

**AGREEMENT AMONG THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL
QUALITY, THE MICHIGAN DEPARTMENT OF ATTORNEY GENERAL, AND THE
DOW CHEMICAL COMPANY**

**WITH RESPECT TO SETTLEMENT DISCUSSIONS
AND INFORMATION DISCLOSURE**

WHEREAS, the United States Environmental Protection Agency (“U.S. EPA”), contends that it has claims (“the claims”) against The Dow Chemical Company (“Dow”) for response activities and costs under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.*, as amended (“CERCLA”), related to the Tittabawasee River Dioxin Spill Site (“Site”) located in and along the upper six miles of the Tittabawasee River and its floodplains, beginning at the upstream portion of Reach A, located upstream of The Dow Chemical Company Midland Plant property with an address of 1000 East Main Street, 1790 Building, Midland Michigan, 48667, and extending downstream to approximately Reach O, and areas where hazardous substances, pollutants, or contaminants have or may have come to be located from the Tittabawasee River Dioxin Spill Site including, but not limited to, the Saginaw River and its floodplains and portions of Saginaw Bay in Lake Huron;

WHEREAS, the Michigan Department of Environmental Quality (“the MDEQ”), was notified on October 10, 2007, by U.S. EPA of negotiations with Dow regarding the implementation of the remedial investigation and feasibility study for the Site, as well as Interim Response Actions;

WHEREAS, the Federal Rules of Evidence as adopted by the United States Supreme Court and the United States Congress have for several decades recognized that it is in the public interest, and in the interest of individual litigants, to encourage consensual resolution of disputes – thus Federal Rule of Evidence 408 offers protection not just to offers or demands made during settlement discussions, but also to conduct or statements made in compromise negotiations;

WHEREAS, it is usual and customary for parties working to resolve a dispute to agree not to disclose confidential settlement information to third persons;

WHEREAS, U.S. EPA, the MDEQ, the Michigan Department of Attorney General (the “MDAG”), and Dow (collectively, “the parties”) wish to avoid unnecessary litigation and to promote frank and productive settlement discussions;

WHEREAS, meaningful settlement discussions require the disclosure of documents and other information by and among the parties;

WHEREAS, the parties wish to provide appropriate protection for information disclosed to each other during settlement discussions;

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The parties agree as follows:

1. This agreement applies to “confidential settlement information,” which means any statement, conduct, document, or other information disclosed during settlement negotiations regarding the claims as defined in the first paragraph of this agreement, by one party (“the disclosing party”) to another party or parties (collectively, “the receiving parties”) that is not otherwise a public record, discoverable, or available through other legal means.
2. Confidential settlement information shall not be disclosed to third persons by the parties. "Parties" include representatives, employees, agents (including but not limited to consultants to the parties) or other persons associated with the parties, except as provided elsewhere in this agreement or with the consent of the disclosing party. "Party" also includes elected or appointed officials within U.S. EPA, MDEQ and MDAG.
3. In any litigation brought by U.S. EPA, the MDAG and/or the MDEQ in connection with their respective claims, the parties will not assert that any privilege has been waived, or any information rendered discoverable or admissible, because information has been disclosed during settlement negotiations.
4. If any governmental party receives a Freedom of Information Act (“FOIA”) or similar request for documents, which request covers confidential settlement information, the party receiving the request shall assert all good faith grounds for maintaining the confidentiality of the confidential settlement information, including without limitation, applicable exemptions under federal and Michigan law. If a governmental party receives a FOIA request for confidential settlement discussions, it shall give prompt notice to the other parties to the settlement discussions and, in recognition of FOIA timeframes, allow them a reasonable opportunity to share their concerns regarding disclosure and pursue their rights, if any, to prevent or restrict such disclosure.
5. By sharing confidential settlement information, the parties do not intend to waive any privileges otherwise applicable to confidential settlement information as against third parties requesting such information.
6. Any communication that is required to be made by statute, regulation, or permit, including without limitation the hazardous waste treatment, storage, and disposal facility operating license issued to Dow by the Michigan Department of Environmental Quality on June 12, 2003, shall not be considered confidential settlement communications, whether or not the communication is made within the course of settlement negotiations.
7. Nothing in this agreement shall be construed to prejudice or limit the right of U.S. EPA, the MDAG, or the MDEQ to take any action to implement or enforce state or federal law, or to protect public health, safety, welfare, or the environment. Further, nothing in this agreement shall be construed to conflict with state or federal law.

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8. Any party may terminate its participation in this agreement by ten days prior written notice to the other parties. However, the provisions of this agreement shall continue to apply to all confidential settlement information exchanged during the pendency of this agreement.

9. The undersigned representative of each of the parties certifies that he or she is fully authorized to enter into the terms and conditions of this agreement and to legally bind such party to all terms and conditions of this document.

10. This agreement may be amended to add additional parties by written consent of all parties through execution of a signature page identifying that additional party.

11. This agreement may be executed in counterparts, with separate signature pages.

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SIGNATURE:


The United States Environmental Protection Agency consents to the terms and conditions of this agreement by its duly authorized representative on this 23rd day of October, 2007.

By: Robert A. Kaplan
Robert A. Kaplan, Regional Counsel
U.S. Environmental Protection Agency, Region 5

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SIGNATURE:

The Michigan Department of Environmental Quality and the Michigan Department of Attorney General consents to the terms and conditions of this agreement by its duly authorized representative on this 23 day of October, 2007.

By: 
Kathleen L. Cavanaugh, Assistant Attorney General

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SIGNATURE:

The Dow Chemical Company consents to the terms and conditions of this agreement by its duly authorized representative on this 24 day of October, 2007.

By:



Peter C. Wright, Esq.