



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

SR-6J

October 10, 2007

URGENT LEGAL MATTER -
PROMPT REPLY NECESSARY

VIA FEDERAL EXPRESS

David Graham, Vice President
Environment, Health, & Safety and Sustainability
The Dow Chemical Company
2040 Dow Center
Midland, MI 48674

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

Dear Mr. Graham:

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 being conducted by the Dow Chemical Company ("Dow") at Reaches D, JK, and O in the Tittabawassee River in Midland County, 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, and V-W-07-C-876. 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) a remedial investigation ("RI") to determine the nature and extent of the contamination at the Site; 2) a feasibility study to determine and evaluate alternatives for remedial action at the Site ("FS"); 3) Interim Response Actions ("IRAs") as necessary, including additional removal action work, and Remedial Design of all remedial action work selected by U.S. EPA in a record of decision developed for the Site and issued by U.S. EPA.

This letter follows a general notice letter that was issued on June 27, 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 RI, FS and IRAs 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 letter 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 \$25,000 per day, under Section 106(b) of CERCLA, 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 107 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 **December 10, 2007**. The 60-day negotiation moratorium will be extended for an additional 30 days if PRPs provide U.S. EPA with a good faith offer to conduct or finance the RI, FS and IRAs, on or before December 10, 2007. If U.S. EPA

determines that the PRPs have submitted a good faith offer, U.S. EPA will extend negotiations until **January 9, 2008**. If settlement is reached between U.S. EPA and the PRPs, the settlement will be embodied in an administrative order on consent for RI, FS, and IRAs.

FUTURE RESPONSE ACTIONS

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

1. Remedial Investigation/Feasibility Study on or about January 9, 2008; and
2. Interim Response Actions as necessary, including additional removal action work, and Remedial Design.

WORK PLAN AND DRAFT CONSENT ORDER

A copy of U.S. EPA's draft administrative order on consent ("AOC") and statement of work ("SOWs") are attached. This is provided to assist Dow in developing a good faith offer for conducting the RI, FS and IRAs.

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 RI, FS and IRAs must include a written proposal that demonstrates Dow's qualifications and willingness to conduct or finance the RI, FS and IRAs and must include the following elements:

1. A statement of willingness by Dow to conduct or finance the RI, FS and IRAs 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 RI, FS and IRAs 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 RI, FS and IRAs.
4. A statement of willingness by Dow to reimburse U.S. EPA for costs incurred in overseeing Dow's conduct of the RI, FS and IRAs.
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 10am on Wednesday, October 24, 2007, at U.S. EPA offices in Chicago, Illinois.

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 RI, FS and IRAs.

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 exceeds \$50,000.00. In accordance with Section 107(a) of CERCLA, demand is hereby made for payment for payment of all costs incurred 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 RI, FS and IRAs. Whether U.S. EPA funds the entire RI, FS and all IRAs, 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**

PRP RESPONSE AND U.S. EPA CONTACT PERSON

Please contact U.S. EPA by **October 17, 2007**, 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 RI, FS AND IRAs. 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**

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 Mary Logan, Remedial Project Manager at (312) 886-4699. For legal questions please direct your attorney to contact Jeffrey A. Cahn, Associate Regional Counsel, at (312) 886-6670.

Sincerely,

A handwritten signature in black ink, appearing to read "Wendy L. Carney". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Wendy L. Carney, Chief
Remedial Response Branch #1

Enclosures: 1. Administrative Order on Consent
 2. Statements of Work

cc: Peter C. Wright, Esq. (via hand-delivery)
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Michigan Department of Natural Resources

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State of Michigan Office of Attorney General

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U.S. Department of Interior

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Michael Chezik, Regional Environmental Officer

U.S. Department of Energy

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Washington, D.C. 20585

Samuel W. Bodman, Secretary

U.S. Department of Agriculture

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Chuck Connor, Acting Secretary

U.S. Bureau of Indian Affairs

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Steve Willey / TRUSTEE

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