

**Lone Tree Council**  
P.O. 1251, Bay City, Michigan 48706  
*(Fighting for environmental justice since 1978)*

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**Groups Charge Bush Administration Grants Dow Chemical the Gift to Negotiate Behind Closed Doors**

**What's the issue?**

Dow Chemical, the largest chemical company in the world, is in private negotiations with the outgoing Bush Administration's EPA to alter the existing process governing cleanup of the largest dioxin contaminated site in the United States. The move may result in an agreement that reduces the stringency of cleanup required, weakens the government's hand in requiring timely action, curtail public input, and eliminate government transparency and accountability. Dow Chemical proposed a similarly weak agreement in negotiations with Region 5 EPA last year. EPA Region V rejected the proposal at that time.

**What is being proposed?**

The EPA and the Michigan Department of Environmental Quality (DEQ) have recently entered into a private negotiating session with the Company that could radically impact existing site characterization and cleanup. The parties are proposing to arbitrarily change the way in which cleanup would be administered under the existing and prevailing state hazardous waste permit (RCRA) to a voluntary agreement under the Superfund Alternatives Sites (SAS) program. Concerns about the SAS program are detailed below.

While the specifics of the SAS Agreement are not yet known, preliminary indications suggest the Agreement could be strikingly similar to the agreement discussed during Regional Administrator Mary Gade's tenure at the EPA. At the time, the EPA issued this statement:

"U.S. Environmental Protection Agency Region 5 today stopped its negotiations with Dow Chemical aimed at a settlement to conduct a study and interim cleanup actions for dioxin contamination in the Tittabawassee River system."

"EPA does not believe that the deal Dow is offering goes far enough," said Ralph Dollhopf, Associate Director for the Superfund Division of EPA's Regional Office in Chicago. "Key issues that are paramount for protecting human health and the environment remain unresolved. EPA simply will not accept any deal that is not comprehensive."

After rejection of the proposal by Gade, she was terminated from her job.

### **Why is the Superfund Alternatives Sites (SAS) program a concern?**

The SAS is a non-regulatory program that has never gone through a public process of rulemaking. Nor has the program been evaluated for effectiveness in achieving cleanup. Many SAS sites are languishing without action. The Superfund Alternatives Site process was initially designed to allow contamination caused by a responsible party to be addressed without the stigma of being placed on the Superfund National Priority List (NPL). Note: The SAS has not previously been used when a viable Resource Conservation and Recovery Act (RCRA) corrective action process is already in place, as is the case for the Dow Michigan site. The proposed use of the SAS program in these circumstances is unprecedented.

The SAS process circumvents some of the requirements of the federal Administrative Procedures Act and other public input provisions of the Superfund law, thereby essentially eliminating transparency and a public role in a major cleanup impacting public health and the commons in the region.

### **Why now?**

This past spring, EPA Region V and the Michigan Department of Environmental Quality lauded the accomplishments made in 2007 as being the most progress made in 30 years on this site. Yet, the SAS proposal would derail that process. In December 2008 Dow Chemical successfully secured the right to negotiate a weak agreement under the Bush Administration, whose regulatory philosophy has been notably pro-business. This new process is perplexing. After years of delay around this contamination site, removal of some contaminated soils and sediments finally took place in 2007 and 2008 as a result of orders issued by then Regional Administrator Mary Gade. The orders were issued under powers granted EPA under CERCLA to intervene when a contaminated site poses an imminent threat to human health and the environment. Using this lever, and the company's current operating license, which requires Dow to fully characterize the contamination and propose solutions, action was taken to address the contamination. The combination of state and federal action seemed for the first time in years to have been working. The May 2008 firing of Mary Gade brought these activities to a halt. Gade's firing was reported this way in *The Wall Street Journal*:

The departure of Mary Gade is the latest in a series of unusually public conflicts between the EPA's chief, Stephen Johnson, and his subordinates, and comes at a time when Mr. Johnson is under criticism from congressional Democrats for some of his decisions.

Ms. Gade linked the agency's action to her office's efforts to press Dow Chemical to clean up a Michigan river system that is near a Dow chemical-manufacturing plant and that is contaminated with dioxin as a result of past waste-disposal practices, emissions and incineration at the plant.

To date, the EPA, DEQ and Dow have yet to offer a compelling reason for the secret negotiations or the new process. Residents and citizens believe a good cleanup requires transparency. A comprehensive approach and procedure already exists under existing

law and procedure through the company's operating license and through EPA's authority under CERCLA to impose cleanup orders on the company. Watchdog groups believe implanting the SAS guidance was a direct result of Dow's ongoing efforts to garner a cleanup plan out of the public view where the company can privately leverage their political influence at the state and federal level.

### **Doing Dow Chemical's bidding?**

A recent Freedom of Information document revealed a letter from Dow Chemical to EPA headquarters in March of 2008 requesting their RCRA license be abandoned, even though Dow Chemical is a signatory to the RCRA agreement for cleanup. Regional Administrator Gade interceded on numerous occasions when Dow attempted to engage EPA headquarters. It should come as no surprise that MS Gade's termination was needed to pursue a new process that excludes the public, allows the company to avoid listing on the NPL and rescinds the company's obligations to give a detailed picture of their contamination.

### **What's at stake?**

- **The health and well being of thousands of residents including children living on contaminated property or families forced by economic circumstances to consume contaminated fish and game.**
- **Minimal cleanup on the Saginaw River and Saginaw Bay of Lake Huron**
- **The continued migration of contaminated sediments to Lake Huron**
- **Decreased property values**
- **Diminished natural resources including water quality and wildlife**
- **Realization of the economic potential of Michigan's largest watershed**
- **The ongoing stigma of a highly contaminated community**
- **Community Right to Know, transparency and an informed citizenry**

Dow Chemical's contamination site stretches more than 50 miles from the Company's global headquarters to Saginaw Bay, one of the largest watersheds in the Great Lakes. The contamination is dominated by dioxins, a family of chemicals that are toxic in tiny amounts, and have been found in every species tested in the watershed, including residents of in the area. Fish consumption warnings stretch into Lake Huron, one of the Great Lakes. Wild game consumption is restricted, as is the movement of soil in the contaminated area. Dioxin can disrupt vital functions at infinitesimally small amounts, and has been linked to immune system suppression, diabetes, endometriosis, cancer, birth defects, and a host of other health problems.

