

# **RESPONSIVENESS SUMMARY**

**Hazardous Waste Facility Operating License  
The Dow Chemical Company**

**Salzburg Landfill  
2314 West Salzburg Road  
Midland, Michigan  
MID 980 617 435**

**MARCH 2009**



**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY  
WASTE AND HAZARDOUS MATERIALS DIVISION**

## RESPONSIVENESS SUMMARY

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On December 4, 2008, a public hearing was held to receive comments concerning the draft hazardous waste management facility operating license (License) to be issued to The Dow Chemical Company (Dow) for the Salzburg Landfill pursuant to Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and Title 42 of the United States Code, Section 6901 *et seq.*, the Resource Conservation and Recovery Act of 1976 (RCRA). No U.S. Environmental Protection Agency (U.S. EPA) federal permit was required because there are no federal hazardous waste program provisions that the Michigan Department of Environmental Quality (MDEQ) is not authorized for at this time.

The public hearing and public comment period were announced in the *Midland Daily News* and on area radio stations, WSGW and WCMU. The public comment period extended from November 3, 2008, to December 19, 2008. On November 10, 2008, notice regarding the MDEQ's intent to issue a Part 111 License to Dow appeared in the DEQ Calendar, which is published every two weeks to provide public notice of pending MDEQ decisions, etc.

In accordance with R 299.9515 of the Part 111 administrative rules, this document was prepared to respond to significant comments submitted during the public comment period and to describe any significant changes made to the draft License. No oral comments were received at the public hearing. Written comments were only received from Dow during the public comment period. The MDEQ, Waste and Hazardous Materials Division (WHMD), made modifications to the draft License as a result of the comments received. A summary of the comments received and the MDEQ response to the comments are presented in Attachment 1, Summary of Comments. Changes made to the draft License and the reasons for each change are presented in Attachment 2, Summary of Changes.

## ATTACHMENT 1 Summary of Comments

The Dow Chemical Company  
Salzburg Landfill  
Hazardous Waste Management Facility Operating License  
MID 980 617 435

### COMMENTS RECEIVED FROM THE DOW CHEMICAL COMPANY (DOW)

Note: The comments that were received from Dow are provided unedited.

**COMMENT 1:** The MDEQ should eliminate the prohibition on acceptance of hazardous waste at the facility between the hours of 3 p.m. and 5 p.m.

Condition II.T prohibits Dow from accepting waste at the Salzburg Landfill facility between the hours of 3:00 p.m. and 5:00 p.m. The MDEQ is clarifying that the prohibition on the acceptance of waste at the facility between the hours of 3:00 p.m. and 5:00 p.m. only applies to hazardous waste, and if the restriction remains in the license at all, Dow supports that clarification. However, Dow believes that the restriction on hazardous waste acceptance at the landfill from 3:00 p.m. to 5:00 p.m. is not necessary to protect human health or the environment and should be eliminated from the license. The following points support this position:

- The number of hazardous waste shipments to Salzburg Landfill is negligible. Dow's Michigan Operations site safely ships or receives 600 to 800 trucks in a typical week. These trucks contain our products, raw materials and industrial supplies that are produced or consumed by the manufacturing site. In contrast, Dow ships less than 20 truck loads of hazardous waste to Salzburg Landfill in a normal week.
- The potential for accidents is negligible. A truck carrying hazardous waste from our site to Salzburg Landfill travels less than  $\frac{3}{4}$  of a mile on public roads.
- If a traffic accident happened, there would likely be no "chemical" hazards. The majority of hazardous waste shipments to Salzburg Landfill consist of incinerator ash. Although technically classified as hazardous waste, the ash is essentially inert. Hazardous constituents have been removed or destroyed with at least 99.9% efficiency. If any ash were to spill during a traffic accident, it would not be anticipated to pose any acute hazard.
- Dow's safety record for hazardous waste shipments is excellent. During the 26 years the landfill has been operating, there have been zero traffic accidents involving trucks carrying waste to or from the landfill.

- The restriction keeps a small number of trucks with negligible hazard off the road, while a far greater number of trucks with more hazardous material operate (safely) during the same hours. As mentioned above, the hazardous nature of the waste shipments to Salzburg Landfill is negligible. In contrast, numerous trucks carrying actual hazardous waste materials are in operation (safely) at any hour of the day, throughout the State. Many of these trucks contain flammable or combustible liquids and gases, water reactive materials, oxidizers, poisons and corrosive materials. These trucks serve manufacturers, wholesalers, distributors, farming operations and numerous other industries. There are no restrictions on the hours those trucks operate. The number of such trucks, and the number of miles traveled, are exponentially larger than the trucks that carry waste to Salzburg landfill. Even so, it is rare for those trucks to experience an accident that causes a leak with adverse consequences.
- Shipments of hazardous waste are already extensively regulated by State and Federal agencies to ensure public safety. Shipments of these waste streams must meet the very same State and Federal regulations as our products and raw materials. In addition, under Part 111 these shipments are regulated by the MDEQ including special licensing provisions for the truck drivers and trucking firms.
- Shipments of waste to Salzburg Landfill do not increase risk to the safe transportation of children to or from school. The MDEQ has indicated to Dow that their primary concern with shipments of hazardous waste to Salzburg landfill between the hours of 3 p.m. and 5 p.m. is the possible presence of school buses in the area. Although the area around Salzburg is industrial and no longer contains occupied residences, Dow acknowledges that the Midland Public Schools may have a few buses that pass near Dow's Michigan Operations and Salzburg Landfill facilities to transport children to residences south of the Dow plant site. Dow's limited number of shipments of waste to Salzburg Landfill does not represent any increased risk to the safe transportation of children to or from school for all of the reasons previously provided. If the MDEQ rationale for maintaining a prohibition on waste acceptance between 3 p.m. and 5 p.m. is due to the possible presence of school buses, then the MDEQ should at a minimum clarify that the prohibition is only in effect on days the Midland Public Schools are in session.
- The existing restriction may decrease safety. Prohibiting waste receipts between 3 p.m. and 5 p.m. only results in shifting the timing of some waste shipments to either after 5 p.m. or early the next morning. It is not obvious to Dow that these times provide substantially safer shipping conditions warranting this prohibition. In fact, during several months of the year, the periods after 5 p.m. or early in the morning are likely to be dark, providing for less desirable driving conditions. During winter months the prohibition could also delay shipments from periods

with good weather and clear roads to periods with poorer driving conditions due to snow or other adverse weather conditions.

- The existing restriction may increase the number of miles that hazardous wastes travel on public roads. Prohibiting waste receipts between 3 p.m. and 5 p.m. may require Dow to ship wastes to other facilities at greater distance from Dow. For example, Dow has recently been involved in remediation activities with time-sensitive completion deadlines and substantial volumes of waste. If future remediation activities involve hazardous waste, we may be unable to meet legally required deadlines if we cannot ship waste to our on-site landfill in a timely manner. However, other disposal facilities have no such restriction. As a result, the license may result in foreclosing the best and safest option (disposal closest to the generator) and sending waste longer distances on the public highways.

Recommendation

The restriction against accepting waste between 3 PM and 5 PM should be deleted.

**MDEQ RESPONSE:** Before the MDEQ made the draft License available for public review, Dow requested the MDEQ to consider entirely eliminating the restriction on acceptance of remediation waste that is classified as hazardous waste at the facility between the hours of 3:00 p.m. and 5:00 p.m., or as an alternative, on days when school is not in session. Instead of initially making this requested change in the draft License, the MDEQ notified the public of the opportunity to submit comments on Dow's request during the public comment period. Commenters were to have indicated whether the MDEQ should make this change or allow it on a case-by-case basis under a minor modification to the License. The MDEQ also stated that it would consider any public comment received on Dow's request described above and confer with Midland Public Schools (MPS) before making a final decision on this matter.

No oral or written comments were received from the public or MPS on this matter during the public comment period. The MDEQ has conferred with the MPS Superintendent to determine whether MPS had any objections to eliminating the restriction on acceptance of waste at the facility between the hours of 3:00 p.m. and 5:00 p.m. MPS had no objections to the receipt between the hours of 3:00 p.m. and 5:00 p.m. of nonhazardous waste at Salzburg Landfill, including remediation waste that does not meet the definition of hazardous waste, or the receipt of hazardous waste between the hours of 3:00 p.m. and 5:00 p.m. on days when MPS are not in session. Therefore, the MDEQ has not entirely removed this restriction from the License. Instead, the MDEQ has clarified this condition as shown by the addition in bold text below: The licensee shall not accept hazardous waste at the facility between the hours of 3:00 p.m. and 5:00 p.m. **on days when Midland Public Schools are in session** or during times when hazardous driving conditions exist. Hazardous driving conditions will be considered to exist when a hazard warning for the county of Midland has been issued by the Midland County Sheriff's Office.

**COMMENT 2:** If MDEQ does not eliminate the prohibition on acceptance of hazardous waste at the facility between the hours of 3 p.m. and 5 p.m., the Agency should exclude remediation waste from the prohibition to facilitate the timely completion of remediation projects.

If the MDEQ is unwilling to eliminate the prohibition on receiving hazardous waste at Salzburg Landfill between 3 p.m. and 5 p.m. in its entirety, then at a minimum the agency should waive this prohibition for remediation waste that is classified as hazardous waste.

A prohibition in receiving this type of waste at Salzburg Landfill only serves to extend the time the contaminated media remain in the environment. It is common for regulatory agencies such as the MDEQ to compel responsible parties such as Dow to undertake removal actions on rapid timelines. When such removals are predicated on unacceptable risks to human health or the environment, the public interest is not served by prohibiting shipments of these wastes to Salzburg Landfill between 3 p.m. and 5 p.m.

In recognition of this very issue, the MDEQ waived the waste acceptance prohibition for three (3) separate remediation projects (Reach D, Reach J/K and Reach 0) during the past two (2) years to facilitate timely completion of the projects. It is primarily this issue that now motivates the MDEQ to clarify that the prohibition on waste acceptance only applies to hazardous waste. This is an incomplete solution to allowing the timely management of remediation waste. While it is true that some remediation waste is not hazardous waste, this may not always be the case. As the MDEQ is well aware, the distinction between waste regulated by Part 111 ("hazardous waste") and waste not regulated by Part 111 ("non-hazardous waste") sometimes has more to do with the location or circumstances of the waste generation than the chemical composition or actual hazard of the waste.

The MDEQ has indicated in the fact sheet that they are considering waiving the prohibition of remediation waste that is hazardous waste on a case-by-case basis pursuant to a minor modification to the license. This process is neither quick nor efficient and likely will not meet the needs of any potential stakeholders. Case-by-case approval will necessarily take some amount of time for Dow to make a formal request and for MDEQ to evaluate that request and document a formal determination. After approval it can take up to 90 days to provide public notification of the change to those on the facility mailing list. It is possible for Dow to safely complete some remediation projects faster than Dow can request, MDEQ can approve and the public be notified of these regulatory approvals.

The case-by-case approval proposed by MDEQ is unnecessary to protect human health and the environment and is potentially a duplication of other work. Dow is already required to submit work plans for remediation projects to the MDEQ describing what work will be done and what procedures, methods and practices will be utilized to ensure protection of human health and the environment. These work plans are thoroughly

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reviewed by the MDEQ prior to approval, and it is common that modifications to the original plans are required by the MDEQ to address concerns. If MDEQ believed public notification was important for a specific project, the MDEQ and Dow can define and implement appropriate public communication plans through the existing work plan review/approval process to efficiently notify appropriate stakeholders.

To fully protect the public welfare, the MDEQ should waive the waste acceptance prohibition for all remediation waste.

### Recommendation

If MDEQ does not totally eliminate the time restriction, Condition II.T Site Review Board Limitation on Waste Acceptance should be modified to say --

The licensee shall not accept hazardous waste at the facility between the hours of 3:00 p.m. and 5:00 p.m. The prohibition on waste acceptance between the hours of 3:00 p.m. and 5:00 p.m. does not apply to remediation waste that is hazardous waste. The licensee shall not accept waste at the facility ~~or~~ [sic] during times when hazardous driving conditions exist. Hazardous driving conditions will be considered to exist when a hazard warning for the county of Midland has been issued by the Midland County Sheriff's Office.

**MDEQ RESPONSE:** The MDEQ has clarified this condition as described in the response to Comment 1, above.

**COMMENT 3:** MDEQ has not addressed Dow's concerns about license provisions that allow the Agency to "modify and approve" submittals. The license conditions as presently worded are unacceptable.

The draft Salzburg Landfill Operating License has several conditions which, as presently worded, would allow MDEQ to "modify and approve" various submittals, and then make the "approved" document enforceable. This is unacceptable for reasons explained in this comment.

### Examples of affected permit conditions

The "modify and approve" language that concerns Dow is located in several permit conditions. Examples include the following:

- Condition V.D. says MDEQ may "modify and approve" RI Work Plans and RI Final Reports, which then become "enforceable conditions of this license."
- Condition V.E. says MDEQ may "modify and approve" IRA Work Plans and IRA Final Reports, which then become "enforceable conditions of this license."
- Condition V.G. says MDEQ may "modify and approve" FS Work Plans and FS Final Reports, which then become "enforceable conditions of this license."

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- Condition V.H.1. says Dow is required to “conduct final response activities based on the FS Final Report provided by the Division Chief.”
- Condition V.H.1. says MDEQ may “modify and approve” RAPs and Completion Reports, which then become “enforceable conditions of this license.”
- Condition V.H.3. says Dow must implement the approved RAP within 45 days.

### Why the language is unacceptable

The concept of “modify and approve” can be a very helpful tool when it is used appropriately. For example, the “modify and approve” tool is used appropriately on occasions when the Agency contacts the licensee about a submittal, describes a proposed modification that (in the Agency’s view) would facilitate approval, and gets the licensee’s consent to make the modification. This has the ability to speed up the approval process, and is not a concern.

On the other hand, inappropriate use of the “modify and approve” tool occurs when the Agency unilaterally imposes conditions without prior discussion, and -- to the surprise of the licensee -- “approves” a resulting document that differs substantially from what the licensee submitted. In Dow’s experience, on the infrequent occasions when the Agency has engaged in this inappropriate use of the “modify and approve” process, the Agency’s unilateral modifications inevitably contain one or more provisions that we would never have proposed and cannot accept. However, as stated in the existing draft license, the approved conditions become enforceable conditions of the license. Unilateral application of the “modify and approve” tool does not benefit anyone. It does not benefit the Agency, the licensee, or the public.

Currently DOW and the MDEQ are in litigation over a document - unrelated to the Salzburg Landfill operating license -- that the Agency “approved” with substantial modifications that had not been discussed or agreed upon. In theory, the ability to challenge the Agency’s actions in court is a remedy for misuse of the “modify and approve” mechanism. However, litigation is very costly to both parties, has a tendency to be very slow, and leaves the licensee open to the risk of Agency enforcement activity. Litigation is also highly adversarial. For all these reasons, the ability to litigate is not an adequate, or preferred, remedy.

### Potential Paths to Resolution

Dow has offered several possible ways to address this concern during the draft permitting process. Unfortunately, up to this point MDEQ has not made a reasonable change in the license to address Dow’s concern and the MDEQ has not communicated sufficient rationale to explain why our suggestions have not been included. To date, Dow has offered the following:

- **Deletion.** One possible resolution would be to delete the words “modify and approve” from the Salzburg Landfill operating license. We do not insist on this

approach, but we could accept it. Obviously, the “down side” of this approach could be the loss of appropriate use of “modify and approve”, which occurs far more often than its misuse.

- **Require concurrence.** A second possible resolution is to change the language of the draft permit so it allows the Agency to modify and approve submittals with the concurrence of the licensee. This would fully allow the proper use of “modify and approve” but would prevent its misuse.
- **Add Dispute Resolution.** Another possible resolution would be to provide for dispute resolution. This approach is included in the Facility Operating License for Dow’s main Midland Plant Site (MID 000 724 724, Part XI.E), and to the best of our knowledge no problems have resulted. In fact, the dispute resolution text in the Facility Operating License is written as a companion piece specific to the sections of the license that includes the “modify and approve” text. Further, the dispute resolution text encourages an informal and good faith effort by all parties to resolve the dispute. When resolution is not achieved, then a clear and predictable path is described on how to proceed. We have offered -- and continue to offer -- that this approach would be acceptable in our Salzburg Landfill operating license.

Dow has suggested all of these alternatives during the license negotiations, but the issue has not been resolved based on language in the proposed license.

#### Additional Concerns

Dow acknowledges that the Salzburg Operating License does not envision as many submittals as the main plant operating license. It is possible that we may go through the entire life of the Salzburg Operating license without ever needing to submit any document that the Agency could modify and approve. However, we have two additional concerns:

- Salzburg Landfill has a lifespan that will outlive this license renewal, and MDEQ may treat decisions on the license as precedents for future licenses: and
- MDEQ may perhaps treat decisions on this license as precedents for the next Midland Plant Operating License.

This issue is very important and must be resolved in an acceptable manner. If unresolved in the final issued Operating License, Dow must seriously consider contesting the Salzburg License. This would be a very unfortunate outcome considering the many hours and hard work spent by both MDEQ and Dow staff to resolve numerous other license issues to date.

Recommendation

Dow is requesting that the MDEQ either accept one of the alternatives Dow has proposed previously and restated above, or suggest another approach that will address the concern.

**MDEQ RESPONSE:** The “modify and approve” provisions of the License are necessary to ensure regulatory compliance and protection of human health and the environment. The MDEQ does not agree with Dow’s assertions in the above comments that it has inappropriately used this provision. Therefore, the MDEQ will not delete this language from the License.

However, the MDEQ will accept the Dispute Resolution alternative that Dow proposed in its comments on the draft License. The MDEQ has added dispute resolution language to the Salzburg Landfill License that is comparable to the dispute resolution language that exists in Dow’s License for the Dow Michigan Operations Midland Plant. Please refer to Attachment 2, Summary of Changes, for the final License language.

## ATTACHMENT 2 Summary of Changes

The Dow Chemical Company  
Salzburg Landfill  
Hazardous Waste Management Facility Operating License  
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### COVER PAGE

**CHANGE - WHMD-Initiated Revision to Address, Effective Date, Reapplication Date, Five-Year Review Date, and Expiration Date:** The facility address was corrected as shown by the added bold text: 2314 **West** Salzburg Road, Midland, Michigan 48640. In addition, dates were inserted in the appropriate locations in the final License for finalization purposes.

**CHANGE - WHMD-Initiated Revision to Applicable Regulations and License Approval:** The second sentence of the first paragraph of this section was revised as shown by the deletions in strikethrough text and the addition shown in bold text: This license consists of the ~~257~~ **257** pages of conditions attached hereto (in addition to those in Attachments 1 through 9) and the applicable regulations contained in R 299.9101 through R 299.11008, as specified in the license.

The number of pages in the License increased due to changes made in response to comments received during the public comment period and as a result of WHMD-initiated revisions.

**CHANGE - WHMD-Initiated Revision to Signature Block:** The signature of the WHMD Chief and the date the License was signed were added to the signature block.

### TABLE OF CONTENTS

**CHANGE - WHMD-Initiated Revision to Table of Contents:** Page numbers in the Table of Contents were updated to be consistent with the revised page numbering that resulted from the changes that were made to the License in response to comments. In addition, the Table of Contents was updated to reflect the addition of Condition V.D., Dispute Resolution for Corrective Action Reviews, and changes to the numbering of subsequent conditions.

### PART I - STANDARD CONDITIONS

**CHANGE - WHMD-Initiated Revision to Condition I.D.2. - Responsibilities:** This condition was revised by adding the reapplication submittal date for finalization purposes.

**CHANGE - WHMD-Initiated Revision to Condition I.D.3. – Responsibilities:** This condition was revised following final Department of Attorney General review of the draft License to improve the enforceability of the License language by revising the condition wording and format as shown by the deletions in strikethrough text and additions in bold text.

The licensee shall comply with the conditions ~~identified below~~ **in the following federal and state regulations:**

- (a) **R 299.9521(1)(b)(i) regarding F**facility enlargement, alteration, or expansion; ~~R 299.9521(1)(b)(i)~~
- (b) **R 299.9521(1)(b)(ii) regarding S**submission of statements and certifications for construction and capability; ~~R 299.9521(1)(b)(ii)~~
- (c) **R 299.9521(1)(b)(iii) and 40 CFR §270.30(l)(3) regarding L**icense modification requirements for transferring ownership before new owner/operator accepting hazardous waste; ~~R 299.9521(1)(b)(iii) 40 CFR §270.30(l)(3)~~
- (d) **40 CFR §270.30(c) regarding N**eed to halt or reduce activity not a defense; ~~40 CFR §270.30(c)~~
- (e) **40 CFR §270.30(d) regarding D**duty to mitigate; ~~40 CFR §270.30(d)~~
- (f) **40 CFR §270.30(e) regarding P**roper operation and maintenance; ~~40 CFR §270.30(e)~~
- (g) **40 CFR §270.30(f) regarding P**ermit actions; ~~40 CFR §270.30(f)~~
- (h) **40 CFR §270.30(g) regarding P**roperty rights; ~~40 CFR §270.30(g)~~
- (i) **40 CFR §270.30(h) regarding D**duty to provide information; ~~40 CFR §270.30(h)~~
- (j) **40 CFR §270.30(i) regarding I**nspection and entry; ~~40 CFR §270.30(i)~~
- (k) **40 CFR §270.30(j) regarding M**onitoring and records; ~~40 CFR §270.30(j)~~
- (l) **40 CFR §270.30(k) regarding S**ignatory requirements; ~~40 CFR §270.30(k)~~
- (m) **40 CFR §270.30(l)(2) regarding A**nticipated noncompliance; ~~40 CFR §270.30(l)(2)~~
- (n) **40 CFR §270.30(l)(5) regarding C**ompliance schedules; ~~40 CFR §270.30(l)(5)~~
- (o) **40 CFR §270.30(l)(7) regarding M**anifest discrepancy report; ~~40 CFR §270.30(l)(7)~~
- (p) **40 CFR §270.30(l)(11) regarding O**ther information; ~~40 CFR §270.30(l)(11)~~  
and
- (q) **40 CFR §270.30(m) regarding I**nformation repository. ~~40 CFR §270.30(m)~~

## **PART II - GENERAL CONDITIONS**

### **CHANGE - WHMD-Initiated Revision to Condition II.L. – Financial Assurance for Closure:**

This condition was revised to reflect the closure cost estimate to reflect a revised cap design for Cells 20-22 and 2009 construction costs as shown by deletion of the strikethrough text and the addition of the bold text: On the effective date of this license, the facility closure cost estimate is ~~\$2,547,500~~**2,532,750**. The licensee shall keep this estimate current as required under R 299.9702 and 40 CFR §264.142.

### **CHANGE - Condition II.T., Site Review Board Limitation on Waste Acceptance:**

This condition was revised in response to comments received from Dow and input from the MPS Superintendent by revising the condition wording as shown by the addition in bold text: The licensee shall not accept hazardous waste at the facility between the hours of 3:00 p.m. and 5:00 p.m. **on days when Midland Public Schools are in session** or during times when hazardous driving conditions exist. Hazardous driving conditions will be considered to exist when a hazard warning for the county of Midland has been issued by the Midland County Sheriff's Office.

## **PART III – LANDFILL DISPOSAL CONDITIONS**

### **CHANGE - WHMD-Initiated Revision to Condition III.B.1. - Waste Identification and Quantity:**

This condition was revised to address a concern raised by the WHMD and Department of Attorney General review regarding the enforceability of the License with respect to Dow's ability to accept waste at Salzburg Landfill on a commercial basis. Although Dow states in the Waste Analysis Plan that it is a captive facility accepting off-site waste (i.e., from other Dow sites and subsidiaries and small quantities of waste as a public service), the License language did not explicitly prohibit operation as a commercial facility. This condition was also revised to clarify the applicability of county Solid Waste Management Plans to the disposal of compatible nonhazardous solid waste in the Dow Salzburg Landfill.

For clarification and enforceability purposes, the License was revised by the addition of the bold text and deletion of the strikethrough text and format changes as follows:

The licensee **may, subject to the terms of this license and** except to the extent prohibited under Condition III.B.2. below, ~~may~~ dispose a total volume of 3,090,000 cubic yards of:

- (a) ~~H~~**azardous waste generated by the licensee and subsidiaries, Dow-related remediation activities, small quantities of hazardous waste as a "public service" (e.g., household hazardous waste, waste from local educational and not-for-profit institutions); and**
- (b) ~~C~~**ompatible nonhazardous waste generated by the licensee and subsidiaries, or Dow-related remediation activities, in the landfill, subject to**

the terms of this license. **If the nonhazardous waste is regulated as solid waste under Part 115, Solid Waste Management, of Act 451, and is generated outside Midland County, disposal must be consistent with any applicable provisions restricting importation of waste into Midland County contained in the Midland County Solid Waste Management Plan and must also be consistent with any applicable provisions restricting exportation of waste from the county where the waste is generated, as contained in that county's Solid Waste Management Plan. All references to county Solid Waste Management Plans mean the plan(s) as approved at the time of solid waste shipment in accordance with the provisions of Part 115 of Act 451. The obligation to comply with county Solid Waste Management Plans arises under Part 115 of Act 451 independently of this license and the process for counties to revise their plans is governed by Part 115 of Act 451. Such revisions need not be incorporated into this license through Part 111 of Act 451 license modification procedures. Any failure to comply with a county Solid Waste Management Plan is subject to enforcement under this license pursuant to the provisions of Part 115 of Act 451.**

The licensee shall not dispose of any hazardous waste not listed in the List of Acceptable Waste Types, Attachment 8 of this license, unless the Division Chief approves the disposal of such waste types through an amendment to this license.  
{R 299.9521(2)(d)}

#### **PART IV – ENVIRONMENTAL MONITORING CONDITIONS**

##### **CHANGE - WHMD-Initiated Revision to Condition IV.A.9.(b) - Groundwater Monitoring Program:**

This condition was revised following final Department of Attorney General review of the draft License to correct an inadvertent word omission as shown by the addition in bold text: Within 90 days after the determining a statistically significant increase pursuant to Condition IV.A.6. of this license, submit a report to the Division Chief that demonstrates a source other than the licensed facility solely caused the statistically significant increase, or that the statistically **significant** increase was caused by an error in sampling, analysis, or evaluation.

##### **CHANGE - WHMD-Initiated Revision to Condition IV.C.6.(b) - Soil Monitoring Program:**

This condition was revised following final Department of Attorney General review of the draft License to correct an inadvertent word omission as shown by the addition in bold text: Within 90 days after the determining a statistically significant increase pursuant to Condition IV.C.3. of this license, submit a report to the Division Chief that demonstrates a source other than the licensed facility solely caused the statistically significant increase, or that the statistically **significant** increase was caused by an error in sampling, analysis, or evaluation.

## **PART V - CORRECTIVE ACTION CONDITIONS**

**CHANGE - WHMD-Initiated Revision to Condition V.C.1.(a) – Identification of Waste Management Units:** This condition was revised to reflect that multiple Waste Management Units are listed in this condition and to clarify a regulatory citation noted during final proofreading of the License as shown by the following deletions in strikethrough text and additions in bold text: The WMUs that ~~are~~**is** currently operating pursuant to **Part 111 of the Act 451** and its rules with no evidence of a release of any contaminants. Corrective action may be required when any of the unit(s) undergo final closure.

**CHANGE - Condition V.D. - Dispute Resolution for Corrective Action Reviews:** This condition was revised in response to comments received from Dow by adding the condition shown in bold text below. This addition resulted in the subsequent renumbering of previous Conditions V.D. through V.L. to Conditions V.E. through V.M. wherever such references appear in the License. These minor changes can be viewed in the “track changes” version of the License.

### **D. DISPUTE RESOLUTION FOR CORRECTIVE ACTION REVIEWS**

- 1. The MDEQ and the licensee shall use their best efforts to informally, and in good faith, resolve any dispute that arises with respect to the implementation or administration of the work plan, final report, Corrective Measures Implementation Plan, or Completion Report submission requirements of Conditions V.E., V.F., V.H., and V.I. of this license. Upon request by the licensee, the MDEQ will provide the licensee a written statement of its decision on any matter that the parties are unable to resolve.**
- 2. If the MDEQ approves with modifications a work plan, final report, Corrective Measures Implementation Plan, or Completion Report submitted under Conditions V.E., V.F., V.H., and V.I. of this license, and the matter has not been resolved through informal discussions under Condition V.D.1. above, the licensee may seek further review of the approval with modifications by filing written objections with the Director within 15 days of receiving the MDEQ’s notice of approval with modifications, or under an alternate time frame approved by the MDEQ. The written objection shall set forth the specific points of dispute, the relevant facts upon which the dispute is based, the basis for the licensee’s position, including any factual data, analysis, or opinion, and any matters that the licensee considers necessary for a determination.**
- 3. Within 14 days of the receipt of the licensee’s request for a review of disputed issues pursuant to Condition V.D.2. of this license, the Director will provide a written statement of decision to the licensee. This statement**

**will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting his/her position; and any other supporting documentation relied upon by the Director in making his/her decision. The time period for the Director's review of the disputed issues may be extended by written agreement between the parties.**

- 4. The written statement of the Director issued under Condition V.D.3. of this license shall be binding on the licensee subject to any rights the licensee may have to seek judicial review of the MDEQ's decision under Section 600.631 of the Michigan Compiled Laws or any other applicable provision of law. Nothing in this paragraph shall be construed to limit any defenses the MDEQ may raise should the licensee seek such judicial review. This condition is not intended to limit any right the licensee may have to seek judicial review of matters not subject to dispute resolution under Condition V.D. of this license.**

#### **THROUGHOUT THE LICENSE**

A number of minor typographical changes that were made as a result of final proofreading have not been summarized in this document. Such changes include corrections to punctuation, act and rule citations, and references to License conditions and attachments. These changes may be viewed in the "track changes" version of the License.