

Dow Shalt Not Blight the Earth

Ecology Center, Mid-Michigan Activists Expose Dioxin Cover-up, Block Bail-Out of World's Second Largest Chemical Company

compiled from reports by Tracey Easthope, Dave Dempsey, and Mike Garfield

In 1986, heavy rains flooded chemical waste disposal lagoons in Midland at Dow Chemical's headquarters complex. The flood washed wastes contaminated with dioxin – the world's most toxic known substance – into the Tittabawassee River. The full extent of Dow's dioxin problem only came to light over the past two years, revealing what may be one of the worst contamination sites in the United States.

During the last two months of 2002, Dow's problems also ex-

posed the full corruption of the outgoing Engler Administration. Until it was blocked at the last minute by the Ecology Center, mid-Michigan environmentalists, and other state and federal agencies, Governor Engler's Department of Environmental Quality (DEQ) sought to bail out Dow from responsibilities for cleaning up its dioxin mess.

Stall and Cover-up

In the spring of 2000, General Motors discovered extremely high levels of dioxin in the floodplain of the Tittabawassee River downstream of Midland, as the company investigated property for a wetland remediation project. The DEQ conducted follow-up tests, and found dioxin levels 80 times higher than the state's acceptable standard. By Fall 2001, DEQ staff urged Director Russ Harding to conduct a second round of testing to define the full extent of the contamination.

According to an inter-department email sent in November 2001, "the deputies of the three departments all agreed we should proceed with Phase II," be-

fore the winter freeze. But Harding demurred, and neighboring property owners weren't even warned about the problem until six months later.

Unaware of the data on downstream contamination, the Ecology Center and Michigan Environmental Council petitioned the federal Agency for Toxic Substances and Disease Registry (ATSDR) to conduct its own health assessment in the Midland area. The study eventually confirmed the alarming early reports, indicating dangerous dioxin levels 22 miles downstream from the Dow site. But the Engler Administration withheld the bad news. When environmentalists submitted a Freedom of Information Act request to obtain the test results, the Michigan Department of Community Health blacked out large sections of the report – principally the sections which tied Dow Chemical to the contamination.

The Environmental Health Watch (Midland), Lone Tree Council (Bay City), Michigan Environmental Council, and the Ecology Center released the findings to the press, which viewed the issue as a local story until National Public Radio featured the issue on its nationally broadcast "Living on Earth" show.



Rebecca Meunier

Ecology Center Environmental Health Director Tracey Easthope testifies at the DEQ public hearing about the dioxin consent order.

"We live here, our children play here, we eat the food grown here. Our health and the health of our children is at stake. We will not rest until we get some justice and this mess is cleaned up."

Lawsuit and Objections Block Bail-Out

On December 5, the Ecology Center, Lone Tree Council, Tittabawassee River Watch, Clean Water Action, Citizens for Alternatives to Chemical Contamination, PIRGIM, and over a dozen local residents filed suit to block the deal. Since the suit was filed, a remarkable series of events unfolded to ultimately foil the deal.

On December 6, District Court Judge William Collette heard arguments and refused our request for a temporary restraining order to stop DEQ from signing the consent order. At the same time, however, he scheduled a hearing for early January to consider the order, and reserved his right to invalidate it then if he deemed it illegal. The *Washington Post* devoted a lengthy page 2 story to the issue that same day, sparking renewed interest among the Michigan press about the matter's national significance. On December 9, the period closed for submitting public comments about the draft order, and DEQ received strong objections from the U.S. Environmental Protection Agency, the state Department of Community Health, environmental groups, and local residents.

Knowledgeable sources told us that DEQ Director Harding refused to allow staff to begin holiday vacations until they completed responses to the order's public comments. (The State is required by law to provide response to public

comments before signing a consent order.) Other sources informed us that the attorney general's office was advising the DEQ against signing the order, and little by little, cracks started showing in the DEQ façade. High-level staff expressed increasing doubts about the proposal. On December 14, division chief Jim Sygo told an AP reporter:

"Does everybody in (DEQ) agree with (the consent order)? No. I know a lot of internal staff don't agree with it," he said. "But if your boss tells you to do something, what do you do?" Sygo said. "We have deadlines. (Harding) asked us to get this done before the end of the year."

On December 20, a DEQ spokesperson announced that the more lenient cleanup standard was

being removed from the proposed deal, and that Department officials were approaching Dow about signing the order without the new "site-specific" level. After Christmas, Dow and Harding continued negotiating until December 27, when the *Detroit News* and *Washington Post* reported that the deal had collapsed.

By the New Year, mid-Michigan residents had won a small measure of justice, but the cleanup of Dow's dioxin mess awaits a new Governor, a new DEQ, and the ongoing attention of environmentalists and local residents.

Tracey Easthope, M.P.H. is the Ecology Center's Environmental Health Director. For more information about the proposed consent order, visit <http://www.ecocenter.org>.



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John Engler's Parting Shot

On November 8th, mere days after Michigan voters elected its first Democratic Governor in the past dozen years, the Michigan Department of Environmental Quality (DEQ) released a draft consent order potentially relieving Dow Chemical of substantial liability for the clean-up. DEQ issued the order despite warnings from the state attorney general's office that the proposal was "illegal" and "fatally flawed." The environmental coalition vigorously protested the agreement, pointing to the threat that citizens would be exposed to high levels of a potent developmental and reproductive toxin. The Dow deal also had the potential to set a precedent for the political manipulation of cleanup standards meant to protect public health.

Internal memos obtained by citizens in Saginaw County revealed that top DEQ management worked hand-in-glove with Dow to craft the agreement. Despite outrage by citizens, contradictory advice from DEQ's own technical staff, and recommendations from the EPA to slow down, the draft order was made public, with a 30-day comment period before its finalization. The order effectively cemented the DEQ's intention to relax cleanup standards before the impending change in state Gubernatorial leadership.

In November, DEQ Director Russ Harding was quoted saying he hoped to reach an agreement

before a new Governor would take office. Although entrusted with protection of the state's resources, he instead worried about the cost to Dow Chemical of a cleanup if the company were required to meet current state standards. "That would be a huge expense for them for what they think is not money well-spent."

Under the Terms of the November Agreement:

- A dioxin zone would be created in Midland, where permissible levels of dioxin in soils will be set

to a process that Dow could manipulate;

- Dow would be relieved of potentially astronomical financial liabilities for fouling Midland and areas downstream to Saginaw Bay.

The announcement of the deal angered local residents. "This is the ultimate outrage in a long line of them," said Michelle Hurd Riddick, a Saginaw resident and a leader of Lone Tree Council. "Have they no shame? This corruption couldn't be more blatant, or more damaging to the public health and to democracy itself."

At the draft of an earlier version of the agreement, members of the Attorney General's office voiced their concerns, stating that "...the order is illegal..." and the order 1) unlawfully purported to relieve Dow of certain liability to the state, 2) arbitrarily and illegally established certain "action levels" for dioxin in soils ten times greater than

DEQ's existing statewide standards under Part 201 through processes not in compliance with Parts 111 and 201, 3) unlawfully delegated DEQ regulatory authority to private parties, and 4) illegally substituted "dispute resolution" procedures involving a de novo trial in Midland County Circuit Court for the administrative and judicial processes specified in applicable law..."

"The citizens who have to live in this contamination will not stand for this," said Tittabawassee River Watch Chairman John Taylor.



DEQ's Jim Sygo and Michigan Environmental Science Board's Keith Harrison preside over sham hearing in Midland about the dioxin problem.

Rebecca Meunier

at an interim level almost ten times higher than the health standard that applies in the rest of the state (with provisions that could relax that number further); and almost 100 times the standard in several other regions. The same lax standard could later be applied to highly contaminated soils along the floodplain of the Tittabawassee River in Saginaw County;

- Key scientific decisions about the risk posed by dioxin and how to address it would be taken from DEQ scientists and delegated