"Kepler II, David (DE)" <dekepler@dow.com>
Sent by: "Szymanski, Dawn (M)" <DSzymanski@dow.com>

03/04/2008 11:42 AM

To Susan Bodine/DC/USEPA/US@EPA

cc Granta Nakayama/DC/USEPA/US@EPA, "Wright, Peter (PC)" <PCWright@dow.com>

bcc

Subject FW: Dow Chemical Follow Up to February 26th Meeting

History: This message has been forwarded.

Please use the attached PDF version instead.

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From: Szymanski, Dawn (M) **On Behalf Of** Kepler II, David (DE)
Sent: Tuesday, March 04, 2008 11:20 AM
To: bodine.susan@epa.gov
Cc: nakayama.granta@epa.gov; Wright, Peter (PC)
Subject: Dow Chemical Follow Up to February 26th Meeting
Sensitivity: Confidential

Susan,

Attached is a letter in follow up to our meeting on February 26th. The original will be sent via standard mail today.

<< File: 20080304 Susan Bodine EPA Letter.doc >>

Regards,

Dave

David Kepler
Executive Vice President
Chief Sustainability Officer
Chief Information Officer
Shared Services
The Dow Chemical Company

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March 4, 2008

The Dow Chemical Company
Midland, Michigan 48674
USA

Ms. Susan P. Bodine
Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
Mail Code 5101T
Ariel Rios Building
1200 Pennsylvania Avenue NW
Washington, DC 20004

Dear Ms. Bodine:

Thank you and Assistant Administrator Nakayama and your staffs for meeting with my team and me last week.

In all candor, it was not the session we expected based upon our meeting request. Further, we found the meeting dynamics troubling and reflective of recent negotiations with Region 5.

As you know, we disagree with the EPA's decision to rely on the State RCRA program as the best way to proceed with the clean-up of the large and complex sediment site. Given the size and complexity of the site and its national significance, it would be most efficient and effective to have the Tittabawassee and Saginaw Rivers and Saginaw Bay proceed under the CERCLA program. The Rivers and the Bay would receive the benefit of national program management, expertise and guidance, and the State program could focus its more limited resources on addressing issues in the City of Midland and on the Dow plant site. Nevertheless, we are determined to do our part to ensure the process works.

Dow's goal remains a sustainable resolution of matters related to releases from historic operations of Dow's Midland, Michigan operations. Dow and MDEQ negotiated a "Framework for an Agreement" in January 2005 which was signed by Steve Chester for MDEQ and supported verbally and in writing by the management of Region 5. It anticipated an integrated, collaborative approach to "ensuring that ecological and human risk reduction and restoration projects can be implemented that provide environmental protection and meaningful local environmental and public benefits, including enhancement of ongoing regional economic development and ... a structure for Dow to resolve with finality potential government claims arising from various historical releases." We remain committed to operate within the Framework for Agreement.

One direct outgrowth of the Framework was to establish the ADR process with the regulatory agencies, the natural resource trustees and the federal government in its role as a potential responsible party. By bringing all of the government stakeholders together, the ADR integrates differing requirements and interests of the governmental parties and assembles representatives of the parties with a wide range of experience and expertise to address the issues presented by a complex sediment site and to examine innovative solutions. Notwithstanding Ms. Gade's opinion, because of the ADR process, progress has been made ahead of the pace that is imposed by the regulatory structure implemented by MDEQ and overseen by Region 5. The most notable example is the study evaluating the feasibility of using turning basins on the upper Saginaw River as sediment traps. This feasibility study work may be of interest to Headquarters representatives. We hope that at some point in the future, EPA will rejoin the ADR.

At our meeting, you made a point of recognizing that this site is one of national significance, and that EPA Headquarters wanted to be kept informed of and be involved in decisions affecting the cleanup of the site. We think this is very important. EPA has an interest in ensuring national consistency in the implementation of its policies, and Dow has an interest and right not to be treated differently than others in similar circumstances.

To that end, I would like to respond to your question about the work we anticipate during 2008. Dow has already scheduled a meeting with MDEQ for March 11 at MDEQ's offices in Lansing to review the considerable amount of data from 2007. We expect soon thereafter to have another meeting with MDEQ to present our outline for work to be conducted in 2008, based on sampling results to date and any feedback MDEQ will share with us based on their review of the data. Over the last two years, MDEQ has not approved aspects of the Remedial Investigation Work Plans (RIWP) beyond soil and sediment sampling. As we discussed, MDEQ's unilateral modification to the Scope of Work for the Saginaw River and Bay is being appealed. Further, Ms. Gade implied she had an agenda for 2008, notwithstanding the claim that the State RCRA program has the lead. Ms. Gade did not elaborate with any details either as to the timing or content of her agenda or whether it will be coordinated with the State. Given these uncertainties, we are moving as fast as the state process will allow us.

We can provide copies of all the reports, as well as a briefing on all of the data collected over the last few years to whomever at national program office you will have engaged in this matter. We encourage those representatives to attend the meeting with the State on March 11 and the follow-up meeting to discuss the 2008 work.

We encourage the Headquarters sediment team representatives to meet with the principal investigators for the Michigan State University ecological studies and the University of Michigan Dioxin Exposure Study. This work, funded by unrestricted grants to the universities, has provided invaluable site specific data about the impact of the environmental conditions on the local animal and human populations.

Given the acrimony that has sometimes characterized the relationships between the MDEQ, Region 5 and Dow; we think the involvement of Headquarters could play a role in getting matters back on a constructive track. We are willing to help Headquarters remain informed and engaged in this matter.

Sincerely,

David E. Kepler
Executive Vice President
Chief Sustainability Officer
Chief Information Officer
Corporate Director of Shared Services

cc: Mr. Granta Nakayama, Assistant Administrator, Office of Enforcement and Compliance Assurance, 1200 Pennsylvania Avenue NW, Room 3204 ARS MC 2201A, Washington, DC 20460

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