



Superfund Process and Negotiations at the Dow Site

Tittabawassee River, Saginaw River & Bay Contamination Site
Midland/Saginaw/Bay City Region, Michigan June 2009

For more information

You can view documents related to the Tittabawassee River, Saginaw River & Bay Contamination Site in information repositories set up by EPA and MDEQ. The repositories are located in the Grace A. Dow Memorial Library, 1710 W. St. Andrews St., Midland; the Hoyt Main Library, 505 Janes Ave., Saginaw; and the Alice and Jack Wirt Public Library, 500 Center Ave., Bay City.

Information office

On June 23, EPA will open a community information office in the Saginaw County Courthouse, 111 S. Michigan Ave., Saginaw. Initial hours will be Tuesday through Thursday, 8 a.m. to 5 p.m. (closed from noon to 1 p.m.). Check the Web site for more information.

Go on the Web

EPA dioxin investigation:
<http://www.epa.gov/region5/sites/dowchemical>

MDEQ dioxin information:
<http://www.michigan.gov/deqdioxin>

Sign up for the listserv

If you'd like to be emailed site updates, send a blank message to: dow_dioxin-subscribe@lists.epa.gov

Contacts

These EPA community involvement coordinators can answer questions:

Patricia Krause
312-886-9506
krause.patricia@epa.gov

Don de Blasio
312-886-4360
deblasio.don@epa.gov

Region 5 toll free:
800-621-8431, 9:30 a.m. – 5:30 p.m., weekdays

At MDEQ contact:

Cheryl Howe
517-373-9881
howec@michigan.gov

EPA follows an established step-by-step process to determine the best way to clean up a Superfund site and protect human health and the environment. EPA prefers that those individuals and/or companies considered responsible for the contamination (potentially responsible parties, or PRPs) clean up a Superfund site. EPA ensures this by negotiating binding, enforceable settlement agreements with PRPs. If no agreement is reached, EPA can either issue an order compelling the PRPs to perform the work or EPA can pay for the work and recover the costs later. MDEQ and EPA are working collaboratively together as partners to ensure that all contamination is addressed. MDEQ has been participating and will continue to participate in these negotiations.

Currently, EPA and MDEQ are negotiating with Dow to conduct the following work:

Remedial Investigation and Feasibility Study (RI/FS)

The RI/FS phase of the process determines the nature and extent of contamination at the site, develops cleanup options — such as dredging, capping, etc. — for addressing the contamination, and evaluates and compares the performance and costs of the various cleanup options. As an RI/FS is under way, EPA may identify serious immediate threats to the environment or to the people who live or work around a site based on the data being gathered. EPA would then consider whether a removal action should be conducted as an early cleanup at the site.

Based on cleanup options developed in the feasibility study phase, EPA will develop a “proposed plan” for cleaning up the site. The proposed plan discusses all the options developed and presents EPA's preferred approach. EPA will issue a public notice and hold a public hearing so interested members of the community can comment on the plan. After considering all comments, EPA then releases a “record of decision” which explains which cleanup alternatives will be used at a site and responds to public comments received.

Remedial Design (RD)

The RD phase of the process includes preparing for the cleanup at the site. It is during this phase that the engineering plans are developed for implementing the cleanup option EPA selected in the ROD.

At this site, EPA and MDEQ prefer that Dow do the work of investigating contamination building upon the investigatory work that Dow has already conducted under RCRA authorities (RI), developing clean up options (FS) and designing selected remedies (RD) in the Tittabawassee River, Saginaw River and Saginaw Bay.

EPA is negotiating an “administrative order on consent” or AOC with Dow that outlines the work that is to be done. An AOC is a legal document that would formalize an agreement between EPA and Dow to conduct the work at the site. The initial AOC provided to Dow is based on model settlement agreements and will be modified to fit the circumstances at the site. Even though EPA may agree to modify the settlement agreement initially provided to Dow, EPA will not sign any final agreement that is not in the public interest or is inconsistent with the Superfund or RCRA process and law. EPA and MDEQ will hold a public meeting to discuss the details of any proposed order while it is in draft form. Any such draft order will be subject to formal public review and comment.

So what topics are under discussion between EPA and Dow at this site?

The following is a list of topics under discussion as well as those topics that are not being discussed.

Topics That Are Not Being Negotiated in This Order (but will be considered later in an open and transparent public process)

- Cleanup options, including sediment disposal locations, cleanup technologies such as dredging, capping, etc. and relocation
- Cleanup levels

Topics That Are Non-Negotiable (part of EPA's "bottom line")

- The geographic extent of site (Dow will investigate wherever contamination has come to be located)
- The scope of the work (the AOC must cover remedial investigation, feasibility studies and remedial design)
- Public comment on the AOC prior to signature by the Agencies
- EPA's right to list the site on the NPL
- Evaluating contamination on high-use properties along the rivers
- Evaluating the movement of highly contaminated sediments
- A CERCLA order would not terminate RCRA corrective action obligations

Topics That Are Being Negotiated

The following is a list of the more significant topics that are the subject of Superfund negotiations. Other, more minor, topics may also be discussed. To list every single topic would lead to too long a list.

General Provisions

- How to integrate existing data into Dow's characterization work under the order
- The schedule for Dow's investigation work and reports under the order
- How to organize the rivers and bay into manageable components for conducting work
- How to define the appropriate types of investigations to be completed for Saginaw River and Saginaw Bay
- How to integrate the current RCRA "contaminants of interest" list into future Superfund investigatory work
- The "technical assistance plan" (provides funding to representative of the community to hire technical advisors)
- The coordination between EPA and MDEQ under the order
- How to foster consistency in meeting RCRA license and CERCLA obligations
- Natural Resource Trustees' role under the order

Monetary Provisions

- How and when Dow will reimburse EPA for cleanup costs to date

Legal Provisions

- EPA's authority to issue the order
- How to resolve disputes under the order

Enforcement

- When EPA can take over work if Dow does not perform adequately
- The amount of stipulated penalties if Dow violates the order
- Dow must ensure that adequate funds to complete the work under the order