

**City of Midland, Michigan, Tittabawassee River,
Saginaw River and Saginaw Bay Contamination
Remediation and Damages
Alternative Dispute Resolution Mediation**

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made by and among the United States of America on behalf of its agencies, departments, and instrumentalities (the "United States"), the State of Michigan (the "State"), the Saginaw Chippewa Indian Tribe of Michigan (the "Tribe"), and The Dow Chemical Company ("Dow"), collectively referred to in this Agreement as "the Parties."

WHEREAS, the Parties intend this Confidentiality Agreement to address the negotiation of the possible settlement of Claims defined below that the United States, the State, and the Tribe may have against Dow, and Dow may have against the United States, in connection with certain alleged offsite releases of hazardous substances, wastes or constituents from Dow's Michigan Operations Midland plant ("Dow Facility");

WHEREAS, on January 20, 2005 Dow and the State entered into a "Framework for an Agreement Between the State of Michigan and The Dow Chemical Company" ("Framework for Agreement") that contemplated an innovative approach to resolving issues associated with the aforementioned alleged releases in order to provide greater and more rapid benefits than a traditional litigation-based approach;

WHEREAS, the Framework for Agreement stated that the interests of all stakeholders are served by an integrated, comprehensive, and accelerated approach to resolution of these issues that involves additional governmental parties, additional statutory authorities, and supplemental agreements;

WHEREAS, the Parties desire to attempt to resolve these issues in anticipation of possible litigation, but without filing or otherwise initiating litigation, through the use of alternative dispute resolution processes;

WHEREAS, in order for the Parties to have frank and productive discussions, and be able to explore timely and comprehensive resolution of these issues, the Parties have determined that a confidential negotiation process is necessary; and

WHEREAS, any proposed settlement ultimately reached with the United States and the State will be subject to public comment;

THEREFORE, in consideration of the covenants contained herein and the mutual benefits to be derived therefrom, the Parties and the undersigned Convening Neutral agree as follows:

1. Purpose: The purpose of this Confidentiality Agreement (Agreement) is to specify the conditions of confidentiality for facilitated negotiations among the undersigned Parties and the Convening Neutral in the non-binding alternative dispute mediation process (Mediation) described below. This Agreement may be superseded by a comprehensive Mediation Participation Agreement to be entered by the Parties at a later date.

2. Scope:

A. Except as provided otherwise in this Section, the Parties intend this Mediation and Agreement to address and extend to negotiation of the possible settlement of claims or causes of action arising from the presence of hazardous substances, wastes or constituents in the following areas as a result of alleged releases from the Dow Facility:

- (i) the surficial soils of the City of Midland;
- (ii) the Tittabawassee River and its sediments and floodplain soils;
- (iii) the Saginaw River and its sediments and floodplain soils;
- (iv) the Saginaw Bay of Lake Huron and its sediments and floodplain soils; and
- (v) any other locations (other than the areas referred to in Section 2.B, below) where hazardous substances, wastes or constituents from the areas described in subsections (i) through (iv) above have subsequently come to be located or deposited

(hereinafter "Claims"). The Claims addressed by this Mediation and Agreement include, without limitation, claims for response costs, response actions, corrective action, and natural resource damages arising under the following federal and state statutes: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; and Parts 31, 111 and 201 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.101 et seq; as all such statutes have been amended.

B. The Mediation and Agreement are not intended to address or extend to negotiation of the possible settlement of claims or causes of action arising from:

- (i) the presence of hazardous substances, wastes or constituents:
 - (a) within the boundaries of the Dow Facility;
 - (b) in groundwater, regardless of location, provided, however, that

the scope of the discussions regarding damages to natural resources may include discussions of any damages resulting from releases to groundwater;

(c) in any of the following areas:

- (1) Dow's brine extraction well and pipeline network and all associated buildings, storage areas, and equipment;
- (2) Dow's benzene pipeline between the Dow Facility and Bay City, Michigan, and all associated buildings, storage areas, and equipment; and
- (3) the Rockwell Road Landfill; and

(ii) releases originating from any of the areas described in Section 2.B(i) (b) or (c), above, to any other area.

C. Additional claims, sites, and geographic areas may be excluded from, or covered by, this Agreement by unanimous agreement in writing of the Parties. Communications regarding a claim, site or geographic area not subject to this Agreement may be covered under this Agreement, where the Parties unanimously agree that such communications will assist the possible resolution of one or more Claims.

3. Participants in the Mediation

A. Convening Neutral: The Convening Neutral in this matter will serve at the pleasure and with the consent of all the Parties. Therefore, the Convening Neutral shall be agreed upon by the Parties. The Parties have agreed that unless and until one or more final neutrals have been selected by the Parties, David Batson will serve as the Convening Neutral.

B. Persons Bound: Those bound by the Mediation and this Agreement shall be the Parties and their respective insurers and representatives, including counsel and those consultants/contractors/experts retained by a Party, whose advice has been solicited by the Party in connection with the Mediation and/or in connection with any existing or future litigation related to alleged releases of hazardous substances, wastes or constituents from the Dow Facility.

4. Confidentiality: To promote frank and productive discussions, the Parties agree that the Mediation shall be confidential. To the extent authorized by law, the Parties shall keep confidential any written communications prepared for the purposes of the Mediation, including any memoranda, notes or work product of the Parties or Convening Neutral, submitted to or by them, or to or by the Convening Neutral, or prepared by or for them, or by or for the Convening Neutral, and any oral communications made for the purposes of the Mediation, among or between them, or the Convening Neutral, with respect to the Claims. The foregoing communications are hereinafter collectively referred to as "dispute resolution communications." Notwithstanding the foregoing, any communication:

(i) 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, or

(ii) of environmental monitoring or natural resource damages assessment data, or calculations or factual depictions of such data, but excluding interpretation, characterization, or statements of position regarding such data made for the purposes of the Mediation,

shall not be considered confidential dispute resolution communications, whether or not the communication is made in the course of the Mediation.

No Party shall disclose any confidential dispute resolution communication, nor the substance of any confidential dispute communication to any person or entity not a Party to the Mediation, other than the Convening Neutral, except as provided for in this Agreement.

This Agreement shall not restrict any Party's right to use documents it prepares or submits in the course of the Mediation in any manner that Party deems suitable. In addition, this Agreement shall not apply to or restrict the use of information or documents that were, or hereafter become, public knowledge or publicly available without violation of the terms of this Agreement. Any dispute resolution communication that is otherwise admissible or discoverable by any Party shall not be rendered inadmissible or non-discoverable because it is referenced, discussed, used, produced, or disclosed during the Mediation.

The Convening Neutral shall not disclose to any Party information conveyed to him in confidence by another Party, unless authorized to do so by that Party or as required by law. The Convening Neutral shall, upon termination of his services as a Convening Neutral, either (i) destroy any notes and written or electronic records created by or provided to him, unless a Party requests the return of such written records provided to the neutral by such Party, in which case the Convening Neutral shall return the original and all copies of the requested materials to the Party, or (ii) if requested by any mediator(s) selected by the Parties in any subsequent mediation agreement, furnish the originals of all such notes and records to any such mediator(s) and destroy all copies of them. Mediation sessions shall not be recorded verbatim and no formal minutes or transcripts shall be maintained.

The Convening Neutral shall not be deemed a "necessary or indispensable" party, as defined in Rule 19 of the Federal Rules of Civil Procedure and any equivalent state law, in any pending or future judicial, administrative, or arbitral action related to matters discussed in the Mediation. A Party shall not subpoena or otherwise seek from the Convening Neutral any information that relates to the Mediation provided to him by another Party. In no event shall the Convening Neutral voluntarily testify on behalf of a Party, or participate as a consultant or expert, in any pending or future judicial,

administrative, or arbitral action related to matters discussed in the Mediation.

The Mediation, including all dispute resolution communications, is confidential pursuant to the Administrative Dispute Resolution Act of 1996, 5 U.S.C. Section 574 (ADR Act). Except as expressly agreed to otherwise in this Agreement, the confidentiality provisions of the ADR Act, with the exception of 5 U.S.C. Section 574(b)(7), shall govern all dispute resolution communications. In addition, the Mediation shall be treated as compromise negotiations under Rule 408 of the Federal Rules of Evidence and applicable state law. Nothing in this Agreement shall be construed to limit or expand the application of Rule 408 of the Federal Rules of Evidence or Rule 408 of the Michigan Rules of Evidence to any documents or other communications exchanged in the course of settlement discussions among or between the Parties.

This Agreement shall remain in full force and effect without regard to whether any issues considered as part of the Mediation are settled or concluded by final judgment or otherwise. Any unauthorized or inadvertent disclosure of dispute resolution communications shall not result in a waiver of the confidentiality of such communications.

The Parties agree that this Agreement is not confidential.

5. Disclosures Required by Law: Nothing in this Agreement shall be construed to prevent any Party from disclosing dispute resolution communications if required to do so by a federal or state court or under applicable federal or state law, including the Freedom of Information Act ("FOIA") or other public records statute. If any governmental Party receives a FOIA request or other request or demand for documents, which requests, demands or covers dispute resolution communications, the Party receiving the request shall, in good faith, assert all appropriate grounds for maintaining the confidentiality of the document, including without limitation, applicable exemptions under federal and Michigan law. For that purpose, it is understood and agreed by the Parties that the exemption from disclosure established by the ADR Act at 5 U.S.C. §574(j) is an applicable exemption under federal and Michigan law. If a governmental Party receives a FOIA request or other request or demand for dispute resolution communications, it shall give prompt notice to the other Parties to the Mediation and, in recognition of FOIA or other applicable time frames, allow them a reasonable opportunity to share their concerns regarding disclosure, and, as permitted by any applicable law, initiate or participate in any formal proceeding governing whether such dispute resolution communication must be disclosed. If a Party who has received a subpoena, order, or request to disclose dispute resolution communications determines that disclosure is required, that Party shall give reasonable written notice of its determination to each Party that provided the dispute resolution communications (the "Originating Party") proposed to be disclosed.

6. Document Marking and Handling Procedures: All documents covered by the confidentiality provisions of the Agreement (covered documents) shall be marked

“Settlement Confidential.” Any Party receiving covered documents shall take measures to ensure that the documents remain confidential. Such measures shall include, but are not limited to (a) maintaining covered documents in separate files, (b) restricting access to those files and documents to the receiving Party’s attorneys, consultants, or other experts retained by the receiving Party, and involved in the Mediation or other litigation involving the alleged releases at issue in the Mediation, and (c) requiring the Parties’ consultants or other experts involved in the Mediation or such other litigation to enter into agreements to maintain the confidentiality of all covered documents and other communications in accordance with this Agreement and to assert available privilege(s) to decline any requested disclosure of such documents or communications to any person who is not a Party to this Agreement. Information and documents that are otherwise publicly available without violation of the terms of this Agreement, admissible, or discoverable shall not be rendered confidential, inadmissible, or non-discoverable merely because they have been marked as “Settlement Confidential” or as otherwise confidential in any other form or manner. This Agreement shall not restrict any Party’s right to contend, or contest, that any information or document used in the Mediation is confidential pursuant to the terms of this Agreement regardless of whether such information or document is so marked at the time of its submission or use in the Mediation. If a Party notifies a receiving Party that a confidential document, not so marked at the time of submission, should have been marked “Settlement Confidential”, the receiving Party shall thereafter handle the document in accordance with this section.

The United States, the State and the Tribe reserve the right to utilize any information from this Mediation to fully inform decision makers within the federal, state and tribal governments and to make recommendations within those organizations concerning settlement with respect to these matters or claims. In addition, the United States, the State and the Tribe may share information obtained during the Mediation among their various departments, agencies or instrumentalities for any appropriate purpose, provided each person to whom such information is to be shared is shown a copy of this Agreement, is informed of the confidential nature of the information to be disclosed and agrees to comply with this Agreement.

7. Non-Waiver: By exchanging documents and information with each other for the purpose of settlement negotiations, the Parties do not waive any privilege, immunity, or other basis for non-disclosure that otherwise applies to these documents and information.

8. Modification of Agreement: Any provision of this Agreement may be modified only by unanimous written consent of all of the Parties, excluding any Parties that have withdrawn from the Mediation.

9. Representations Regarding Mediation: Nothing herein shall foreclose a Party from representing to a third party that it is (or was) among a group of Parties that engaged in discussions with a neutral professional regarding the site. The Parties agree that communications with individuals and organizations other than

the Parties, including the press and members of the public, (hereinafter referred to collectively as “public statements”) regarding matters discussed during the Mediation shall be governed by the following methods and procedures:

A. The Parties will make good faith efforts to jointly identify ahead of time and agree upon the content of public statements regarding their discussions. Communications with individuals and organizations other than the Parties will usually be conducted by individuals within the Parties’ respective organizations identified as being principally responsible for public statements regarding the Mediation. Notwithstanding

the foregoing, nothing in this Agreement shall be construed to limit the ability or authority of any of the Parties to engage in independent public statements regarding the Mediation, provided that such statements are consistent with this Agreement.

B. If there are disagreements among the Parties as to the appropriate content of public statements, the Parties may request that the Convening Neutral mediate those differences.

C. The Parties may, by mutual agreement, request that the Convening Neutral make joint statements on the Parties’ behalf about the Mediation, and the Convening Neutral agrees to do so if the request is made by all of the Parties.

D. Consistent with the confidential nature of the dispute resolution communications between the Parties, any public statements regarding those communications will generally be limited to: 1) the date of the discussion/meeting; 2) the Parties participating in the discussion/meeting; 3) the nature of the topics discussed by the Parties; 4) the status of the discussions of the Parties; 5) the future topics to be discussed by the Parties; and 6) the schedule for future discussions of the Parties.

10. Settlement Documents Subject to Public Disclosure: The Parties intend that if a settlement is reached during, or as a result of, the Mediation, the document(s) embodying the proposed settlement would be subject to public notice and comment.

11. Additional Parties: Additional entities and organizations may become parties to the Mediation upon the unanimous written consent of all the Parties to this Agreement. Any such additional entities or organizations shall be required to bind themselves by this Agreement and any other agreements reached by the Parties to this Agreement.

12. Settlement Obligations: Nothing in this Agreement shall be construed to require either Party to enter into or execute a consent decree or other settlement agreement.

13. Reservation of Rights: Nothing in this Agreement shall be so construed to limit the right of the United States, the State or the Tribe to take any action pursuant to CERCLA, RCRA or any other statute, regulation, policy or rule to enforce applicable laws or to protect public health, safety, welfare or the environment. Nothing in this Agreement shall be so construed as to limit the right of Dow to raise any defenses it may have to such action. This Agreement in no way affects or relieves any Party of its responsibility to comply with all federal, state or local laws or regulations or permits, including the hazardous waste management facility operating license issued to Dow's Midland facility on June 12, 2003. Except as specifically provided, nothing in this Agreement alters the right and/or liabilities of the Parties to the Agreement with respect to any potential litigation.

The Parties make no admission of fact or law, responsibility, fault, or liability by entering into and participating in the Mediation, by entering into this Agreement or by submitting any final settlement agreement for approval by their decision makers.

14. Consideration: The Parties agree that their mutual obligations to maintain the confidentiality of settlement information provides sufficient consideration for this Agreement.

15. Termination: Following 10 days prior written notice to the other Parties and the Convening Neutral, any Party may terminate its participation in the Mediation at any time for any reason without prejudice. Each withdrawing Party shall remain bound by the confidentiality provisions of this Agreement with respect to all dispute resolution communications made prior to such Party's withdrawal from the Mediation. Following 30 days prior written notice to all Parties, the Convening Neutral may terminate the Mediation at any time he deems the Mediation nonproductive. Each Party and the Convening Neutral shall remain bound by the confidentiality provisions of this Agreement with respect to all dispute resolution communications made prior to termination of the Mediation.

16. Counterparts: This Agreement may be executed in counterparts, each or all of which shall be considered an original.

17. Acknowledgement: Each of the undersigned representatives of each Party to the Mediation represents that each representative is authorized to bind that Party and execute this Agreement on behalf of that Party. By signature below, each representative acknowledges that each representative has read, understands and agrees to the terms and conditions of this Agreement. The Convening Neutral, as attested by his signature below, has read, understands and agrees to be bound by the terms and conditions of this Agreement.

18. Applicability: The provisions of this Agreement shall apply to and be binding upon the Parties and their officers, directors, attorneys, employees, agents,

consultants, insurers, successors and assigns and any person acting on their behalf. Each Party is responsible for ensuring that any of its officers, directors, attorneys, employees, agents, consultants, insurers, successors and assigns and any person acting on their behalf who come into possession of dispute resolution communications are aware of and bound to comply with this Agreement. It is explicitly recognized that the representatives of the United States, the State and the Tribe participating in this Mediation and executing this Agreement do not have the authority to settle the claims and defenses of the United States, the State and the Tribe and are authorized solely to negotiate the terms, and recommend approval, of any proposed settlement of such claims and defenses on behalf of the United States, the State and the Tribe. In accordance with established government policy, the Parties also recognize that any proposed written agreement reached by the Parties resolving any claims or defenses of the United States, the State and the Tribe would require formal and final approval by appropriate decision makers of the United States, the State and the Tribe.

19. Effective Date: This Agreement will become final and effective as to a Party once an appropriate representative of that Party and the Convening Neutral have executed and dated the document.

We agree to abide by the terms and conditions of this Interim Confidentiality Agreement and indicate our assent by signing this document below.

PARTIES

The Dow Chemical Company

By: _____
Susan Carrington

Date

We agree to abide by the terms and conditions of this Interim Confidentiality Agreement and indicate our assent by signing this document below.

PARTIES

The State of Michigan Department of Environmental Quality

By: _____

_____ Date

We agree to abide by the terms and conditions of this Interim Confidentiality Agreement and indicate our assent by signing this document below.

PARTIES

The State of Michigan Department of Natural Resources

By: _____

Date

We agree to abide by the terms and conditions of this Interim Confidentiality Agreement and indicate our assent by signing this document below.

PARTIES

The State of Michigan Office of Attorney General

By: _____ Date
Robert Reichel

We agree to abide by the terms and conditions of this Interim Confidentiality Agreement and indicate our assent by signing this document below.

PARTIES

The United States Department of Justice

Sue Ellen Wooldridge
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

By: _____

_____ Date

Steven Willey, Environmental Enforcement Section
Joshua M. Levin, Environmental Defense Section
Daniel R. Dertke, Environmental Defense Section

We agree to abide by the terms and conditions of this Interim Confidentiality Agreement and indicate our assent by signing this document below.

PARTIES

The United States Environmental Protection Agency

By: _____
Gerald W. Phillips

Date

We agree to abide by the terms and conditions of this Interim Confidentiality Agreement and indicate our assent by signing this document below.

PARTIES

The United States Department of Interior

By: _____
Kim Gilmore

Date

We agree to abide by the terms and conditions of this Interim Confidentiality Agreement and indicate our assent by signing this document below.

PARTIES

For the United States Fish & Wildlife Service

By: _____ Date _____
Lisa Williams

By: _____ Date _____
Allen Sedik

We agree to abide by the terms and conditions of this Interim Confidentiality Agreement and indicate our assent by signing this document below.

PARTIES

For The Saginaw Chippewa Indian Tribe of Michigan

By: _____
Audrey Falcon, Tribal Chief

Date

I agree to abide by the terms and conditions of this Interim Confidentiality Agreement and indicate our assent by signing this document below.

CONVENING NEUTRAL

David C. Batson

Date