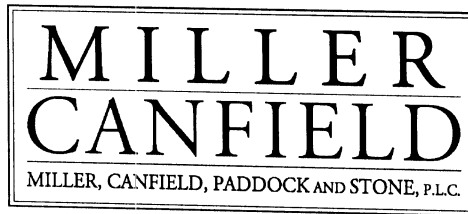


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March 14, 2006

VIA FIRST CLASS MAIL AND E-MAIL: HOWE@MICHIGAN.GOV

Ms. Cheryl Howe
Michigan Department of Environmental Quality
Waste and Hazardous Materials Division
Constitution Hall, Atrium North
525 West Allegan Street
PO Box 30241
Lansing, MI 48909-7741

Re: Comments Concerning the Midland Area Soils Remedial Investigation Work Plan

Dear Ms. Howe:

We are writing to you on behalf of the City of Midland. The City hopes that the Michigan Department of Environmental Quality (MDEQ) will take into consideration the following comments regarding the Midland Area Soils Remedial Investigation Work Plan (RIWP) for the Dow Off-Site Corrective Action. Each of the following comments relate to the effect the RIWP will have on private property owners in Midland. The City has a critical interest in the substance and form of the RIWP, not only because it owns property affected by this RIWP, but because Dow's conduct under the RIWP has the potential to affect all Midland citizens.

Both MDEQ and the United States Environmental Protection Agency (EPA) have indicated that Dow's proposed draft of the RIWP is unacceptable and must be resubmitted with substantial revisions. Accordingly, these comments focus on the elements the City views as essential to a well-designed RIWP and not to specific provisions in the current draft, which are likely to change before being approved.

1 **Access To Private Property**

- (a) Access to private property should be dictated by voluntary cooperation from property owners.

- (b) When seeking access, Dow should be required to provide a neutral and legally accurate explanation of the rights/duties of property owners regarding access without any undue pressure designed to gain access.
- (c) At a minimum, this explanation of the rights and duties associated with access should inform the property owner of:
 - (i) what will occur during sampling, such as the movement of equipment onto the property;
 - (ii) the times sampling will occur;
 - (iii) who will be present while sampling occurs;
 - (iv) the potential contaminants of interest (PCOIs) for which the samples will be tested;
 - (v) the various studies in which any samples taken would be used;
 - (vi) steps taken to obscure the identity of the property when testing the samples;
 - (vii) how long samples will be retained;
 - (viii) the steps that will occur if the property is determined to have soils that meet or exceed generic cleanup criteria, site-specific criteria, or action levels for PCOIs;
 - (ix) any inferences regarding facility status and due care responsibilities to be drawn from allowing sampling and testing;
 - (x) how the test results will be disclosed;
 - (xi) Dow's obligation to restore the property to its original (or better) condition following sampling.
- (d) Dow should be required to use the least intrusive methods of access tailored to the individual property owners' respective circumstances. These methods should take into consideration the time of day for access, locating points of access from public roads rather than neighboring parcels, efforts to avoid disturbing gardens and plantings, and other factors.

2. **Soil Sampling**

- (a) Avoiding unnecessary and duplicative sampling should be a cornerstone of any sampling plan.
- (b) Dow and MDEQ should agree regarding all PCOIs subject to testing in advance of off-site sampling so that only one entry on to private property for sampling is necessary.
- (c) Dow should be required to gather sufficient samples for all approved testing during a single entry onto private property, even if the testing will be conducted under multiple, separate work plans.
- (d) Dow and MDEQ should agree to an objective protocol that will determine when sampling in a particular area should stop, e.g., when there is sufficient data to determine nature and extent, sampling will stop at that boundary even if additional properties were slated for sampling.
- (e) Dow and MDEQ should agree on a trusted third party to assign identification numbers to soil samples so that further laboratory, Dow, and MDEQ handling is done on an anonymous basis without knowledge of the specific property where the sample was collected.
- (f) The sampling plan should specify in advance how long samples must be retained and after what time they will be discarded in an appropriate manner.
- (g) Midland supports developing a sampling protocol that will prevent attaching a facility designation to any private property before site-specific cleanup criteria (SSCC) are approved for all PCOIs. This protocol may rely, for instance, on standardized methodology for selecting property to sample, using anonymous identification numbers for samples, and segregating that identification information from test results until the SSCC are developed.
- (h) Dow must be required to restore property to its original (or better) condition following sampling.

3. **Soil Testing**

- (a) The fundamental basis for any testing plan should be developing quality assurance methods that will generate confidence in results by Dow, MDEQ, and the public and will prevent the need to repeat sampling and testing.

- (b) All testing should be truly blind so that neither MDEQ nor Dow know which test results belong to a specific parcel of property unless results indicate that the soils meet an action level.
- (c) Even if test results reveal that soils exceed the generic residential cleanup criteria, they should not be used as action levels during the remedial investigation.
- (d) The action level for dioxins and furans should be no lower than 1,000 ppt.
- (e) MDEQ and Dow, with concurrence from Midland, should agree to action levels for other PCOI's that are a multiplier of the generic residential cleanup criteria.

4. **Disclosing Test Results**

- (a) No property owner should be required to receive test results against their wishes unless test results meet or exceed a predetermined action level for one or more PCOIs.
- (b) Property owners should be permitted to request information on a voluntary basis from the trusted third party regarding whether the samples taken were tested and, if so, the results for all PCOIs even when the results do not meet action levels.
- (c) MDEQ and Dow should not be informed of the identity of any property owners who voluntarily seek test results from the trusted third party.
- (d) MDEQ and Dow should not have access to test results for particular parcels of property that fall below action levels until after the SSCC are developed.

5. **Other**

- (a) MDEQ should develop a written policy statement establishing that there is no inference regarding facility status simply because a property owner permits sampling.
- (b) MDEQ should develop a written policy statement establishing that there is no inference regarding facility status simply because samples taken from a property are selected for and subject to testing for one or more PCOIs.
- (c) MDEQ should make a clear statement in writing to property owners regarding due care obligations if testing reveals PCOIs that meet action levels or property falls within the boundaries of contamination.
- (d) Dow must be required to pay for all remediation, whether taken as an interim or final response activity.

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

Ms. Cheryl Howe

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March 14, 2006

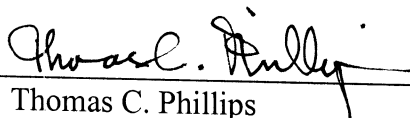
- (c) Dow must be required to confirm the effectiveness of its remedial activities with additional sampling and testing that would also be used to demonstrate that the property is no longer a facility.

Midland hopes that MDEQ will seriously consider these comments when reviewing Dow's RIWP. Midland looks forward to an opportunity to review and provide additional comments regarding future drafts of the Midland Area Soils RIWP, as well as other plans and submissions.

Very truly yours,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By:



Thomas C. Phillips

TCP/ysl

cc: Ms. Susan Carrington, Dow
Ms. Margaret Guerriero, EPA
Mr. Karl Tomion, City of Midland

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