



Michigan Department of Environmental Quality

Frequently Asked Questions For Owners of Property Affected by Migrating Dioxin Contamination

REVISED Supplemental Advisory

In June 2003 the Michigan Department of Environmental Quality (DEQ) issued a document entitled "Supplemental Advisory Regarding Part 201 Requirements Applicable to Property Contaminated by Dioxin" (referred to here as the Supplemental Advisory). The DEQ prepared the Supplemental Advisory to provide information to citizens in the area potentially affected by dioxin contamination in the floodplain of the Tittabawassee River. This informational material was sent to more than 2,000 homes. It was also sent to people who use public parks, or fish or hunt in the affected area. As a result of the Supplemental Advisory and other events in the area, the community has raised questions and expressed concerns about which properties are part of the "Facility" caused by the release and migration of dioxins from The Dow Chemical Company (Dow) in Midland.

In response, the DEQ has adopted a new policy to clarify how it determines whether property is a Facility and how it communicates with the public about contamination, especially when it affects a large number of residential properties.

This document, referred to as the **Revised Advisory**, revises the Supplemental Advisory and clarifies: 1) which properties are part of the Facility (see below); 2) what the DEQ knows about the migration of contamination; and 3) what is required of owners of contaminated property.



Which properties are part of the Facility?

Based on currently available information, the DEQ considers only the following properties in the Midland and Tittabawassee River floodplain areas to be part of the Facility. More properties may be identified as part of the Facility as additional information becomes available.

City of Midland: Those properties in three neighborhoods that are close to and downwind of the Dow Midland plant that have been identified as Priority 1 areas for immediate action by Dow to reduce exposure to dioxin contamination. These areas are presumed to significantly exceed the residential soil direct contact criterion for dioxins, based on soil sampling by the DEQ, Dow, and the U.S. Environmental Protection Agency. Dow is required to notify owners of Priority 1 properties.

Tittabawassee River Floodplain: Those properties or portions of properties where samples have been taken that show concentrations higher than the residential soil direct contact cleanup criterion for dioxins. The owners of all properties sampled by the DEQ have been notified of the results of that sampling.

Those properties or portions of properties that have been identified as Priority 1 and Priority 2 areas for actions by Dow to immediately reduce exposure to dioxin. These properties are repeatedly flooded (approximately every seven to ten years) or contain relocated contaminated soils (e.g., for home construction or fill) where concentrations significantly exceed the residential soil direct contact cleanup criterion for dioxins. Dow is required to notify owners of Priority 1 and Priority 2 properties.

FREQUENTLY ASKED QUESTIONS



What is a Facility?

The term “Facility” is used in the state cleanup law, known as Part 201, to describe a location where a hazardous substance can be found at a concentration above what would be considered safe for residential property (the residential cleanup criteria). Therefore, a Part 201 Facility is a place where health or environmental risks may exist, where cleanup may be needed, and where public funding may be used to do that cleanup.



What are cleanup criteria?

The Legislature has established in law the amount of risk that is considered acceptable when the environment has been contaminated by a hazardous substance. The law also directs the DEQ to determine what amount of any particular hazardous substance in the environment results in that unacceptable risk. These amounts are measured as a concentration of a hazardous substance in soil or groundwater and are called the cleanup criteria. Cleanup criteria are developed using the best available scientific information about health and environmental risks.



Why is the term Facility important in Part 201?

The term Facility is important for two reasons under Part 201.

First, Part 201 requires a person who caused contamination to take actions that protect public health, safety, and welfare, and the environment on all properties that qualify as the Facility. This includes contamination that affects someone else’s property. These actions are called response activities.

Second, a person who owns property that has been contaminated by someone else also has some obligations. These obligations are discussed later in this document and are often referred to as “due care” and “disclosure” obligations.



Does the DEQ designate a property as a Facility?

No, the DEQ does not designate a property as a Facility. Property becomes a Facility if, based on the facts, it meets the definition in the law. That is, if it is a location where a hazardous substance can be found at a concentration above a residential cleanup criterion, it is a “Facility.” The box on the first page of this Revised Advisory describes areas that the DEQ has determined, based on the facts, meet the definition of Facility. Only those portions of a parcel of property that are contaminated above a residential criterion are considered part of the Facility.



What obligations apply to the owner of property that is part of a Facility as a result of contamination migrating onto their property?

The property owner has only three obligations: 1) not to make the existing contamination more difficult or costly to clean up; 2) to provide written notification to a person acquiring any interest in his or her property about the presence of contamination; and 3) to comply with restrictions on the relocation of contaminated soil. The “Soil Movement Advisory for Private, Public, and Commercial Projects” that was issued by the DEQ in June 2003 provides details about the regulatory restrictions on soil movement.

A property owner who did not cause the contamination is **not** required to conduct or pay for cleanup activities. The party that caused the contamination is required to clean up contamination and/or control exposure to contamination on property owned by others, but must do so with permission of the property owner. If a property owner has made the existing contamination more difficult or costly to clean up or has relocated contaminated soils, the party responsible for the contamination can take steps to recover the increased costs of cleanup.



How did the DEQ determine which areas of the Tittabawassee River floodplain are part of the Facility?

Data collected to date indicate that the Priority 1 and Priority 2 areas identified in Dow’s Interim Response Activities Work Plan and other sites where samples have been taken that exceed the residential soil direct contact cleanup criterion are part of the Facility.

The DEQ has collected more than 600 soil samples from properties in the Tittabawassee River floodplain between Midland and the point where the Tittabawassee River joins the Saginaw River. The owner of each property that has been sampled has been informed by the DEQ about the sample results. The DEQ has also carefully evaluated the data from those 600 samples together with information about flood events, soil movement in and near the floodplain, and human alteration of land in the floodplain. This process of making inferences from available data is part of the evaluation of every Facility, although the factors that are considered vary from case to case.

In this case, the DEQ has determined that there is a predictable pattern of dioxin contamination in the floodplain based on flooding. Flooding carries dioxin-contaminated sediment (soil) out of the river. When flood waters recede, the dioxin-contaminated sediment is left behind. The more often land is flooded, the more it is affected by contamination coming from the river. After thorough review of all available data and information, and considering sound scientific principles, the DEQ has concluded that land in the 100-year floodplain downstream of the city of Midland is likely to have dioxin concentrations exceeding residential cleanup criteria **if it is repeatedly flooded by the Tittabawassee River** (approximately seven to ten years).

It is important to note that not all land in the 100-year floodplain is repeatedly flooded. In the case of property along the Tittabawassee River floodplain, parts of the property close to the river and more frequently flooded are more likely to be contaminated, while property farther from the river, or that is higher than surrounding property, is less likely to be contaminated. Only those portions of a parcel of property that are contaminated are considered part of the Facility. These property-specific differences were evaluated on a case-by-case basis in identifying which floodplain property is Priority 1, Priority 2, or in neither category.



How did the DEQ determine which areas in the city of Midland are part of the Facility?

Approximately 60 samples taken in the city of Midland show dioxin levels in soil that exceed the residential cleanup criterion. However, this number of samples cannot be used to draw firm conclusions about the presences of dioxin on a larger area. In addition, it is more difficult to evaluate contamination resulting from air deposition as compared to contamination carried by flood waters. Therefore, the DEQ has limited its conclusions to the properties in three neighborhoods near to and downwind of the Dow Midland plant that have been identified as Priority 1 properties.



Can my property be part of a hazardous waste facility?

No. The term “facility” is also used in other ways under other laws and this sometimes causes confusion. For example, a “hazardous waste treatment, storage, and disposal facility” is a location that is licensed to manage certain special kinds of waste. The word “facility” can also be used in a way that does not have legal or regulatory significance, such as “a manufacturing facility” or “a storage facility.” Property that is affected by migrating contamination is part of the Facility that is regulated by Part 201, but it does not become part of, for example, the licensed hazardous waste facility from which the contamination migrated.

FOR FURTHER INFORMATION

www.michigan.gov/deqdioxin

Or contact:

Allan Taylor, 517-335-4799 or taylorab@michigan.gov
Cheryl Howe, 517-373-9881 or howec@michigan.gov
Michigan Department of Environmental Quality
Waste and Hazardous Materials Division
P.O. Box 30241
Lansing, MI 48909-7741

Or contact:

Michigan Department of Environmental Quality
Saginaw Bay District Office
989-686-8025
Waste and Hazardous Materials Division
Remediation and Redevelopment Division

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