EPA pursue a process other than RCRA for the company's contamination of Michigan largest watershed. RA Gade was not copied on this letter. Needless to say, Administrator Johnson agreed to Dow's request. Hence Dow got its SAS process and the right to negotiate one of the nation's worst contaminations out of view of the public and the media.

It is the contention of Lone Tree Council that in order to do this, Mary Gade needed to be terminated. The ramifications for Michigan's largest watershed are enormous. In a *Chicago Tribune* article dated **January 1 2009**, on the capitulation to Dow Chemical, terminated RA Gade stated:

" In my experience, Dow only enters into negotiations if they can cut a better deal for themselves, not the environment,"

January 10, 2009- Michelle Hurd Riddick, Lone Tree Council, created this document. To the best of my knowledge this timeline and the scenario are correct. The information stated was either from documents in my possession or in conversations with the persons from where the information originated.

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