



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

REPLY TO THE ATTENTION OF:

S-6J

August 31, 2007

**PROMPT REPLY NECESSARY**

**VIA FEDERAL EXPRESS DELIVERY**

Miller, Canfield, Paddock and Stone, P.L.C.  
c/o Thomas C. Phillips  
Miller, Canfield, Paddock and Stone, P.L.C.  
One Michigan Ave.  
Suite 900  
Lansing, Michigan 48933  
517-487-2070

RE: Request for Information Pursuant to Section 104 of CERCLA to Miller, Canfield,  
Paddock and Stone, P.L.C.

Dear Mr. Phillips:

This letter seeks the cooperation of Miller, Canfield, Paddock and Stone, P.L.C. (sometimes referred to herein as "Miller Canfield," "you," or "Respondent"), in providing information and documents relating to the contamination at The Dow Chemical Company Midland Plant property with an address of 1000 East Main Street, 1790 Building, Midland, Michigan, 48667 (the "Midland Plant") and all locations where hazardous substances, pollutants, or contaminants released from the Midland Plant have come to be located ("Site"). We encourage you to give this matter your immediate attention and that you provide a complete and truthful response to this Information Request and attached questions (Attachment B) **within seven (7) days** after your receipt of this letter.

The United States Environmental Protection Agency ("U.S. EPA") is investigating the release or threat of release of hazardous substances, pollutants, or contaminants at the Site. U.S. EPA is seeking to obtain information concerning the generation, storage, treatment, transportation, and methods used to dispose of these substances, and identify activities, materials, and parties that contributed to contamination at the Site. U.S. EPA will study the effects of these substances on the environment and public health. U.S. EPA believes that Miller Canfield might possess information which may assist the Agency in its investigation of the Site.

On July 12, 2007, U.S. EPA and The Dow Chemical Company ("Dow") entered into three separate Administrative Settlement Agreements and Orders on Consent under the authority of Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"). The Administrative Settlement Agreements and Orders provide for CERCLA time critical removal actions to clean up dioxin-contaminated bottom deposits, sediments, and/or soils in, or along, the Tittabawassee River in Midland County, Michigan.

The first Administrative Settlement Agreement and Order on Consent ("AOC") provides for the performance of removal actions by Dow to cleanup dioxin-contaminated bottom deposits and sediments at the area known as Reach D, which is located at and in the vicinity of an historic flume situated along the northeast bank of the Tittabawassee River, within the Midland Plant property in Midland County, Michigan.

Under the second AOC, Dow agrees to perform a removal action at an area known as Reach J-K, which is located in overbank areas on the northeast side of the Tittabawassee River, approximately 3.6 miles downstream of the confluence of the Chippewa and Tittabawassee Rivers. Under this AOC, Dow will remove a dioxin-contaminated naturally occurring levee, as well as cap one dioxin-contaminated upland area and fence off another dioxin-contaminated wetland area. Reach J-K is located within Dow's property bounded to the northeast by a wetland with Saginaw Road to the northeast beyond the wetland, the Caldwell boat launch to the South, and to the west by the east channel bank of the Tittabawassee River, in Midland County, Michigan.

Under the third AOC, Dow agrees to perform a removal action at an area known as Reach O of the Tittabawassee River, an approximately 1,300 foot-long point bar extending approximately 50 to 100 feet into the Tittabawassee River and situated parallel to the northeast bank of the Tittabawassee River, approximately 6.1 miles downstream of the confluence of the Chippewa and Tittabawassee Rivers and located within, or immediately adjacent to, Dow property located to the south of North Saginaw Road in Midland County, Michigan. Under this AOC, Dow will remove dioxin-contaminated sediments in three designated locations of the point bar.

Each of these three performance based removal actions began no later than August 15, 2007, and must be completed by December 15, 2007.

Under Section 104(e)(2) of CERCLA, 42 U.S.C. §9604(e)(2), U.S. EPA has broad information gathering authority which allows U.S. EPA to require persons to furnish information or documents relating to:

- (A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.

(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

(C) Information relating to the ability of a person to pay for or to perform a cleanup.

While U.S. EPA seeks the cooperation of Miller Canfield in this investigation, compliance with the Information Request is required by law. In addition, providing false, fictitious, or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. §1001. The information Miller Canfield provides may be used by U.S. EPA in administrative, civil, or criminal proceedings.

Some of the information U.S. EPA is requesting may be considered by Miller Canfield to be confidential. Please be aware that Miller Canfield may not withhold the information upon that basis. If you wish U.S. EPA to treat the information confidentially, you must advise U.S. EPA of that fact by following the procedures outlined in Attachment A, including the requirement for supporting your claim for confidentiality.

If you have information about other parties who may have information which may assist the Agency in its investigation of the Site or may be responsible for the contamination at the Site, that information should be submitted within the time frame noted above.

Section 104 of CERCLA, 42 U.S.C. §9604, authorizes U.S. EPA to pursue penalties for failure to comply with that section or for failure to respond adequately to requests for submissions of required information.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. §3501 et seq.

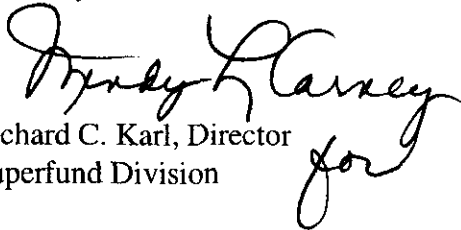
Instructions on how to respond to the questions in Attachment B to this document are described in Attachment A. Your response to this Information Request should be mailed to:

Richard C. Karl, Director  
Superfund Division, S-6J  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

If you have specific questions about the Information Request, or legal questions, please contact Jeffrey A. Cahn, Associate Regional Counsel at 312-886-6670.

We appreciate and look forward to your prompt response to this Information Request.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard C. Karl". The signature is written in a cursive style and is positioned above the typed name and title.

Richard C. Karl, Director  
Superfund Division

Enclosures

cc: Jim Sygo, Deputy Director  
Michigan Department of Environmental Quality  
P.O. Box 30241  
Lansing, Michigan 48909

George Bruchmann, Chief  
Waste and Hazardous Materials Division  
Michigan Department of Environmental Quality  
P.O. Box 30241  
Lansing, Michigan 48909

**Attachment A**  
**Information Request**  
**to Miller, Canfield, Paddock and Stone, P.L.C.**

**Instructions**

1. Answer Every Question Completely. A separate response must be made to each of the questions set forth in this Information Request. For each question contained in this letter, if information responsive to this Information Request is not in your possession, custody, or control, please identify the person(s) from whom such information may be obtained.
2. Number Each Answer. Precede each answer with the corresponding number of the question and the subpart to which it responds.
3. Provide the Best Information Available. Provide responses to the best of Respondent's ability, even if the information sought was never put down in writing or if the written documents are no longer available. You should seek out responsive information from current and former employees/agents. Submission of cursory responses when other responsive information is available to the Respondent will be considered non-compliance with this Information Request.

This request for information pertains to any and all information Miller Canfield or any person or entity acting on behalf of Miller Canfield, has, or once had, in its possession concerning the release of any dioxin, hazardous substances, pollutants, or contaminants from Dow's Midland, Michigan facility, including but not limited to: the results of any testing for or analysis of any dioxin, hazardous substances, pollutants, or contaminants released from Dow's Midland Plant; and copies of all studies, tests or other analyses of the toxicity of such dioxin, hazardous substances, pollutants, or contaminants.

If the information sought by this information request is not contained in a document, separately identify the persons(s) who provided the information in the response, the basis for each person's knowledge, the position occupied by the person providing the response, and the person's address and supervisor's name.

Upon receipt of this information request, all records relating in any manner to any aspect of environmental management, regulation, investigation, and/or any other environmentally-related issue or state of affairs at Miller Canfield or its affiliates or agents in relation to the general subjects of inquiry in this information request are to be retained until further notice is received from EPA. The destruction of any records containing any information about, or references to, any such matter constitutes a failure to comply with this information request and may result in a court action against Respondent.

You must respond to the Information Request on the basis of all information and documents in your possession, custody or control, or in the possession, custody or control of your

current employees, agents, servants, contractors, or attorneys. A separate response must be made to each of the questions set forth in this Information Request. Precede each response with the letter of the Information Request to which it corresponds.

If any document was, but is no longer, in the possession, custody, or control of Respondent, provide the following information: state the disposition of the document; state the date such disposition was made; identify the present custodian of the document, state his or her address, or, if the document no longer exists, so state; identify the person who made the decision regarding the disposition of the document; state the reason for the disposition; and describe the document and the contents of the document, including the title, date, author, addressees, locations and number of copies made and the location of the copies.

If any information called for herein is not available or accessible in the full detail requested, the request shall be deemed to call for the best information available. The request also requires the production of all information called for in as detailed a manner as possible based upon such information as is available or accessible, including, where specific information is not available or accessible, an estimate and explanation of the method by which each estimate is made.

4. Identify Sources of Answer. For each question, identify (see Definitions) all the persons and documents that you relied on in producing your answer.

5. Data Submission. All sampling data, sampling results, sample reports, non-numerical sampling data shall be submitted in both a "hard" (or paper) copy form, as well as in an electronic format developed and submitted in accordance with the Manual for Electronic Data, Version 1.1, EPA Region 5, June 2004.

A copy of the Manual for Electronic Data, Version 1.1 may be found at the following web site: "[www.epa.gov/region5superfund/edman/index.html](http://www.epa.gov/region5superfund/edman/index.html)".

In addition, a paper copy of the Manual for Electronic Data, Version 1.1 is enclosed with this information request as a courtesy and for your convenience.

6. Document Submission. Each document that is produced shall be produced in a manner that designates the specific numbered information request item(s) and subpart(s) to which the document is responsive. Each document submitted shall be clearly and precisely identified by its title, author, date of preparation, and subject matter. Each document shall be produced in "hard" (or paper) copy form and, to the extent practicable, in a searchable electronic format with the "cut and paste" feature enabled (data submissions remain subject to information request instruction number 5, supra). For each response to this information request which includes documents, Respondent shall compile an index of the documents produced in response to the specific numbered information request item(s) to which the documents are responsive. The index must state the paragraph number of the information request item(s) and must list all documents submitted in response to that paragraph.

7. Number of Copies. Two “hard” (or paper) copies of all documents, sampling data, sampling results, sample reports, and non-numerical sampling data shall be submitted where no electronic version of such documents, sampling data, sampling results, sample reports, and non-numerical sampling data is submitted. One “hard” (or paper) copy of all documents, sampling data, sampling results, sample reports, and non-numerical sampling data shall be submitted where an electronic version of such documents, sampling data, sampling results, sample reports, and non-numerical sampling data is also submitted.

All electronic copies of all documents, sampling data, sampling results, sample reports, non-numerical sampling data shall be submitted on compact disk(s) (“CD”) or digital video disk(s). Three copies of all CD(s) or DVD(s) shall be submitted.

8. Continuing Obligation to Provide/Correct Information. If additional information or documents responsive to this Request become known or available to you after you respond to this Request, U.S. EPA hereby requests pursuant to Section 104(e) of CERCLA that you supplement your response to U.S. EPA.

9. Confidential Information. The information requested herein must be provided even though you may contend that it includes confidential information or trade secrets. You may assert a confidentiality claim covering part or all of the information requested, pursuant to Sections 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. §§ 9604(e)(7)(E) and (F), and 40 C.F.R. §2.203(b).

If you make a claim of confidentiality for any of the information you submit to U.S. EPA, you must prove that claim. For each document or response you claim confidential, you must separately address the following points:

1. the portions of the information alleged to be entitled to confidential treatment;
2. the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);
3. measures taken by you to guard against the undesired disclosure of the information to others;
4. the extent to which the information has been disclosed to others; and the precautions taken in connection therewith;
5. pertinent confidentiality determinations, if any, by U.S. EPA or other federal agencies, and a copy of any such determinations or reference to them, if available; and
6. whether you assert that disclosure of the information would likely result in substantial harmful effects on your business' competitive position, and if so, what those harmful

effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

To make a confidentiality claim, please stamp or type “confidential” on all confidential responses and any related confidential documents. Confidential portions of otherwise nonconfidential documents should be clearly identified. You should indicate a date, if any, after which the information need no longer be treated as confidential. Please submit your response so that all non-confidential information, including any redacted versions of documents, is in one envelope and all materials for which you desire confidential treatment are in another envelope.

All confidentiality claims are subject to U.S. EPA verification. It is important that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so, and that it is not and has not been obtainable by legitimate means without your consent. Information covered by such claim will be disclosed by U.S. EPA only to the extent permitted by Section 104(e) of CERCLA. If no such claim accompanies the information when it is received by U.S. EPA, then it may be made available to the public by U.S. EPA without further notice to you.

10. Disclosure to U.S. EPA Contractor. Information which you submit in response to this Information Request may be disclosed by U.S. EPA to authorized representatives of the United States, pursuant to 40 C.F.R. §2.310(h), even if you assert that all or part of it is confidential business information. Please be advised that U.S. EPA may disclose all responses to this Information Request to one or more of its private contractors for the purpose of organizing and/or analyzing the information contained in the responses to this Information Request. If you are submitting information which you assert is entitled to treatment as confidential business information, you may comment on this intended disclosure within seven (7) days of receiving this Information Request.

11. Personal Privacy Information. Personnel and medical files, and similar files, the disclosure of which to the general public may constitute an invasion of privacy, should be segregated from your responses, included on separate sheet(s), and marked as “Personal Privacy Information.”

12. Objections to Questions. If you have objections to some or all the questions within the Information Request letter, you are still required to respond to each of the questions.

### **Definitions**

The following definitions shall apply to the following words as they appear in this Information Request.

1. The term “arrangement” means every separate contract or other agreement between two or more persons, whether written or oral.



2. The term “documents” includes any written, recorded, computer-generated, or visually or aurally reproduced material of any kind in any medium in your possession, custody, or control, or known by you to exist, including originals, all prior drafts, and all non-identical copies.

3. The term “Dioxin” or “dioxin” shall mean shall mean the seventeen chlorinated dibenzo-p-dioxins and chlorinated dibenzofurans identified by the World Health Organization in *The 2005 World Health Organization Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds*, as set forth below.

Congener (Full-Name)	Congener (Abreviation)	CAS No
<b>Dioxins</b>		
2,3,7,8-Tetrachlorodibenzo-p-dioxin	2,3,7,8-TCDD	1746-01-6
1,2,3,7,8-Pentachlorodibenzo-p-dioxin	1,2,3,7,8-PCDD	40321-76-4
1,2,3,4,7,8- Hexachlorodibenzo-p-dioxin	1,4-HxCDD	39227-28-6
1,2,3,6,7,8- Hexachlorodibenzo-p-dioxin	1,6-HxCDD	57653-85-7
1,2,3,7,8,9- Hexachlorodibenzo-p-dioxin	1,9-HxCDD	19408-74-3
1,2,3,4,6,7,8- Heptachlorodibenzo-p-dioxin	1,4,8-HpCDD	35822-39-4
1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin	OCDD	3268-87-9
<b>Furans</b>		
2,3,7,8-Tetrachlorodibenzofuran	2,3,7,8-TCDF	51207-31-9
1,2,3,7,8-Pentachlorodibenzofuran	1,2,3,7,8-PCDF	57117-41-6
2,3,4,7,8-Pentachlorodibenzofuran	2,3,4,7,8-PCDF	57117-31-4
1,2,3,4,7,8-Hexachlorodibenzofuran	1,4-HxCDF	70648-26-9
1,2,3,6,7,8- Hexachlorodibenzofuran	1,6-HxCDF	57117-44-9
1,2,3,7,8,9- Hexachlorodibenzofuran	1,9-HxCDF	72918-21-9
2,3,4,6,7,8- Hexachlorodibenzofuran	4,6-HxCDF	60851-34-5
1,2,3,4,6,7,8- Heptachlorodibenzofuran	1,4,6-HpCDF	67562-39-4
1,2,3,4,7,8,9- Heptachlorodibenzofuran	1,4,9-HpCDF	55673-89-7
1,2,3,4,6,7,8,9-Octachlorodibenzofuran	OCDF	39001-02-0

Individual dioxins are assessed using a toxic equivalency factor (“TEF”), which is an estimate of the relative toxicity of the compounds to 2,3,7,8-tetrachlorodibenzo-p-dioxin (“TCDD”). These converted concentrations are then added together to determine the “toxic equivalence concentration” (“TEQ”) of the dioxin compounds as a whole.

4. The term “hazardous substance” shall have the same definition as that contained in Section 101(14) of CERCLA, and includes any mixtures of such hazardous substances with any other substances, including mixtures of hazardous substances with petroleum products or other nonhazardous substances.

5. The term “identify” means, with respect to a natural person, to set forth: (a) the person's full name; (b) present or last known business and home addresses and telephone numbers; (c) present or last known employer (include full name and address) with title, position or business.

6. With respect to a corporation, partnership, or other business entity (including a sole proprietorship), the term “identify” means to provide its full name, address, and affiliation with the individual and/or company to whom/which this request is addressed.

7. The term “material” or “materials” shall mean any and all objects, goods, substances, or matter of any kind, including but not limited to wastes.

8. The term “person” shall include any individual, firm, unincorporated association, partnership, corporation, trust, or other entity.

9. The term “pollutant or contaminant” shall have the same definition as that contained in Section 101(33) of CERCLA and shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations; except that the term “pollutant or contaminant” shall not include petroleum. “Pollutant or contaminant” shall also include, but not be limited to, the most recent version of Dow’s Target Analyte List (“TAL”) list (the original of which was attached to Dow’s December 1, 2006, Remedial Investigation Work Plan for the Tittabawasee and Upper Saginaw River).

10. The term “real estate” shall mean and include, but not be limited to the following: land, buildings, a house, dwelling place, condominium, cooperative apartment, office or commercial building, including those located outside the United States.

11. The term “release” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant.

12. The term “Site” shall mean The Dow Chemical Company Midland Plant property with an address of 1000 East Main Street, 1790 Building, Midland, Michigan, 48667 (the “Midland Plant”), and all locations where hazardous substances, pollutants, or contaminants released from the Midland Plant have come to be located (“Site”).

13. The terms “Miller Canfield,” “you,” or “Respondent” shall mean Miller, Canfield, Paddock and Stone, P.L.C., which owns and/or operates, or owned and/or operated, a business or businesses located at One Michigan Ave., Suite 900, Lansing, Michigan 48933, and includes all partners, associates, officers, directors, employees and agents of that P.L.C., including all

contractors, consultants, and their employees, or any such person, and any merged, consolidated, acquired or defunct predecessor, parent, subsidiary, division or affiliate thereof and its P.L.C. offices, field offices and any other place utilized for the purpose of operating and maintaining such business or businesses.

**Attachment B**  
**Information Requests**  
**to Miller, Canfield, Paddock and Stone, P.L.C.**

**Information Requests**

1. Identify all persons consulted in the preparation of the answers to these Information Requests.
  
2. Identify all documents consulted, examined, or referred to in the preparation of the answers to these Requests, and provide copies of all such documents. Each document that is produced shall be produced in a manner that designates the specific numbered information request item(s) and subpart(s) to which the document is responsive. Each document submitted shall be clearly and precisely identified by its title, author, date of preparation, and subject matter. Each document shall be produced in “hard” (or paper) copy form and, to the extent practicable, in a searchable electronic format with the “cut and paste” feature enabled (data submissions remain subject to information request instruction number 5, *supra*). For each response to this information request which includes documents, Respondent shall compile an index of the documents produced in response to the specific numbered information request item(s) to which the documents are responsive. The index must state the paragraph number of the information request item(s) and must list all documents submitted in response to that paragraph.
  
3. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any Information Request or who may be able to provide additional responsive documents, identify such persons.
  
4. Provide all information related to the soil sampling conducted in and around the City of Midland pursuant to the *Midland Representative Soils Sampling and Analysis Plan in Support of Bioavailability Study*, CH2MHILL, 2006, June (revised November), and provide all information related to the soil sampling conducted in and around the City of Midland reported in the Data Evaluation Report in Support of Bioavailability Study, Midland Areas Soils, prepared for the Dow Chemical Company, CH2MHILL, March, 2007. Provide the name, address, and title of the person(s) who performed the sampling, testing, or analyses. Provide the dates when all such sampling, testing or analyses were performed. Provide the specific locations where all such sampling, testing, or analyses were performed including an address of the location where such sampling, testing or analyses were conducted; a detailed description of the location where such sampling, testing, or analyses were conducted, including global positioning system coordinates, or similar coordinates, if available; provide copies of all county plat maps and all other maps identifying the specific location(s) where such sampling, testing, or analyses were conducted. Provide a detailed description of the dioxin results of all such sampling, testing, or analyses, including but not limited to the date such activities were conducted. Provide copies of all documentation associated with and setting forth the results of such sampling, testing, or analyses. If such results were not committed to writing, please provide a detailed description of the results and identify the person(s) who provided such description. Without limiting the

foregoing provide the following specific information related to the soil sampling conducted in and around the City of Midland pursuant to the *Midland Representative Soils Sampling and Analysis Plan in Support of Bioavailability Study*, CH2MHILL, 2006, June (revised November), and related to the soil sampling conducted in and around the City of Midland reported in the Data Evaluation Report in Support of Bioavailability Study, Midland Areas Soils, prepared for the Dow Chemical Company, CH2MHILL, March, 2007:

- A. Provide copies of the results of all sampling, testing, or analyses, including original data packages and quality assurance documentation, in the current possession of the Respondent, or any person or entity acting on behalf of the Respondent, performed to determine the presence of dioxin in soil in and around the City of Midland, Michigan.
- B. Provide copies of the results of all sampling, testing, or analyses, including original data packages and quality assurance documentation, in the current possession of the Respondent, or any person or entity acting on behalf of the Respondent, performed by a third party to determine the presence of dioxin in soil in and around the City of Midland, Michigan.
- C. Provide all final versions of planning documents used to conduct the sampling and manage the samples, including information on “blinding” the samples, for soil samples taken in 2006 and 2007. If any such document was not “finalized,” provide the version that was used to conduct the work.
- D. Provide all maps and all other information, keys, programs, logs, codes, numbers, numbering systems, labels, labeling systems, and protocols, needed to decode, decipher, or otherwise identify the specific location (including address), where each sample, test, or analysis was conducted, and to identify the specific location (including address), of each result (including the numeric value of the concentration of dioxin contamination) of all such sampling, testing, or analyses.
- E. Identify the specific location (including address), where each sample, test, or analysis was conducted, and identify the specific location (including address), of each result (including the numeric value of the concentration of dioxin contamination) of all such sampling, testing, or analyses.
- F. Provide copies of all documents, reports, or written analyses produced by the Respondent, or any person or entity acting on behalf of Respondent concerning the nature and extent of dioxin in and around the City of Midland, Michigan.