**Department of Environmental Quality**

**Responses to Comments/Questions from the Convening Meetings Held in March and April 2005**

**June 23, 2005**

1. Comment: "Not filling the seats on the invitation table is wrong and goes to show that the DEQ does not really want public input. Better selection for public input. The public has lost all trust in DEQ. Falsified numbers are a major part and taking Dow's side."

   Response: Sufficient seats were provided at the table for the invited participants. Unfortunately, a number of these people were not available to attend so there were some empty seats. The DEQ is very interested in public input and is devoting significant resources to developing a community involvement process that will be inclusive and effective. The initial convening or "focus group" meetings were the first phase of this community involvement process under the Framework for an Agreement (Framework) between Dow and the DEQ.

   The basis of the statement "Falsified numbers are a major part and taking Dow's side" is not known, and therefore, it cannot be addressed.

2. Comment: "Wide range of representatives; townships – residents from CAP [Community Advisory Panel] Panel! Three years <u>involved</u> - county parks commission members have a stake in this – not always the politicians. Residents, residents, residents – communications works best; gain Trust. Not including the CAP Panel – residents – makes them have distrust in whole process."

   Response: The DEQ agrees that gaining the trust of the community is important to resolving the issue of dioxin contamination. Comments from the public at the convening meetings indicate that the DEQ CAP is supported by some members of the community, but not by others. The DEQ is reconvening the CAP to gather input on a proposed ongoing community involvement plan before it is submitted to the public generally for comment. That plan also proposes a Community Advisory Committee (CAC), which we envision as offering an opportunity for involvement much like the CAP, but with changes designed to gain widespread community acceptance.

3. Question: "Who would administer the so called trust fund? Hopefully not politicians ideas, conservative [*sic*] groups etc." [Note: It is unclear whether this is what the writer meant.]

   Response: There has been no decision as to who would administer a trust fund that could potentially result from a negotiated agreement with Dow. Other trust funds that have been established as part of Natural Resources Damage

Assessments (NRDA) have boards comprised of the NRDA trustees (e.g., U.S. Fish and Wildlife Service; the Michigan Departments of Natural Resources, Environmental Quality, and Attorney General; and tribal representatives) that administer settlement trust funds. The Framework contemplates stakeholder input into the process for establishment of a trust fund(s) or other actions and mechanisms.

4. Comment/Question: "Crying about public input. Well why not take willing people out of this room. There are individuals on the board tonight. Lady sitting on the end that was invited by the gentleman next to her. Why is that?"

   Response: The DEQ appreciates the commitment of the people who attended the convening meetings as nonpanel members. The convening meetings were limited in size by design in order to encourage a facilitated conversation on where the community involvement process should be going. Everyone will be offered the opportunity for more direct participation during the second phase of this process that will include three town hall style meetings.

   The basis of the statement "Lady sitting on the end that was invited by the gentleman next to her. Why is that?" is not known, and therefore, it cannot be addressed.

5. Comment: "As a former environmental planner, I am proposing that DEQ and Dow and the meeting participants consider advising creation of a citizen-based regional planning body composed of citizens from the Midland, Saginaw and Bay county communities to guide residents, stakeholders, and public officials in addressing environmental planning needs and challenges facing the Saginaw Bay watershed -- particularly those concerning implementation of the framework agreement.

   "Regional environmental planning needs and challenges in the Saginaw Bay watershed have not been comprehensively addressed since 1978 when the East Central Michigan Planning and Development Commission completed its Selected 208 Plan and Plan Management Program. Subsequent initiatives have been undertaken since but have not been successful.

   "A modern format for reclaiming citizen rights to a clean and healthy environment is offered by the American Planning Association. Tom and Katherine Daniels have authored The Environmental Planning Handbook (2003). The handbook's strong point is its breadth of coverage and attention to planning for sustainable public health, planning for natural areas, planning for working landscapes, and planning for the built environment, including planning for toxic substances and toxic wastes. The handbook is available at APA's website www.planning.org."

   Response: The proposed ongoing community involvement process would establish a CAC to enable the public participation envisioned in the Framework Agreement, much as suggested by this commenter. The CAC would have

representatives from the Midland, Saginaw, and Bay Counties communities. The DEQ will be seeking comments from the public on the structure and operation of the CAC, as well as the entire proposed ongoing involvement process. The public may wish to comment on how that process should relate to regional planning as discussed in this comment.

6. Question: "Why did the State and Dow go behind closed doors to the exclusion of everyone else?"

   Response: The DEQ and Dow found it necessary to establish an agreed upon Framework for implementation of Dow's corrective action responsibilities as contained in Dow's Hazardous Waste Management Facility Operating License (Operating License). The frank discussions necessary in such negotiations can be hampered if conducted in public. However, the DEQ is sensitive to the public's interest in Dow appropriately meeting its corrective action responsibilities. Accordingly, the negotiations did not change Dow's corrective action obligations as outlined in the Operating License. In addition, the Framework clearly envisions a strong role for the public as the corrective action process moves forward and the DEQ is striving to facilitate that involvement.

7. Question: "We were told Dow's consultants do not like the DEQ CAP. Is this influencing your decision to not reconvene the DEQ CAP?"

   Response: Dow and others have expressed some concerns regarding the DEQ CAP. It was suggested, for example, that the CAP did not adequately represent the variety of concerned interests in the community. The value of an advisory body can be substantially lessened if it is not both truly representative of affected interests and perceived as such. Accordingly, the DEQ is proposing an advisory body, called the CAC, which is envisioned to build upon the CAP and add features to broaden its effectiveness. These features include the use of a trained, neutral facilitator and recruiting additional members to more fully represent down-watershed communities such as Bay City. Because the CAP has proven valuable in many regards, we are reconvening the CAP specifically to gather input on a proposed ongoing community involvement plan—including the structure and function of the CAC—before it is submitted to the public generally for comment.

8. Question: "Why was the Framework not brought to the public and the DEQ CAP before it was signed? The Lt. Governor stated in his November 4th Press Release that he would do this. Why didn't it happen?"

   Response: The DEQ believes that the Lt. Governor referenced public review and comment on a final settlement between the DEQ and Dow, not the initial Framework that set forth the path toward such a final agreement. Because the Framework took longer to negotiate than originally envisioned, the DEQ's highest priority was having Dow begin the Interim Response Activities (IRAs) described in the Framework to limit exposure to dioxin contamination in the highest risk areas. Because the Framework does not change Dow's obligations under the Operating

License, the DEQ concluded that steps to protect public health should not be further delayed, especially given the substantial role of the public in the implementation process described in the Framework.

9. Question: "We have been told the Framework is a better alternative than going to court with Dow. We have been told that Dow threatened to sue the state. On what grounds?"

   Response: The DEQ is not aware of any position taken by Dow on whether or not it considered litigation against the State or on what grounds it would do so.

10. Question: "Pursuant to Dow's License, Dow is required to submit Scopes of Work [SOWs] and a detailed Compliance Schedule. Where are they in the Framework?"

    Response: The Framework does not refer to the SOWs. The Framework does state that the Operating License is in full effect and controls in the event of a conflict between the Framework and the Operating License. The Operating License language requiring the SOWs is still in effect. Dow had submitted SOWs and responded to DEQ comments on those SOWs as required by the Operating License. The DEQ and Dow are currently in the process of addressing the remaining items required by the Operating License.

11. Question: "How does the Framework address the EPA's RCRA [Resource Conservation and Recovery Act of 1976] Corrective Action Environmental Indicator goal of 'no significant human exposures'?"

    Response: The Framework does not address this goal and was never considered to be a complete description of Dow's legal obligations. The Framework must be read in conjunction with the more specific requirements contained in the Operating License. Completing each step in the corrective action process described in the Operating License will move Dow toward meeting the Environmental Indicator goal of "no significant human exposures." At this time, it is difficult to predict when this goal can be met.

12. Question: "Director Chester stated in Jan. 2002 that the Dow Corrective Action License was the mechanism by which Dow was legally bound to address their contamination. Yet the Scopes of Work are in limbo and the aggressive timelines established have been derailed. Why? Section XI 3(b) states, The SOW must describe the proposed phasing and prioritization of work in a schedule based on consideration of potential risk to human health and the environment. Dow's license was issued almost two years ago? Where is the schedule?"

    Question: "In December of 2003 Dow was issued a NOD [Notice of Deficiency] on their Scopes of Work. In February 2004 Dow resubmitted their SOWs and DEQ has yet to respond. Why? The Scopes of Work are part of the license."

Question: “The Scopes of Work are mandatory pursuant to Dow’s license. Is DEQ going to require them? If so when. If not isn’t that a modification of the license, subject to public hearings?”

Response: The SOWs are required by the Operating License, and removing this obligation would require a major modification of the Operating License with an opportunity for a public hearing. The Framework does not replace the requirements of the Operating License, but it does lay out a schedule for several IRAs and the submittal of a Remedial Investigation Work Plan. Dow and the DEQ are in the process of addressing the remaining administrative and technical issues (e.g., scheduling and identification of applicable exposure pathways) required by the Operating License. The DEQ envisions that alternate approvable documents will be submitted by Dow prior to December 31, 2005.

13. Question: “The Dow License states that the IRAs will be issued in a timely manner. What’s a timely manner?”

    Response: The Operating License does not specifically state that the IRAs must be issued in a timely manner. Rather, Condition XI.B.3.(a) requires IRAs to reduce exposures to be implemented immediately upon approval by the DEQ. The Midland Area Soils and Tittabawassee River Floodplain Interim Response Activity Work Plans were approved as part of the Framework on January 20, 2005. The DEQ considers this approval and Dow’s immediate implementation to be consistent with the Operating License.

14. Question: “The Framework identifies signs to be posted at parks in Saginaw County but not in Midland. Why?”

    Response: The Communications IRA Work Plan, approved on October 7, 2004, requires signs to be posted in certain areas along the Tittabawassee River in Midland County as well as Saginaw County. The DEQ and Dow are taking steps to see that this requirement is met.