

APPENDIX E

Condition XI.B. of the June 13, 2003 license for The Dow Chemical Company, MID 000 724 724, is modified to include Condition 10 as follows:

10. The licensee, the MDEQ and the U.S. EPA are parties to an Administrative Settlement Agreement and Order on Consent for Remedial Investigation, Feasibility Study and/or Engineering Evaluation and Cost Analysis, and Response Design, CERCLA Docket No. [insert] effective [insert date] (AOC). Among other things, the AOC requires the licensee to conduct a Remedial Investigation and Feasibility Study (RI/FS) pursuant to the requirements of CERCLA for areas defined as the "Site" under the AOC (AOC Site).
 - (a) As they pertain to the AOC Site, the license corrective action obligations set forth in Attachment 31 to this license (Attachment 31 is also Appendix H to the AOC) are held in abeyance and may be satisfied by compliance with the AOC as provided by Condition 10(d) of this license, below.
 - (b) "Site" shall mean the area located in and along the Tittabawassee River and its floodplains, beginning at and including Reach A, starting upstream of the Midland Plant, and extending downstream to, and including, the Saginaw River and its floodplains, and Saginaw Bay, and any other areas in or proximate to the Tittabawassee River and its floodplains, the Saginaw River and its floodplains, and Saginaw Bay, where hazardous substances, pollutants, or contaminants from the Midland Plant have or may have come to be located, all depicted generally on the map attached as Appendix C to the AOC. Areas that are not part of the Site include but are not limited to the city of Midland, Michigan, generally, and the Midland Plant. Limited areas of the Tittabawassee River floodplain are located within the city limits of the city of Midland and are part of the Site as depicted in Appendix C to the AOC. The Midland Plant is depicted in Appendix D to the AOC.
 - (c) "Saginaw Bay" means the area encompassed by an imaginary line drawn between Au Sable Point and Point Aux Barques as depicted in Appendix G of the AOC. Saginaw Bay is operationally considered to have an inner and outer Bay. The inner Bay consists of the area encompassed by an imaginary line drawn between Au Gres and Fish Point, also depicted in Appendix G of the AOC.
 - (d) The MDEQ will review the plans, reports, and other items submitted or determinations made under the AOC. Each plan, report, or other item or determination, once approved or made by the U.S. EPA, after opportunity for review and comment by the MDEQ, will be considered to be consistent with, and to satisfy, the corresponding obligation of the licensee as set forth in Attachment 31 to this license and Appendix H of the AOC unless within no more than 10 business days after the U.S. EPA approval of a plan, report, or other item or U.S. EPA determination, the MDEQ invokes the dispute resolution process set forth in Section XVII of the AOC with respect to that approval or determination.

(e) If after the dispute resolution process in Section XVII of the AOC is completed, and the MDEQ has determined, consistent with the standards set forth in paragraph 69 of the AOC, that the licensee must undertake additional response activities/corrective actions to fulfill the requirement under this license that was the subject of the dispute resolution process, then the MDEQ will provide the licensee with a written notice directing the licensee to conduct such work as necessary to meet the substantive corrective action requirements of Part 111 and this license. The notice will include a description of the corrective action that is necessary, identify the provision of this license that requires the corrective action, and provide a reasonable time schedule for undertaking the corrective action. The notice will also set forth the reasons why:

(i) Such work is necessary to meet the substantive corrective action requirements of this license; and

(ii) Compliance with such substantive corrective action requirements under this license will not be achieved by the implementation of the Work taken or to be taken by licensee pursuant to the AOC.

The licensee shall promptly comply with the required corrective action on the identified schedule, subject to all of licensee's rights under this license and applicable law, including any rights the licensee may have to seek judicial review of the MDEQ's decision under Section 600.631 of the Michigan Compiled Laws or any other applicable provision of law.

- (f) The MDEQ's February 1, 2008, approval with modification of the Remedial Investigation Scope of Work for the Saginaw River and Bay and Floodplain is withdrawn.
- (g) The obligations listed in Attachment 32 to this license (Attachment 32 is also Exhibit B to the Statement of Work and the Statement of Work is Appendix A to the AOC) will be removed as current obligations under this license according to the schedule set forth in Attachment 32, and the work will be undertaken in accordance with the AOC.
- (h) Condition XI.S. of this license does not apply to the AOC Site.

Part XI of the June 13, 2003 license for The Dow Chemical Company, MID 000 724 724, is modified to include Condition T as follows:

T. Except as specifically provided in the AOC, for the area included in the AOC Site, the MDEQ reserves all of its rights to:

1. Require additional remedial investigation and feasibility study activities pursuant to the procedures set forth in Sections XI and XVII of the AOC and Condition XI.B.10 (a) – (h) of this license;

2. Require IRAs pursuant to the procedures set forth in Section XI, paragraph 29(e) and Section XVII of the AOC;
3. Require corrective action for currently unknown releases or potential future releases to the AOC Site from areas outside of the AOC Site that may require actions to be taken in the area defined as the AOC Site as provided in AOC Section XI, paragraph 46;
4. Require submission and implementation of a RAP for the AOC Site;
5. Undertake corrective action or response activities and seek cost recovery from the licensee or any other person; and
6. Take enforcement action against the licensee or any other person with respect to any release of contaminants or hazardous substances into the environment.