



STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



JENNIFER M. GRANHOLM
GOVERNOR

STEVEN E. CHESTER
DIRECTOR

March 3, 2008

VIA E-MAIL and U.S. MAIL

Mr. Greg Cochran, Director
Michigan Dioxin Initiative
Michigan Operations
The Dow Chemical Company
1790 Building, Washington Street
Midland, Michigan 48674

Dear Mr. Cochran:

This letter is in response to your letter of February 8, 2008, in which you express concerns about the working relationship between the Michigan Department of Environmental Quality (MDEQ) and the U.S. Environmental Protection Agency, Region 5 (U.S. EPA), as The Dow Chemical Company, Midland, Michigan (Dow), the MDEQ, and the U.S. EPA work to resolve one of the most intractable environmental issues in the state of Michigan: Dow's hazardous constituent contamination of the Saginaw Bay watershed. In particular, you express concern with the manner in which the MDEQ and U.S. EPA are managing regulatory oversight of the project by requiring Dow to perform off-site remedial investigation activities under Dow's hazardous waste management facility operating license (License) issued pursuant to Part 111, Hazardous Waste Management, of Michigan's Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, with oversight and assistance of the U.S. EPA as appropriate. You suggest that this process is not efficient or effective and will not lead to final remedy.

We could not disagree more with your characterization. The process is, and has been, effective and will lead to a final remedy; and any inefficiencies are within Dow's control. In fact, for the first time in many years, significant progress toward a final remedy is being made by Dow, and this progress is due predominantly to the coordination between the state and federal programs. Also, as a practical and legal matter, a remedy that is reached cooperatively among the state and federal governments and Dow is much more likely to be final and durable. The reality is that in complex and significant remedial actions it is common for both the state and federal governments to be involved, as in this case with the state in the lead subject to federal oversight.

It should be noted that the process to which Dow so strongly objects has led to the first significant remedial investigation activities by Dow since the contamination was discovered by the MDEQ and U.S. EPA. Over 8,000 dioxin and furan samples from the upper 17 miles of the Tittabawassee River investigation area have been collected by Dow over the last 2 years, significantly increasing public and regulatory agency understanding of the distribution of contamination in the river and on the floodplains. Also, in the last year, the U.S. EPA's Superfund removal authority was successfully used to require and assist Dow to conduct four significant removal actions at areas where extremely high levels of contamination were identified. While these removal actions could have been completed as interim response

activities under the License, the use of the U.S. EPA's Superfund removal action authority significantly streamlined the process because it was not necessary to obtain environmental permits to conduct these time-sensitive response activities. Still, these removal processes were enabled by close collaboration between U.S. EPA Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) staff and MDEQ Resource Conservation and Recovery Act of 1976 (RCRA) project managers.

With regard to the termination of the CERCLA negotiations between Dow, the MDEQ, and the U.S. EPA, it should be noted that the U.S. EPA only terminated negotiations after it became apparent that the negotiations would not result in a more efficient and effective cleanup that was protective of human health and the environment.

With regard to the MDEQ's February 1, 2008, decision to approve Dow's Scope of Work (SOW) for the characterization of the Saginaw River and Bay, with modifications (Approval), the U.S. EPA fully supports this decision as was expressed in the enclosed February 15, 2008, letter from the U.S. EPA to the MDEQ. As explained by the MDEQ in its Approval, the state was compelled to approve the SOW with modifications in order to prevent further delays in the cleanup process. Based upon past experience with Dow, the MDEQ concluded that substantial delay would have likely resulted from an additional iterative process of subsequent review and comment on the SOW. Without a timely resolution of the outstanding issues, Dow's submission to the MDEQ of a remedial investigation work plan (RIWP) for the Saginaw River and Bay would have been delayed. Also, it should be noted that the MDEQ issued the Approval only after Dow failed to incorporate comments from the MDEQ into a prior draft of the SOW. By taking the action it did, the MDEQ's goal was to speed the cleanup process and, thus, to properly protect human health and the environment. Dow can, if it is truly interested in a comprehensive and efficient resolution of this matter, partner with the MDEQ and U.S. EPA by accepting and implementing the SOW, as approved with modifications by the MDEQ, and by timely submitting an approvable RIWP for the Saginaw River and Bay. Continuing legal challenge by Dow to the MDEQ's Approval will only serve to unnecessarily delay a timely cleanup of the Saginaw Bay watershed.

While the MDEQ and U.S. EPA may not have always agreed on every aspect of a solution to resolve this matter, the MDEQ and U.S. EPA remain committed to a comprehensive cleanup of the Saginaw Bay watershed for all of the citizens of Michigan that will protect human health and the environment and are in complete agreement that it will take the combined resources of the MDEQ, the U.S. EPA, and Dow to resolve this complex environmental issue.

Sincerely,



Mary A. Gade
Regional Administrator
U.S. Environmental Protection Agency



Steven E. Chester
Director
Michigan Department of Environmental Quality

Enclosure

cc/enc: Mr. David Dupre, Vice President, Dow
Mr. Peter Wright, Dow
Mr. Stanley F. Pruss, Governor's Office
Mr. Bharat Mathur, U.S. EPA
Ms. Margaret Guerriero, U.S. EPA
Mr. Richard Karl, U.S. EPA
Mr. Robert Kaplan, U.S. EPA
Mr. Ralph Dollhopf, U.S. EPA
Mr. Greg Rudloff, U.S. EPA
Mr. John Steketee, U.S. EPA
Mr. Robert Reichel, Michigan Department of Attorney General
Mr. Jim Sygo, Deputy Director, MDEQ
Ms. JoAnn Merrick, Chief of Staff, MDEQ
Mr. Frank Ruswick, Senior Policy Advisor, MDEQ
Mr. George Bruchmann, MDEQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 15 2008

REPLY TO THE ATTENTION OF:

L-8J

George Bruchmann, Chief
Waste and Hazardous Materials Division
Michigan Department of Environmental Quality
P.O. Box 30241
Lansing, Michigan 48909

Re: *MDEQ Approval with Modifications; Remedial Investigation Scope of Work for the Saginaw River, Floodplain and Saginaw Bay, Lake Huron; The Dow Chemical Company, Michigan Operations; MID 000 724 724*

Dear Mr. Bruchmann:

The United States Environmental Protection Agency, Region 5 (U.S. EPA or the Agency) concurs with the Michigan Department of Environmental Quality's (MDEQ) February 1, 2008 approval with modifications of the Dow Chemical Company's (Dow) Scope of Work (SOW) for the Saginaw River, Floodplain and Saginaw Bay. U.S. EPA agrees with MDEQ that the approval of the SOW with modifications will avoid delay in the preparation of the Remedial Investigation Work Plan (RIWP) for the Saginaw River, Floodplain and Saginaw Bay and will allow Dow and the MDEQ to focus valuable resources on the development of an approvable RIWP.

U.S. EPA strongly supports the inclusion of the Interim Response Activities/Pilot Corrective Action Plan Decision Tree for the Saginaw River, Floodplain and Saginaw Bay in the approved SOW. U.S. EPA concurs with MDEQ's requirement that Dow take interim response actions to reduce the movement of high concentrations of dioxins and furans through the Saginaw River and into the Saginaw Bay of Lake Huron. These modifications are wholly consistent with the terms of Dow's 2003 RCRA Hazardous Waste Operating License and the requirements of the State of Michigan's Federally Authorized RCRA corrective action program.

U.S. EPA believes MDEQ's approval with modifications of Dow's SOW is legally required to protect human health and the environment in the Saginaw Bay watershed. U.S. EPA considers MDEQ to be a valuable partner in protecting the environment and the Agency will continue to work closely with the State of Michigan in addressing the off-site contamination from the Dow's facility in Midland, Michigan.

Waste & Hazardous
Materials Division

FEB 19 2008

Please contact me at (312) 886-7435 or Mr. Greg Rudloff of my staff at (312) 886-0455 if you have any questions concerning this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Margaret M. Guerriero', with a long horizontal flourish extending to the right.

Margaret M. Guerriero, Director
Land and Chemicals Division

cc: Jim Sygo, MDEQ
Frank Ruswick, MDEQ