



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

May 26, 2009

THE ADMINISTRATOR

Dear Community Member:

Shortly after I arrived at the U.S. Environmental Protection Agency, I became aware of the serious dioxin contamination of the Saginaw Bay Watershed, starting at the Dow Chemical facility in Midland and extending downstream on the Tittabawassee and Saginaw Rivers and into the Bay. I agree with community members who believe that this contamination is a threat to public health in the communities in the area, to the vibrancy and diversity of the ecosystem, and to economic development in Northeastern Michigan, a state hard-hit by the ongoing recession. Addressing the contamination and protecting health and the environment is one of EPA's highest priorities.

I understand that cleanup progress in the watershed has been uneven, with false starts by EPA and other regulatory bodies, and that there is considerable frustration and concern by many elements in the community. I also understand that, while Dow Chemical has made progress in characterizing the extent of contamination and addressing some of the most severe threats, much work remains, including investigating the contamination, assessing options for comprehensive remediation, and designing and implementing a remedy.

Before committing EPA to a course of action, I felt it was essential to take a step back and examine the history of cleanup efforts, the perspectives of stakeholders, and the legal and regulatory options for protecting health and the environment. I asked a team of officials from EPA Headquarters and Region 5, led by my Senior Policy Counsel, to tour the river systems and meet with the major stakeholders. This visit occurred on March 18-19 and included discussions with Dow Chemical, the Michigan Department of Environmental Quality, environmental organizations, and local business leaders and government officials. During this process, I directed Region 5 to suspend ongoing negotiations with Dow Chemical so that we did not continue down a path that might be incorrect.

The team has now briefed me, and I have carefully considered its feedback. I am writing to share the results of my assessment and announce a new plan that I am confident is in the best interests of the environment and the communities in the Saginaw Bay Watershed. My sole focus in examining the options has been to achieve an expeditious and transparent cleanup that protects health and the environment.

I believe that a strong EPA presence in the watershed is essential as we move ahead to tackle the considerable challenges posed by this site. EPA has both expertise and experience with the health and environmental effects of dioxin and the complex contamination and cleanup issues associated with large river systems. EPA's technical and legal resources are assets that can contribute to an effective cleanup, and I am committed to bringing these assets to bear. With

EPA technical support, the State of Michigan made progress under its authorized Resource Conservation and Recovery Act program. However, given the magnitude of the task ahead, a division of responsibilities between EPA and the State provides the best foundation for further progress. EPA and the State concur that MDEQ should continue in the lead for RCRA corrective action at Dow's Midland plant and its immediate surroundings, including the City of Midland, while EPA will assume lead responsibility for the remainder of the river system and Saginaw Bay using its authorities under the Comprehensive Environmental Response, Compensation, and Liability Act.

I am confident that the two agencies will continue to enjoy an excellent working relationship and that the sampling and characterization completed to date under MDEQ's lead will be valuable to both of us as we move forward. By leveraging our combined resources and expertise, we should be able to accelerate the pace of site investigation and cleanup.

I have carefully considered whether this site should be listed on the CERCLA National Priorities List and have decided that this step would cause further delay if pursued now. I am ready, however, to seek NPL listing if Dow at any time does not comply with requirements that EPA deems necessary for protection of public health and the environment. I will insist on including as part of our agreement with Dow a commitment that Dow not challenge EPA's right to pursue NPL listing if we decide it is needed in the future.

Although we will not list the site on the NPL at this time, the actions we require of Dow under CERCLA will be based on well-established tools that EPA uses for all CERCLA cleanups. These tools will impose enforceable obligations on Dow – backed up by a range of penalties and sanctions – with minimal opportunities for time-consuming appeals to resolve disputes. While our preference is to use these tools on a negotiated basis, we will not hesitate to use them unilaterally if required. We also will undertake the work ourselves at Dow's expense if there is continued non-compliance with EPA directives. These strong enforcement tools will assure progress here after a history of delay in accomplishing significant cleanup.

While NPL listing would have the potential benefit of allowing EPA to spend taxpayer dollars on remedial action, I do not now believe that EPA will need to fund the remedy at this site. We fully expect Dow to provide that funding. Remedy selection would proceed in the same way as it would for any NPL cleanup, with EPA issuing a Record of Decision, after public input, setting the terms and conditions for cleanup. In addition, a CERCLA Order would not terminate RCRA Corrective Action obligations.

Given EPA's lead role for the river system and bay under CERCLA, I am directing Region 5 to resume negotiation of an administrative order on consent with Dow. I am also announcing that EPA will hold a community meeting before negotiations resume to discuss the scope of the negotiations and EPA's overall plans for the site.

I recognize that these negotiations have been controversial in the past. I am therefore taking a number of steps to improve the negotiation process and maximize acceptability of the end-product to stakeholders:

1. There needs to be a clear understanding of the role that any order will – and will not – play in the overall cleanup. Any order must commit Dow to complete the sampling and analysis required to fully characterize contamination in the river system and bay, to conduct a rigorous analysis of options to address this contamination, and to design the resulting remedy after an appropriate option has been selected. Using CERCLA terminology, this means undertaking a CERCLA Remedial Investigation and Feasibility Study and a Remedial Design based on a detailed statement of work. EPA will insist that the scope of this order extend beyond the Tittabawassee River to include the Saginaw River and Bay. We believe that the upper portion of the Tittabawassee River has been adequately characterized under the RCRA process; our focus with Dow will primarily be on characterizing the remainder of the river system and bay.
2. The order will not set cleanup levels or define the nature or stringency of the cleanup actions that ultimately will be required. These decisions will be made solely by EPA, not by Dow, in a public and transparent process that is informed by the requirements of CERCLA and EPA's extensive implementing guidance.
3. As we move forward to develop remediation strategies at this site, the science on dioxin's health and ecological effects will obviously play an important role in our decisions. Although EPA scientists, supported by external peer review bodies, have invested considerable time and effort in evaluating the scientific literature on dioxin, we need to be sure that EPA's assessment of dioxin's risks to people and the environment is brought to bear at this and other dioxin-contaminated sites in a timely manner. Accordingly, I am, in parallel with this letter, announcing a commitment to accelerate our scientific work on dioxin. Our goal is to issue a final dioxin assessment by the end of 2010. In addition, our Office of Research and Development and Office of Solid Waste and Emergency Response will review current dioxin cleanup guidance set by the Agency and the states with the aim of recommending interim preliminary remediation goals informed by the latest science and the work of state agencies. We will announce these interim cleanup goals by the end of the year. Finally, EPA will review the information currently available from the University of Michigan Dioxin Exposure Study in the Midland area and will provide our response by September 30.
4. Because the order will address only the completion of an RI/FS and RD, I believe it is essential that the public understand the full scope of the effort required to achieve site remediation and the many steps that will be required in addition to this order. I have directed Region 5 to develop draft milestones and corresponding schedules for achieving comprehensive cleanup. These will be discussed at the upcoming community meeting. Although the amount of work required is daunting, I believe that a realistic but ambitious set of milestones is critical so that the public can hold EPA and Dow accountable for the rate of progress.
5. EPA and MDEQ remain committed to taking immediate action whenever necessary to protect human health and environment while further characterization and analysis are underway. Starting in 2007, EPA, in consultation with MDEQ, accelerated the cleanup of highly contaminated areas using EPA's CERCLA removal action authority. The

accelerated CERCLA work will continue to be employed where circumstances call for it. For example, EPA recently concluded overseeing cleanup work under an agreement with Dow for a time-critical removal at Riverside Drive. At that location, EPA sampling showed very high levels of dioxin in soils near residences in the floodplain. In addition, EPA and Dow entered into a new agreement for removal work that is underway at a high-use public park site. The fact that EPA is working on a long-term solution does not mean that we will back off of any efforts to accelerate cleanups and take time-critical action where appropriate; in fact, EPA will continue to identify other high-use properties that may warrant early action. EPA retains its authority to require immediate action, and stands ready to use it if the situation warrants it.

6. I know that concerns exist among many stakeholders about a lack of transparency in prior decision-making. Transparency is one of my highest priorities, and I am determined to assure that it is an integral part of how EPA does business at the Dow dioxin site.

The place to start is with the negotiations over the draft agreement between EPA and Dow. We will provide information to all stakeholders about the topics that will be the subject of negotiations with Dow. We will further explain these topics at the upcoming community meeting prior to beginning further negotiations. There are already many useful documents available on EPA's Web site, including the actual December 2008 proposed agreement and the model agreements that are the basis of the December 2008 proposed agreement. We will also provide progress updates on the Web site during the negotiations. In addition, before the parties sign any agreement, EPA will provide the draft for public review and consider public comments before making a final decision.

This is an unprecedented degree of transparency, and goes well beyond the opportunities for public participation typically provided at this phase at other CERCLA sites. The goal is to be open about what topics the parties are discussing and to provide the public with a meaningful role prior to signature.

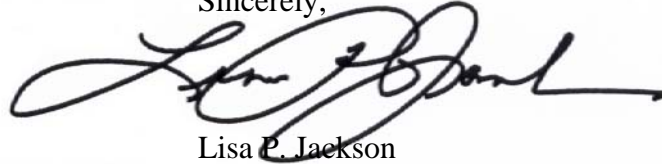
In early April, EPA also awarded a \$75,000 grant to the Michigan Department of Community Health. This will support an ambitious pilot program for community outreach on public health issues associated with eating local fish and wild game, especially at subsistence levels. It will also fund an environmental education program aimed at middle school students. EPA and MDCH will seek the advice of community leaders on the best ways to share relevant information with the community at large.

7. Transparency and public involvement are also essential after the order with Dow is finalized. EPA will create an office in the Tri-Cities office, with a full-time staffer devoted to the cleanup. At my direction, the Region has also developed a comprehensive public involvement plan, which will provide multiple opportunities for input at all stages of the cleanup. The Region will discuss the plan and solicit reactions at the upcoming community meeting.

As this matter proceeds, I will remain actively involved and will demand steady progress toward characterization and cleanup. My priority will be expeditious action to protect human health and the environment, and I will not hesitate to intervene if this goal is not being met.

I want to thank all of you for your cooperation and input as EPA has reconsidered its strategy. EPA has scheduled the community meeting for June 17, 2009; further details about the meeting will be announced separately. EPA looks forward to working with you further as we take the first steps toward achieving a comprehensive remedy at this site.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa P. Jackson", with a long horizontal flourish extending to the right.

Lisa P. Jackson

cc: Michigan Department of Environmental Quality
The Dow Chemical Company