



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

SR-6J

December 15, 2008

**URGENT LEGAL MATTER -
PROMPT REPLY NECESSARY**

VIA FEDERAL EXPRESS

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

Re: Special Notice Letter for The Dow Chemical Company, Midland, Michigan
Tittabawassee River Dioxin Spill Site

Dear Mr. Cochran:

The United States Environmental Protection Agency ("U.S. EPA") has undertaken response actions at the above referenced Site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*, as amended ("CERCLA"). These response actions include, but are not limited to, oversight of removal actions conducted by the Dow Chemical Company ("Dow") at Reaches D, JK, and O, and at Exposure Unit 001 (located along Riverside Boulevard) in, and along, the Tittabawassee River in Midland County, Michigan, and in the Saginaw River adjacent to Wickes Park in the City of Saginaw, Michigan, under the authority of Sections 104, 106(a), 107, and 122 of CERCLA, as agreed to in the Administrative Settlement Agreements and Orders on Consent, entered in U.S. EPA Docket Nos. V-W-07-C-874, V-W-07-C-875, V-W-07-C-876, V-W-08-906, and V-W-08-C-886. Other activities include review of existing documents, data, and sampling and analyses results. U.S. EPA has documented the release or threatened release of hazardous substances, pollutants, and contaminants at or from the Site. U.S. EPA believes the following response activities are necessary at the Site: 1) evaluation of current Site conditions and assessments of response options; 2) remedial investigation(s) ("RI") to determine the nature and extent of the contamination at the Site; 3) feasibility study(ies) to determine and evaluate alternatives for remedial action at the Site ("FS") and/or engineering evaluation and cost analysis to support

selection of non-time critical removal action(s) (“EE/CA”); and 4) Response Design(s) (“RD”) of all remedial action work selected by U.S. EPA in any records of decision developed for the Site and issued by U.S. EPA, and of all non-time critical removal action work selected by U.S. EPA in any action memoranda developed for the Site and issued by U.S. EPA.

This letter follows a general notice letter that was issued on June 27, 2007, as well as a special notice letter that was issued on October 10, 2007. You have been identified as a contact for the Potentially Responsible Party identified above. This letter notifies Dow that a **60 day period** of formal negotiations with the U.S. EPA automatically begins on the date of this letter whereby Dow is invited to enter into negotiations with U.S. EPA to conduct the evaluation of current Site conditions and assessments of response options, RI, FS and/or EE/CA, and RD at the Site. This letter also contains a formal demand for reimbursement of costs that have been incurred at this Site by the U.S. EPA in response to the health and environmental concerns at the Site. This letter also provides general and site-specific information to assist Dow in these negotiations.

NOTICE OF POTENTIAL LIABILITY

As indicated in the general notice and special notice letters previously sent regarding this Site, U.S. EPA has information indicating that Dow may be a Potentially Responsible Party (“PRP”) under Section 107 of CERCLA, with respect to this Site. Under Section 107 of CERCLA, responsible parties include current owners and operators of the Site and former owners and operators of the Site at the time of disposal of hazardous substances, as well as persons who owned or possessed hazardous substances and arranged for disposal, treatment, or transportation of such hazardous substances and persons who accepted hazardous substances for transportation for disposal or treatment to the Site selected by such transporter.

U.S. EPA may perform response actions in response to a release or threatened release of hazardous substances, pollutants or contaminants pursuant to Section 104 of CERCLA. Under Section 107 of CERCLA, U.S. EPA can recover those response costs from responsible parties. Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, as amended (“RCRA”), and other laws, U.S. EPA can order, or ask a court to order, responsible parties to conduct response actions at a site. Failure to comply with an administrative order issued under Section 106(a) of CERCLA may result in a fine of up to \$32,500 per day, under Section 106(b) of CERCLA, as updated by 40 C.F.R. § 19.4, or imposition of treble damages, under Section 107(c)(3) of CERCLA. In addition, responsible parties may be liable for damages to natural resources at a Site.

SPECIAL NOTICE AND NEGOTIATION MORATORIUM

Under Section 122 of CERCLA and general settlement authority, U.S. EPA can enter into settlement agreements with PRPs that require PRPs to conduct response actions under Section 104 of CERCLA. U.S. EPA has determined that use of the Section 122(e) special notice procedures specified in CERCLA may facilitate a settlement between U.S. EPA and Dow. Therefore, under Section 122 of CERCLA, this letter triggers a 60-day moratorium on certain

U.S. EPA response activities at the Site. During this 60-day period Dow is invited to participate in formal negotiations with U.S. EPA. Dow is also encouraged to voluntarily negotiate a settlement providing for Dow to conduct or finance the response activities required at the Site. The 60-day negotiation period ends on **February 13, 2009**. The 60-day negotiation moratorium will be extended for an additional 30 days if Dow provides U.S. EPA with a good faith offer to conduct or finance the evaluation of current Site conditions and assessments of response options, RI, FS and/or EE/CA, and RD on or before February 13, 2009. If U.S. EPA determines that Dow has submitted a good faith offer, U.S. EPA will extend negotiations until **March 15, 2009**. If settlement is reached between U.S. EPA and Dow, the settlement will be embodied in an administrative order on consent for evaluation of current Site conditions and assessments of response options, RI, FS and/or EE/CA, and RD.

FUTURE RESPONSE ACTIONS

U.S. EPA may conduct the following CERCLA activities at the Site:

1. The evaluation of current Site conditions and assessments of response options, any RI, any FS and/or EE/CA, and any RD.

WORK PLAN AND DRAFT CONSENT ORDER

A copy of U.S. EPA's draft administrative order on consent ("AOC") and statement of work ("SOW") are attached. This is provided to assist Dow in developing a good faith offer for conducting the evaluation of current Site conditions and assessments of response options, RI, FS and/or EE/CA, and RD. U.S. EPA and the Michigan Department of Environmental Quality ("MDEQ") are discussing ways to reflect MDEQ's role regarding the response activities contemplated under the AOC and SOW, including appropriate language for inclusion in future drafts of the AOC and SOW.

GOOD FAITH OFFER

As indicated, the 60-day negotiation moratorium triggered by this letter may be extended for 30 days if Dow submits a good faith offer to U.S. EPA. An offer to conduct or finance the evaluation of current Site conditions and assessments of response options, RI, FS and/or EE/CA, and RD must include a written proposal that demonstrates Dow's qualifications and willingness to conduct or finance the evaluation of current Site conditions and assessments of response options, RI, FS and/or EE/CA, and RD and must include the following elements:

1. A statement of willingness by Dow to conduct or finance the evaluation of current Site conditions and assessment of response options, RI, FS and/or EE/CA, and RD which is consistent with U.S. EPA's statement of work and draft administrative order and provides a sufficient basis for further negotiations.
2. A demonstration of Dow's technical capability to carry out the evaluation of current Site conditions and assessments of response options, RI, FS and/or

EE/CA, and RD including the identification of the firm(s) that may actually conduct the work or a description of the process they will use to select the firm(s).

3. A demonstration of Dow's capability to finance the evaluation of current Site conditions and assessments of response options, RI, FS and/or EE/CA, and RD.
4. A statement of willingness by Dow to reimburse U.S. EPA for costs incurred in overseeing Dow's conduct of the evaluation of current Site conditions and assessments of response options, RI, FS and/or EE/CA, and RD.
5. The name, address, and phone number of the party who will represent Dow in negotiations.

If Dow's offer contemplates modifications to the AOC or SOW, Dow must make revisions to the enclosed proposed AOC and SOW and submit this version to U.S. EPA prior to the expiration of the 60 day negotiation moratorium. Dow's response should provide reasons for or the basis of such modifications to the proposed AOC and SOW. Major modifications to the AOC and/or SOW may not be considered by U.S. EPA to be a good faith offer.

INITIAL CONFERENCE

To further facilitate Dow's ability to present a "good faith offer" within the 60-day time limit, U.S. EPA suggests meeting as soon as Dow has had the opportunity to review the enclosed documents. U.S. EPA suggests meeting at 11 am Eastern Standard Time on Thursday, December 18, 2008, in Benton Harbor, Michigan.

DEMAND FOR PAYMENT

With this letter, U.S. EPA demands that Dow reimburse U.S. EPA for its costs incurred to date, and encourages Dow to voluntarily negotiate an administrative order on consent under which Dow agrees to perform the evaluation of current Site conditions and assessments of response options, RI, FS and/or EE/CA, and RD.

In accordance with CERCLA, U.S. EPA already has undertaken certain actions and incurred certain costs in response to conditions at the Site. Such costs include, but are not limited to, expenditures for investigation, planning, response, oversight, and enforcement activities.

The cost of the response actions performed at the Site through U.S. EPA funding was approximately \$1,841,563.61 as of October 31, 2008 (see enclosed Itemized Cost Summary). In accordance with Section 107(a) of CERCLA, demand is hereby made for payment of the above amount plus any and all interest recoverable under Section 107 or under any other provisions of law.

As indicated above, U.S. EPA may expend additional funds for the evaluation of current Site conditions and assessments of response options, RI, FS and/or EE/CA, and RD. Whether U.S.

EPA funds the entire evaluation of current Site conditions and assessments of response options, RI, FS and/or EE/CA, and RD, or simply incurs costs by overseeing the parties conducting these response activities, Dow is potentially liable for these expenditures plus interest.

ABILITY TO PAY - FUTURE FINANCIAL REVIEW

If Dow wishes to settle, but would face a severe financial hardship by remitting the full payment amount, it may request that the U.S. EPA review Dow's financial ability to pay. Under U.S. EPA policy, it is possible in appropriate circumstances for the payment to be made in installments. This may be considered as part of U.S. EPA's financial review. To process a claim of financial hardship, the U.S. EPA will require Dow to substantiate that claim by submitting detailed financial documentation. A complete description of the U.S. EPA's financial review process is available upon request.

ADMINISTRATIVE RECORD

Pursuant to CERCLA Section 113(k), U.S. EPA must establish an administrative record that contains documents that form the basis of U.S. EPA's decision on the selection of a response action for a site. The administrative record files for this Site are available to the public for inspection and comment at:

**The Superfund Records Center
U.S. EPA Region 5
77 W. Jackson Blvd.
Chicago, Illinois**

Copies of documents in the administrative record file will be available for public inspection at the local repository located at:

**Grace A. Dow Memorial Library
1710 W St. Andrews
Midland, MI 48640
Phone: 989-837-3430**

and

**Hoyt Main Library
505 Janes Avenue
Saginaw, MI 48607
Phone: 989-755-0904**

PRP RESPONSE AND U.S. EPA CONTACT PERSON

Please contact U.S. EPA by **December 22, 2008**, to indicate Dow's willingness to participate in negotiations at this Site. Dow has 60 calendar days from this notice to provide U.S. EPA with a

good faith offer, in writing, demonstrating Dow's willingness to perform the evaluation of current Site conditions and assessments of response options, RI, FS and/or EE/CA, and RD. If U.S. EPA does not receive a timely response, U.S. EPA will assume that Dow does not wish to negotiate a resolution of its liabilities in connection with the response, and that Dow has declined any involvement in performing the response activities.

Dow's response to this notice letter should be sent to:

Jeffrey A. Cahn, Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3590

and

Catherine Garypie, Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3590

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final U.S. EPA positions on any matter set forth herein.

If you have questions of a technical nature, please contact Wendy L. Carney, Superfund Program Manager at (312) 353-6553. For legal questions please direct your attorney to contact Jeffrey A. Cahn, Associate Regional Counsel, at (312) 886-6670.

Sincerely,



Richard C. Karl, Director
Superfund Division

- Enclosures:
1. Administrative Order on Consent
 2. Statement of Work
 3. Itemized Cost Summary

cc: Peter C. Wright, Esq.
The Dow Chemical Company
2030 Dow Center
Midland, MI 48674

Frederick S. Mueller, Esq.
33 West Monroe Street
Suite 2700
Chicago, IL 60603-5404

Michigan Department of Environmental Quality

P.O. Box 30473
525 West Allegan Street
Lansing, Michigan 48909-7973
Steven E. Chester, Director
Judith Gapp / TRUSTEE

Michigan Department of Natural Resources

8562 East Stoll Road
East Lansing, Michigan 48823
Doug Reeves / TRUSTEE
State Field Coordinator/Wildlife Division

State of Michigan Office of Attorney General

525 W. Ottawa Street
P.O. Box 30212
Lansing, MI 48909
Kathy Kavanaugh / TRUSTEE
Assistant Attorney General

Celeste Gill
Assistant Attorney General

U.S. Fish & Wildlife Service

2651 Coolidge Road, Suite 101
East Lansing, MI 48823
Lisa L. Williams, Ph.D / TRUSTEE
Craig Czarnecki / TRUSTEE

U.S. Department of Interior

Three Parkway Center

Room 385

Pittsburgh, PA 15220

Kimberly S. Gilmore / TRUSTEE

Office of the Solicitor

Steve Barclay / TRUSTEE

Office of the Solicitor

U.S. Department of Interior

Office of Environmental Policy and Compliance

200 Chestnut Street, Room 244

Philadelphia, PA 19106-2904

Michael Chezik, Regional Environmental Officer

U.S. Department of Energy

Headquarters

Forrestal Building

1000 Independence Avenue, S.W.

Washington, D.C. 20585

Samuel W. Bodman, Secretary

U.S. Department of Agriculture

200-A Whitten Bldg.

1400 Independence Avenue, S.W.

Washington, D.C. 20585

Chuck Connor, Acting Secretary

U.S. Bureau of Indian Affairs

1849 C Street, NW

Washington, DC 20240

Allen J. Sedik, P.E. / TRUSTEE

NRDAR Program Manager

Division of Natural Resources

National Oceanic and Atmospheric Administration

77 West Jackson Blvd.

Chicago, IL 60604

Todd Goeks

Coastal Resource Hazardous Materials Response and Assessment Division

U.S. Department of Justice

P.O. Box 7611

Ben Franklin Station

Washington, DC 20044-7611

Steve Willey / TRUSTEE

Environmental Enforcement Section

THE SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN

7070 East Broadway

Mt. Pleasant, Michigan 48858-8972

Sally J. Kniffen / TRUSTEE

Environmental Specialist

Jay Fields / TRUSTEE

Counsel

Sean J. Reed / TRUSTEE

General Counsel, Legal Department