

To: Saginaw County Board of Commissioners

From: Michelle Hurd Riddick  
Lone Tree Council

Re: Resolution B

April 1, 2008

Dear Saginaw County Commissioners,

Attached please find two documents for your edification on the Dow Chemical/dioxin issue as it relates to regulatory authority.

This cleanup is regulated under the Resource Conservation and Recovery Act, a federal program of the EPA. EPA granted authority to MDEQ to oversee Dow's corrective action obligations under RCRA for the company's dioxin contamination in the Saginaw Bay Watershed. MDEQ negotiated the terms of the RCRA corrective action over several years with Dow, culminating in the two entities signing the document in June of 2003, DEQ Director Chester, on behalf of the state and Susan Carrington on Dow Chemical's behalf. Because RCRA is a federal program EPA has **always had** and **continues** to have oversight.

Make no mistake--- there is no ambiguity about how cleanup should proceed. Part 111 of the Michigan Environmental Protection Act is clear in Dow's license. There is no ambiguity as to what is required for investigation, public health protection, interim or final response. This corrective action license is a legal binding contract between Dow Chemical and the people of Michigan. Not only does it state how activities will be conducted, it states they will be conducted in an open public process, perhaps the one item Dow dislikes the most. That the Board of Commissioners would support with a resolution Dow Chemical's desire for closed-door negotiations and the company's efforts to abandon a legal binding contract because they no longer want to play by the rules is beyond the pale. Again, there is no ambiguity in Dow's RCRA responsibility. Any delay in resolving the dioxin "situation" is the direct result of the company's efforts to skirt the responsibility of their corrective action license by creating needless delays and interjecting specious arguments and groundless debate into the process.

Your passage of Resolution B calling on EPA to resume lead negotiations with Dow sends three clear messages to the people of Saginaw County:

1. Dow does not need to play by the rules or the laws of the land
2. It's OK for negotiations to take place behind closed doors over this **public** resource
3. Dow does not have to honor their contract signed in June 2003

EPA ordered Dow into negotiations under CERCLA last fall and ended them in January after a thirty-day extension. These negotiations were private, the discussions known only to the respective parties. EPA stated that they were disappointed but that Dow failed to deliver on substantive issues like public health protection, a pretty important detail. This was the third time in six years Dow has negotiated privately with regulators— creating delays, derailing timelines and always, always to no avail. That nothing substantive came from recent negotiations should surprise no one. Lone Tree Council objected to all of these closed-door negotiations and we will continue to do so.

I would submit that your job as elected officials is to support the laws of this state and to reject any negotiations that do not guarantee transparency. As elected officials you have the responsibility to ensure the business of the people is transparent and that the people who own these resources are assured a voice and a place at the table. Given the geographic size of the contamination and the unprecedented concentrations of dioxin in this county, one would think the Board of Commissioners would want to be fully apprised of how public health measures and response activities are being negotiated. Closed-door negotiations leave you, the elected representatives and your local health department out of the information loop. Your support for Resolution B essentially denies the elected representatives of this county access to information.

Many of your districts border these rivers. The impacted residents living and raising their families on contaminated property and the disproportionate number of minorities consuming the most highly contaminated fish from these waters are the **most** legitimate stakeholders. Who is their voice in a closed-door negotiation? We all own these natural resources and we are all stakeholders. No one should be in the dark on this very important issue. Every citizen is entitled to information so they can participate as equals in the one of the worst contaminations in this state's history. This isn't just about Dow and a quick resolution. This is about public health, property, restoration and the quality of Lake Huron. It's about how this county chooses to conduct the people's business.

I did contact MDEQ and EPA and was informed that to the best of their knowledge no one from the Saginaw County Board of Commissioners had contacted them for input on Dow activities, the regulatory process or their perspective on how activities are progressing. Your support for Resolution B without gathering the facts or deliberating is bothersome at best.

Contrary to the language put forth in Resolution B, MDEQ is moving this process along and EPA is actively involved. Consistent with past practice Dow is the only obstacle to progress. Perhaps you would find the courage to call into question all the delays created by Dow Chemical. MDEQ with EPA's support has issued dozens of Notices of Deficiencies to this recalcitrant company over the past five years; the first one being in December of 2003 and the most recent this past December. I would be most happy to compile the list for you.

As for the timely and final resolution being called for in Resolution B, it has always been within Dow's power to bring this cleanup to fruition. In 2003 when Dow and DEQ signed the RCRA corrective action license Dow proclaimed it was the path forward. Again in 2005 after 8 months behind closed doors the public was told the resulting FRAMEWORK AGREEMENT was the "path forward" to resolve this issue. In 2007 upon entering negotiations with EPA, the public was once again told about Dow's desire to settle this issue and move forward. Again they dropped the ball. Now in 2008 Dow is shopping around to create more delays and tossing aside their legal and binding obligations under RCRA. Is it the position of the board that Dow does not have to honor their contract?

This February, Dow visited EPA headquarters in an effort to re-enter negotiations with Region V. EPA headquarters told Dow they were confident in the State of Michigan retaining the lead on this corrective action with back up from Region V when things began to bog down. It worked very well last year on Reach D, JK, O and Wickes Park. The sampling required by MDEQ under RCRA authority and the authority of EPA under CERCLA accelerated cleanup on these various reaches.

As stated in the attached letter from MDEQ and EPA more work was accomplished last year with the two agencies working together than in the previous 30 years. Perhaps it would be advantageous to

invite both agencies in for a committee of the whole meeting where you could ask their opinion, face to face and really find out what's going on.

Resolution B states:

**NOW, THEREFORE, BE IT RESOLVED,** *That it is of great importance to the future of Saginaw County and this region to determine an agreed upon single path forward that will result in a protective, timely and final resolution of the dioxin and furan situation in Saginaw County and surrounding communities....*

However, upholding the democratic process is more important than an expedited clean-up. Dow's RCRA corrective action license is the agreed upon, single path forward to a timely and final resolution to this issue. Commissioner Wurtzel admonished the board to "get some guts" but we are long past the need for ambiguous resolutions and hyperbole. The board's vote to support closing the door on transparency was anything but gutsy.

I hope in the future you will attend the quarterly meetings of the DEQ where all the stakeholders are gathered and engage Dow, the agencies and your community. Dioxin "situation" is a tepid and comfortable description coined early on by Dow. In reality, this "situation" is one of the largest geographic contaminations in the country. The highest levels of dioxin in the nation are in our waters. Every man, woman and child who hunts in or live on these contaminated floodplains, recreates, swims or fishes in these rivers or Bay deserves to be acknowledged as a stakeholder in seeking resolution to this contamination. Those who subsist on these fish deserve a voice too.

To Commissioners Woods, Fox and Ruth we thank you for your support for an open process and your support for the right of the people to know what's going on in their communities.

Sincerely,

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Attached e-mail includes:

1. Dow Chemical letter to MDEQ
2. Joint response to Dow Chemical from MDEQ and EPA Region V

