

TESTIMONY OF JOSEPH G. TEMPLE, JR

Q. Please state your name and business address.

A. Joseph G. Temple, Jr. My business address is 47 Building, Michigan Division, The Dow Chemical Company, Midland, Michigan.

Q. What is your position with The Dow Chemical Company?

A. I am General Manager of the Michigan Division of Dow Chemical USA, an operating unit of The Dow Chemical Company.

Q. What is your educational background and business experience?

A. My educational background and business experience primarily has been in the chemical industry. I received a Bachelor of Science Degree in Chemical Engineering from Purdue University in 1951, and was employed by The Dow Chemical Company that same year in its research and development area. In 1954, I entered the Plastics Marketing Department and served as a field salesman in Boston, Massachusetts, a product sales manager in Midland, Michigan, and a plastics district sales manager in Camden, New Jersey. I returned to Dow headquarters in Midland in 1964 as a product group sales manager. In 1965, I became business manager for polyolefins. I then advanced to the position of sales manager for the Plastics Department in 1967 and was appointed general manager of that department in 1970. I was named to my present position in January 1973. In that position, I am in charge of the management of the Michigan Division, which includes chemical plants in Midland, Bay City and an industrial site in Freeland, all of which are in Michigan.

Q. Would you describe for us your involvement with the contracts between Dow and Consumers Power Company with regard to the Midland nuclear plant?

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A. In January of 1973, there was in existence a General Agreement that had been executed by Consumers Power and Dow in 1967. Shortly after my arrival, I became involved in negotiations between the parties which resulted in certain amendments to the 1967 contract and the execution of contracts for water supply, electric service, and steam service, which have been included as part of Consumers Power Exhibits 7(a)-(c). I also have been in charge of the current negotiations between Consumers Power and Dow.

Q. Has Dow's management conducted reviews of these contracts subsequent to 1967?

A. Yes. Since 1967 when the General Agreement was signed, the Michigan Division has periodically reviewed the situation with regard to the economics of nuclear steam as compared to a Dow alternative whenever Consumers has announced a new projected total capital cost or a new completion date for the Midland nuclear plant, or has announced any other increase in a significant cost factor. In addition, the contracts have been subjected to continuous review since May of 1974, when Dow was first informed of a probable construction delay at the Midland nuclear plant because of the financial difficulties of Consumers Power.

A further review of the project and the contracts between the parties was commenced in August 1976, as a direct result of the Court of Appeals decision on July 21, 1976, and the new projected capital cost of the project of \$1,670,000,000 given to me by telephone on August 5, 1976.

This last review, which was concluded in September of 1976, resulted in a conclusion that at the present time circumstances have not changed sufficiently to call for a modification of Dow's commitment to nuclear produced steam to be supplied by Consumers Power in March of 1982. Under the

present circumstances as known to Dow, the nuclear alternative remains the most attractive one economically. Further, the matter will be kept under continuous review and Dow will keep all of its options open.

Q. What alternative sources of steam did Dow consider in its review?

A. The options which Dow considered as alternative sources of steam to the nuclear plant were: Conventional coal-fired steam turbine plants utilizing either high sulfur or low sulfur coal producing electricity and process steam; package boilers fired by coal, gas, oil, or a combination of the three; and a coal gasification unit in combination with gas turbines and package boilers.

Q. How is Dow currently obtaining steam and electricity for its Midland Plant?

A. Dow is currently producing all of the steam and some of the electricity for its Midland Plant with its own fossil-fired units.

Q. Did Dow consider continued production from these existing fossil-fired units as an alternative to the nuclear supply?

A. No, because Dow had previously determined that these units must be replaced as soon as possible for two reasons:

1. These facilities are quite old, with major pieces of equipment that will be 30 to 50 years old in 1982. Dow is concerned that some of these turbogenerators and boilers already may have been stretched beyond their meaningful life. Dow has studied as carefully as it can how much further these powerhouses can be pushed, and it has concluded that there is simply no way in which they can be made to operate safely and reliably beyond 1984 at the outside. Dow will be continuously reviewing the situation to see whether 1984 itself isn't indeed too far. This means that whatever expenditures Dow may make in the next

few years to assure safety and reliability and to comply with Dow's Consent Order with the Michigan Air Pollution Control Commission are down the drain as far as use after 1984 is concerned.

2. These powerhouses are currently being operated under a consent order with the Michigan Air Pollution Control Commission which permits continued operation until 1980. (Copies of this consent order and related documents identified as Consumers Power Company's proposed Exhibit 8(a)-(g), are attached hereto.) In all probability, Dow will be able to operate these facilities in the present fashion until 1980. Continued operation of these units beyond 1980 will be dependent upon obtaining a further consent order from the MAPCC. It is not possible to predict at this time whether such an order can be obtained or for that matter what new regulatory or statutory provisions Dow may be faced with at that time. The problems of the nuclear plant, its completion date and Dow's obligations under the Consent Order are undoubtedly interrelated. What the Commission will do, to some extent, may be predicated on what the Licensing Board does. If, for example, there were to be an order to abandon the nuclear plant, the MAPCC probably would no longer consider interim arrangements, but would be looking towards some kind of order which would contemplate a permanent alternative for the Midland nuclear plant. On the other hand, if this Licensing Board reaffirms the construction permits with no suspension, the MAPCC will probably consider the 1982 scheduled date for steam supplies and what alternatives seem most feasible under the circumstances of the availability of steam from the nuclear plant in March of 1982.

It must be emphasized that the timetable of the Midland nuclear plant is the critical factor in all of this and that in the near-term this timetable is Dow's most critical problem. Dow simply cannot rely on its antiquated, existing fossil-fired units for much longer, certainly not beyond 1984. Dow believes it is stretching the useful life of these units to their limits. Nor can Dow rely on any continued variances from the air pollution regulations beyond 1980. In addition, the cost increases in nuclear steam which would be inherent in a delay caused by suspension of the construction license and the actual delay that would result in the commercial operation dates of nuclear Units 1 and 2 would force Dow management to evaluate whether the situation had not then been altered to such an extent that Dow must make other arrangements for a reliable supply of steam.

- Q. As a result of its recent review, what is Dow's conclusion as to the comparative costs of nuclear produced steam and steam produced by the alternatives considered?
- A. Although the difference in cost between the nuclear alternative and the coal-fired alternative has narrowed appreciably due to the numerous delays already incurred and the consequent cost increases of the nuclear plant, Dow's latest analyses show that the nuclear alternative still retains some cost advantage, assuming that Dow would require a return on investment of greater than 15% before taxes. (Dow would expect to receive a return of greater than 15% before it could justify capital expenditures for any facility it might build including an electrical and steam supply system. Dow could not justify the investment required to generate adequate steam

and electricity at its Midland Plant without including all of the cost factors attributable to a return on the investment. Thus, such an investment must yield a return comparable to that which the same funds would earn in another investment by Dow bearing similar risks.)

Q. Does Dow intend to construct and operate a facility to act as a backup or auxiliary for the steam from the Midland nuclear plant?

A. Dow has the right, under the terms of the steam service contract, upon retirement of its existing fossil-fuel fired generating units, to generate and utilize in its Midland Plant an amount of steam not exceeding 1,000,000 lb/hr at a pressure not exceeding 175 psig from any facilities owned and operated by Dow, as standby or auxiliary to the steam to be provided by Consumers. Dow has not yet decided what type of facilities to install to generate this steam. Whatever facilities are chosen, they will be installed under a permit from the MAPCC and, of course, will meet the air pollution standards applicable to such a facility.

Q. You previously referred to continuing negotiations between Dow and Consumers Power. Would you please state Dow's position in these negotiations?

A. Since 1975, there have been active negotiations between Dow and Consumers Power concerning possible modifications of the various contracts between them which relate to the nuclear plant. Dow's position on some of the principal issues is:

1. There must be a specifically stated deadline for the commencement of a reliable steam supply for Dow's Midland Plant by Consumers Power. A clearly understood timetable is required for the completion of the key aspects of the job of constructing and starting up each of the

reactor units. Dow cannot be expected to wait beyond a reasonable time for the completion of the nuclear power plant and commencement of the reliable delivery of contract quantities of process steam.

If that timetable is so changed that the stated deadline for delivery of process steam cannot be met, it must be clear that Dow can terminate the contract.

2. As a direct result of Consumers' announced delays, Dow will not receive process steam and power from Consumers in 1980, but at some time in 1982. Because of this, Dow will be forced to secure process steam and power from sources other than the nuclear plant or forfeit markets for its products. Therefore, there can be no contractual restrictions on Dow's right to make, purchase and utilize process steam and electric power at any time at the Midland Plant. This includes elimination of any restrictions on how Dow may use the steam supplied by Consumers when the nuclear plant is in commercial operation. If the contract is so modified, Dow will still be obligated to purchase a minimum of 2,000,000 pounds per hour of 175 psig steam from Consumers Power if the nuclear plant is in commercial operation in conformance with the stated deadline.
3. Modification of the terms and conditions of the Contract for Electric Service, including changing the term of the contract from five years to one year. Dow's current estimated monthly average total electric demand for the Midland Plant in 1982 is between 175-200 megawatts. If the contract is so modified, part of this demand may be supplied by Consumers Power, and the remainder supplied by self-generation.

4. Other issues that were discussed in the negotiations included a definition of commercial operation date for each unit; provisions for Dow to recover from Consumers expenditures Dow must make to keep present fossil units in operation after July 1, 1980, until the present target commercial operation date; a restatement of when and under what conditions the "nonrecoverables" associated with the direct steam costs are payable to Consumers by Dow; financial protection for Dow should the Midland nuclear plant operate below industry experience for similar units; and revision of certain provisions dealing with the allocation of costs arising out of the supply of water to the Midland nuclear plant.

Q. In summary, Mr Temple, what are Dow's present intentions with regard to its agreement with Consumers Power?

A. Dow intends to purchase process steam from Consumers beginning the first year of operation (1982). In that year, the amounts will range from the contractual minimum requirement of 2,000,000 lb/hr of 175 psig steam and 400,000 lb/hr of 600 psig steam. Dow has the right under the contract to increase its reserved capacities for steam up to the maximum steam generating capacity of the plant by giving Consumers Power six years' notice of its intent to do so. At the present time, Dow's contract demand in 1982 for electric service from Consumers Power is established at 300,000 kilowatts, which will be supplied in accordance with Consumers Power's Rate F. Dow's current total electric demand for the Midland Plant in 1982 is estimated to be between 175,000 - 200,000 kilowatts. If the contract is modified, part of this demand may be supplied by Consumers Power. Dow will install and operate, pursuant to its rights under the contract, the capability to generate 1,000,000 lb/hr of steam at Midland.

STATE OF MICHIGAN  
 DEPARTMENT OF NATURAL RESOURCES  
 AIR POLLUTION CONTROL COMMISSION

In re Administrative Proceedings against  
 DOW CHEMICAL COMPANY, a Delaware Corpora-  
 tion, concerning sulfur dioxide emissions  
 from fossil fuel burning operations at  
 Midland Division, in Midland, Michigan.

File No. 12-73-05

STIPULATION FOR ENTRY OF CONSENT ORDER

AND

FINAL ORDER

This matter is before the Air Pollution Control Commission on a proposal from the company to implement a Supplementary Control System for sulfur dioxide control in lieu of the Company's commitment to construct two 400-foot stacks to enhance dispersion of sulfur dioxide. The previous commitment was developed because the Commission had cause to believe that the fossil fuel fired boilers are emitting sulfur dioxide that, if continued unabated, will be in excess of allowable limits according to the provisions of Michigan R. 336.49 (ACS "No. 71, pages 30-32) on July 1, 1975. Supplementary Control Systems are systems which limit the rate of pollutant emissions during periods when meteorological conditions conducive to ground level concentrations in excess of air quality standards are anticipated.

Dow Chemical Company and the staff hereby, with the approval of this Commission, agree to the termination of this proceeding by entry of a Final Order by consent.

Dow Chemical Company and staff hereby and herewith stipulate and agree as follows:

1. That Dow Chemical Company, a Delaware Corporation, having its principal office at Midland, Michigan, acknowledges proper service of a notice of hearing and proposed order for corrective action, and expressly herewith waives the filing of an answer or denial thereto.

2. That the Dow Chemical Company acknowledges that it is presently the source of the emissions which result in all significant ambient air concentrations of sulfur dioxide in and around Midland, Michigan.

3. That the Dow Chemical Company has demonstrated to the satisfaction of the Commission that all constant emission reduction technology reasonably available to the company has been applied and is presently insufficient to attain the national sulfur dioxide air quality standards. The company and the staff agree that further constant emission reduction means, other than tall stack construction, are not reasonably available to the company at this time.

4. That the Dow Chemical Company has demonstrated the technical feasibility of its version of a Supplementary Control System to achieve the primary and secondary sulfur dioxide air quality standards by July 1, 1975.

5. That Dow Chemical Company and the staff agree that the signing of this Stipulation is for settlement purposes only and does not constitute an admission by Dow Chemical Company that the law has been violated, but both staff and Dow Chemical Company do expressly agree that the sulfur dioxide emissions from Midland Division, South Side and West Side Power Plants, at Midland, Michigan, should be abated and, therefore, both staff and Dow Chemical Company herewith and hereby stipulate and agree to the following time schedule for affirmative action:

a) By April 1, 1974, Dow Chemical Company shall replace the four existing continuous sulfur dioxide analyzers with units that will comply with the United States Environmental Protection Agency's specifications as listed in the Federal Register, Volume 36, No. 84, April 30, 1971.

b) Furthermore, Dow Chemical Company shall install up to four additional sulfur dioxide monitors at locations and on a timetable specified by the Chief, Air Pollution Control Division, Department of Natural Resources.

c) On and after May 1, 1974, Dow Chemical Company shall submit to the staff on a real time basis all air quality data from the sulfur dioxide monitoring stations and other pertinent information related to fuel switching and the implementation of the Supplementary Control System at Midland, Michigan. Dow Chemical Company shall provide at its expense the necessary equipment to receive this information at the staff offices in Lansing.

d) By April 1, 1974, and monthly thereafter, Dow Chemical Company shall submit a monthly report of air quality data summaries and a summary of abatement action taken at the South Side and West Side Power Plants.

e) By September 1, 1974, submit to the Commission evidence to show cause, if any Dow Chemical Company has, why the company should not be required to increase the stack height for Boiler No. 20.

f) After June 30, 1975, Dow Chemical Company shall prevent all sulfur dioxide air quality standards promulgated by the United States Environmental Protection Agency in Federal Register, Volume 36, No. 84, dated April 30, 1971, from being exceeded in and around Midland, Michigan, for any cause attributable to the company. The company shall utilize at its option lower sulfur fuel, load reduction, plant shut down or other means to accomplish this objective.

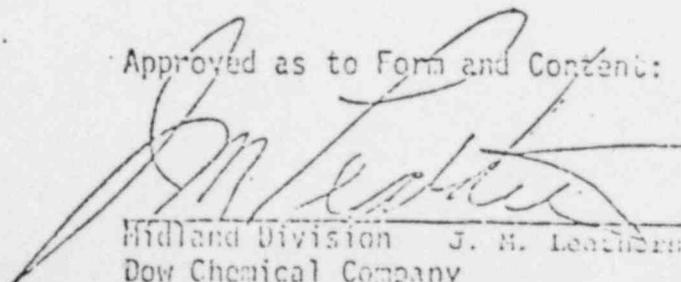
g) By January 1, 1975, and annually thereafter, the company shall report to the Commission and shall show cause, if any the company has, as to why the company should not proceed with dispatch to the design and installation of particulate controls on its existing coal-fired boilers.

h) By July 1, 1980, Dow Chemical Company shall purchase its steam and power requirements in sufficient quantities or make other operating modifications, as appropriate, to be approved in advance by the Commission, to ensure complete compliance with all applicable state and federal particulate and sulfur dioxide emission limitations, such limitations being published in the Administrative Code.

6. The Dow Chemical Company and the staff agree that this stipulation and final order rescinds an agreement between the parties dated March 14, 1973, entitled Voluntary Agreement for Air Pollution Abatement.

Staff and Dow Chemical Company both acknowledge that public hearings on this abatement program were held before the Commission on December 18, 1973. Both staff and Dow Chemical Company hereby consent to enforcement of this stipulation and Final Order in the same manner and by the same procedures for all final orders entered pursuant to Section 16 of Act 257 of the Public Acts of 1972, being Section 336.26 of the Michigan Compiled Laws, including, but not limited to, enforcement by legal action brought under 1972 PA 257 and/or 1970 PA 127.

Approved as to Form and Content:



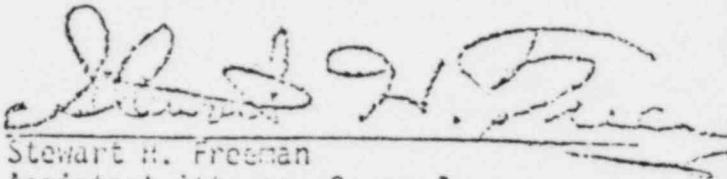
Midland Division J. H. Leathers, Vice President 5/3/74  
Dow Chemical Company  
Dated:

*Handwritten initials and date*  
JH  
5/3/74

Approved as to Content:

Approved as to Form:

  
 \_\_\_\_\_  
 Lee E. Jager, Chief  
 Air Pollution Control Division  
 Department of Natural Resources  
 Dated: 5/7/74

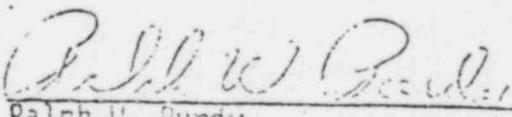
  
 \_\_\_\_\_  
 Stewart H. Freeman  
 Assistant Attorney General  
 Dated: May 13, 1974

FINAL ORDER

This Commission having read the above stated Stipulation for Entry of Consent Order, and the Commission being further fully advised in the premises,

IT IS ORDERED that this Consent Order shall be entered in the record of this Commission as stated herein.

AIR POLLUTION CONTROL COMMISSION

By:   
 \_\_\_\_\_  
 Ralph W. Purdy  
 Executive Secretary

Dated: 5-17-74



WILLIAM G. MILLIKEN, Governor

## DEPARTMENT OF NATURAL RESOURCES

STEVENS T. MASON BUILDING, LANSING, MICHIGAN 48924  
HOWARD A. TANNER, Directorcopy to other files  
file

## NATURAL RESOURCES COMMISSION

CARL T. JOHNSON  
E. M. SATALA  
DEAN D. CHECK  
KURT R. CARL  
MARIA M. WHITELY  
JOHN L. WOLFE  
CHARLES C. ROUNGLOVE

December 5, 1975

RECEIVED  
DEC 12 1975  
MICHIGAN DIVISION LEGISFrank M. Brower, Ph.D.  
Director of Environmental Control  
Dow Chemical Company  
623 Building  
Midland, Michigan 48640

Dear Dr. Brower:

We view with considerable alarm the Dow Chemical Company's inability to prevent the ambient sulfur dioxide concentration from exceeding the maximum 24-hour national ambient air quality standard in the Midland area on December 1, 1975. It is apparent to staff that the control strategy contained in consent order no. 12-73-05 between the Dow Chemical Company and the Michigan Air Pollution Control Commission is not adequate to protect the public health of the citizens of Midland. As this is a most serious matter, it is our intent to file with the Michigan Air Pollution Control Commission at its meeting of December 16, 1975 an administrative complaint requesting a change in the consent order to provide for more certain compliance with the air quality standards. You will be advised of the content of the administrative complaint in the near future.

We respectfully request that the company submit to this office by December 12, 1975, the following information: (1) ERT's predicted SO<sub>2</sub> concentrations at all grid locations for November 30 and December 1, 1975; (2) hourly fuel type, fuel use rates, and sulfur dioxide emission rates for each boiler for the same 48-hour period specified in (1); (3) other dispersion parameters, including meteorological data used by ERT to predict ambient SO<sub>2</sub> concentrations during that 48-hour period; (4) a narrative description of the control measures recommended by ERT and the control measures implemented by the company.

Should you have any questions concerning this matter, please contact Mr. Robert Miller at (517) 373-8640.

Very truly yours,

Lee E. Jager, Chief  
Air Pollution Control Division

LEJ:drc

Ben White  
Stewart Freeman

Exhibit 8c  
STATE OF MICHIGAN



WILLIAM G. MILLIKEN, Governor

DEPARTMENT OF NATURAL RESOURCES

STEVENS T. MASON BUILDING, LANSING, MICHIGAN 48926  
HOWARD A. TANNER, Director

cc: L. Pribila  
L. Note 1/5/76

cc: J.B. Bernd  
12-29-75

NATURAL RESOURCES COMMISSION

CAUL T. JOHNSON  
E. M. LUTALA  
J. W. MULLIN  
MARGARET S. SMITH  
MARGARET H. WINTERLEY  
JOHN L. WOODS  
T. J. G. DUNLOVE

December 24, 1975

Mr. Joseph Temple  
General Manager  
Dow Chemical Company  
Midland Division  
2020 Dow Center  
Midland, Michigan 48640

Dear Mr. Temple:

The Michigan Air Pollution Control Commission will meet on January 20, 1976, at the Delta Administration Building, 7710 West Saginaw Highway, Lansing, Michigan.

According to the terms of Stipulation for Entry of Consent Order and Final Order No. 12-73-05 entered between Dow Chemical Company and the Michigan Air Pollution Control Commission, the company is required to annually report to the Commission and show cause, if any the company has, as to why the company should not proceed with dispatch to the design and installation of particulate controls on its existing coal-fired boilers. There will be opportunity during the Commission's meeting on January 20 for the company to make this required demonstration.

Additionally, it is requested that the company be prepared to explain to the Commission the reasons for high levels of sulfur dioxide measured by air quality monitors in the Midland area during the period of November 30 to December 1, 1975. It is the position of staff that these high levels constitute a violation of the federal air quality standards for sulfur dioxide and, in addition, are in violation of the Order of the Commission, No. 12-73-05. Further, staff believes that the present Order offers the possibility of future violations of both the federal air quality standards and recommends that the existing Order be modified.

Staff would be happy to meet with representatives of the company prior to the January 20 Commission meeting in an attempt to develop a mutually satisfactory solution to this sulfur dioxide question. There is currently a meeting scheduled for January 6, 1976 to discuss the company's presentation as to particulate emissions at which time we would be most happy to also discuss the sulfur dioxide issue.

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JAN - 5 1976



Mr. Joseph Temple  
Dow Chemical Company  
Page 2

As soon as the Commission's agenda is finalized for the January 20 meeting,  
we will send a copy to you.

Very truly yours,



Lee E. Jager, Chief  
Air Pollution Control Division

LEJ:mah

cc: Frank Brower  
Delbert Rector  
Air Pollution Control Commissioners

Exhibit 8d  
STATE OF MICHIGAN



WILLIAM G. MILLIKEN, Governor

DEPARTMENT OF NATURAL RESOURCES

STEVENS T. MASON BUILDING, LANSING, MICHIGAN 48926

HOWARD A. TANNER, Director

*File Air Pollution  
Consent Agreement L. Temple  
cc F. Brower  
1-20-76*

NATURAL RESOURCES COMMISSION

CHIL E. JOHNSON  
E. M. LUTALA  
DEAN PROCTOR  
MELBY F. SNELL  
HARRY H. WHITELEY  
J. L. WOLFE  
CHARLES G. YOUNGLOVE

January 15, 1976

Mr. Joseph Temple  
General Manager  
Dow Chemical Company  
Midland Division  
2020 Dow Center  
Midland, Michigan 48640

Dear Mr. Temple:

At a meeting on January 15, 1976 in our Lansing office, Dr. Frank Brower indicated that the Dow Chemical Company is in the process of making modifications to boilers number 14 and 15 in the Southside Power Plant. They also indicated that they were not aware of permits having been applied for or obtained from the Michigan Air Pollution Control Commission for these modifications.

Please be advised that the rules of the Commission require that permits be obtained prior to installation or modification of this type of equipment and the Air Pollution Control Act makes it a criminal offense to proceed without the necessary permits. You are hereby advised to discontinue any modifications until appropriate permits are obtained.

You are further advised that failure to comply with these permit requirements will result in appropriate administrative or legal action.

Very truly yours,

Lee E. Jager, Chief  
Air Pollution Control Division

LEJ:rmc

cc: Mr. Stewart Freeman  
Dr. Frank Brower



STATE OF MICHIGAN



WILLIAM G. MILLIKEN, Governor

## DEPARTMENT OF NATURAL RESOURCES

STEVENS T. MASON BUILDING, LANSING, MICHIGAN 48926

HOWARD A. TANNER, Director

## NATURAL RESOURCES COMMISSION

CAROL E. JOHNSON  
 E. W. LINDALA  
 CHAS. F. HUBBARD  
 H. L. H. HALL  
 NANCY H. WHITELEY  
 JOAN L. WOLFE  
 CHARLES G. YOUNGLOVE

cc: P. B. Brown  
 J. M. Brown  
 W. E. Rute  
 L. W. Prichard

1-26-76

January 22, 1976

Mr. Joseph Temple  
 General Manager  
 Dow Chemical Company  
 Midland Division  
 2020 Dow Center  
 Midland, Michigan 48640

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JAN 23 1976

MICHIGAN DEPARTMENT OF NATURAL RESOURCES

Dear Mr. Temple:

At its meeting of record on January 20, 1976, the Michigan Air Pollution Control Commission considered two matters pertaining to your company. The first matter had to do with a report by your company as required by Stipulation for Entry of Consent Order and Final Order No. 12-73-05 to show cause as to why the company should not proceed at this time with the installation of particulate controls on its coal-fired boilers. The second matter had to do with the levels of sulfur dioxide which occurred as a result of your company's coal burning activities in the Midland community during the period November 30 - December 1, 1975.

In regard to the first matter, the Commission expressed concern over the lead time that would be required to implement strategies to control particulate emissions in order to meet the deadline required by Order No. 12-73-05. The Commission urged the company to review with its staff the alternative strategies presently under consideration for meeting this deadline and to identify the time schedules required to implement each of the strategies. The intent of this review would be to identify increments of progress and set dates for their accomplishment so that compliance with the deadline of July 1, 1980 would be achieved. I would hope that the company's plans for compliance with the Commission's particulate emission standards can be adequately identified so that this portion of Order No. 12-73-05 need not be an issue in contested case hearings that may now be held as a result of the Commission's Order for Rehearing which is discussed later in this letter.

In regard to the second matter, the position of the Commission's staff was that, since levels of sulfur dioxide had occurred during the period November 30 - December 1, 1975 which would probably have been prevented had the company implemented instructions received from its consultant under the SCS previously approved by the Commission, the Consent Order should be modified to defend against such future occurrences. The

Mr. Joseph Temple

- 2 -

January 22, 1976

company's position as presented by Mr. Frank Brower and Mr. Louis Pribila was that, since in the company's view no violation of the federal air quality standards or Consent Order No. 12-73-05 had occurred, the company was unwilling to negotiate a revised order.

After hearing from the company, staff and interested persons, the Commission entered an "Order for Rehearing" which requires that a record for reconsideration be prepared, that Final Order No. 12-73-05 remain in full force pending further consideration by the Commission and further required that the Acting Executive Secretary of the Commission give formal written notice to the company by formal service of a copy of the Order that the Commission's determination that facts pertaining to this case may warrant a modification of Final Order No. 12-73-05. This letter, therefore, will also serve as a letter of transmittal of a copy of the Order of the Commission.

It is my understanding that, although this Order for Rehearing paves the way for formal proceedings such as before a hearing officer, the entry of this order by the Commission does not preclude reaching an agreement and bringing such an agreement before the Commission with no formal hearings being held. This latter course would be the preference of the Commission's staff and I encourage you to evaluate the staff's position, as we shall yours, and would request that another meeting be held between Dow Chemical Company representatives, representatives of this office, and representatives of the Attorney General's office to attempt to work out a mutually agreeable solution in this matter. I suggest February 3, 4 or 5, 1976 for such a meeting and if a meeting is agreeable to you, I request that you select one or offer alternative dates. We are willing to meet with you in our office in Lansing or your offices in Midland, whichever is preferable to you.

I look forward to your early reply.

Very truly yours,

AIR POLLUTION CONTROL COMMISSION



Lee E. Jager  
Acting Executive Secretary

LEJ:mah

STATE OF MICHIGAN  
AIR POLLUTION CONTROL COMMISSION  
OFFICIAL CERTIFICATE

Lansing, Michigan January 22, 1976

I, Lee E. Jager, Acting Executive Secretary of the Air Pollution Control Commission, DO HEREBY CERTIFY that annexed is a true copy of \_\_\_\_\_  
an ORDER FOR REHEARING on the Commission's Final Order No. 12-73-05

and that I have carefully compared the said copy, consisting of three (3) pages, with the original thereof now on file and of record in the office of said Commission, and that it is a correct transcript therefrom and of the whole thereof.

By:

  
\_\_\_\_\_  
Lee E. Jager  
Acting Executive Secretary  
Air Pollution Control Commission  
Lansing, Michigan

STATE OF MICHIGAN  
DEPARTMENT OF NATURAL RESOURCES  
AIR POLLUTION CONTROL COMMISSION

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In the matter of administrative proceedings against DOW CHEMICAL COMPANY, a Delaware corporation, concerning sulfur dioxide and particulate emissions from fossil fuel burning operations at the Midland Division in the City of Midland, County of Midland, State of Michigan.

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APC No. 12-73-05

ORDER FOR REHEARING

At a public session of the Air Pollution Control Commission, on Tuesday, January 20, 1976, at the Delta Township Hall, the Commission having heard from both the Air Pollution Control Division of the Michigan Department of Natural Resources and from representatives of the Dow Chemical Company, concerning sulfur dioxide and particulate emissions from fossil fuel burning operations at the Midland Division of the Dow Chemical Company,

And, it appearing to the Commission from the matters heard that Final Commission Order No. 12-73-05, as written, may not be affording the public the degree of protection which was intended by the Commission and which the Commission views as being both necessary and desirable to prevent and minimize degradation of the environment and to protect both the public health and the air resource, and the public trust therein, from impairment,

And, it further appearing to the Commission that Final Order No. 12-73-05 should be reconsidered,

And, the Commission being cognizant that Final Order 12-73-05 concerns the first supplementary control

system approved for implementation in the State of Michigan, and that this particular system was one of the first such to be operational in the United States, so that the Commission, in approving Final Order 12-73-05, was acting without benefit of precedent or experience.

And, it further appearing that certain proposed modifications by Dow Chemical Company at the Midland facility concerning this system will be subject to the permit rules of this Commission,

And, it being the Commission's desire to consider this system in toto rather than considering various portions of the system piecemeal through the permit process,

And, the Commission having discretionary authority, pursuant to Section 5(e) of the Air Pollution Act, being 1965 PA 348, as amended by 1972 PA 257, to "make, modify or cancel orders which require, in accordance with the provisions of this Act, the control of air pollution,"

And, the Commission having discretionary authority to order rehearings on its own motion pursuant to Section 37 of the Administrative Procedures Act, being 1969 PA 306, as amended by 1970 PA 40,

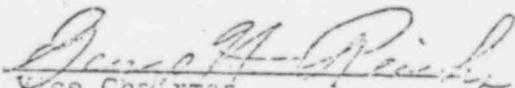
NOW, THEREFORE, IT IS ORDERED that there be a rehearing of the provisions of Final Order 12-73-05.

It is further ordered that a record for reconsideration be prepared either by agreement of the parties, or in the course of formal proceedings for preparation of a proposal for decision before a hearing officer to be designated by the Director of the Department of Natural Resources.

It is further ordered that Final Order 12-73-05 shall remain in full force and effect pending a decision on reconsideration by the Commission.

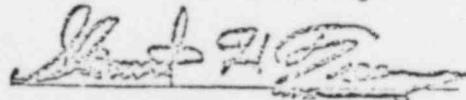
It is further ordered that the Acting Executive Secretary of the Commission give formal written notice to Dow Chemical Company by formal service of a copy of this order that the facts, and conduct of Dow Chemical Company, as alleged by staff in the staff activity report, dated January 20, 1976, and matters brought forth this date before the Commission in public session, may warrant, upon reconsideration of this matter, a modification of the provisions of Final Order 12-73-05.

This ORDER is effective immediately.

  
Vice Chairman  
For the Commission  
Upon Vote of the Commission

January 21, 1976

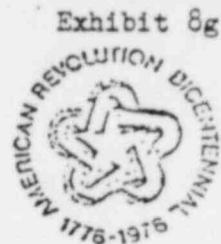
This Order drafted by:



Stewart H. Freeman  
Assistant Attorney General



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION V  
230 SOUTH DEARBORN ST.  
CHICAGO, ILLINOIS 60604



CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

MAR 26 1976

*File*

Mr. Frank M. Brower  
Manager, Environmental Control  
Michigan Division of Dow Chemical Co.  
628 Building  
Midland, Michigan 48640

Dear Mr. Brower:

Under the provisions of the Clean Air Act, as amended, 42 U.S.C. §91857 et. seq., the Administrator of the United States Environmental Protection Agency (EPA) approved portions of an implementation plan submitted by the State of Michigan to attain the national ambient air quality standards for particulate matter and sulfur dioxide within the Central Michigan Intrastate Air Quality Control Region (40 C.F.R. Part 52, 37 FR 10873). The provisions so approved include: R 336.11 through R 336.14; R 336.41 through R 336.49; R 336.51 through R 336.54; R 336.61 and R 336.62 of the Michigan Air Pollution Control Regulations concerning control of particulate matter and sulfur dioxide emissions. These regulations are enforceable by the State of Michigan and the Federal Government.

It has been determined that the information requested herein is necessary to determine whether the Dow Chemical Co. West side and South side Power house is in compliance with applicable provisions of the State Implementation Plan. Accordingly, you are hereby required under authority of Sections 113 and 114(a) of the Act (a copy of which is enclosed) to report the information requested in the attached Air Pollutant Emissions Report. Instructions for completing this report are also attached. Copies of the applicable 1973 Michigan Air Pollution Reporting Forms (AP-101 thru AP-104) should also be submitted.

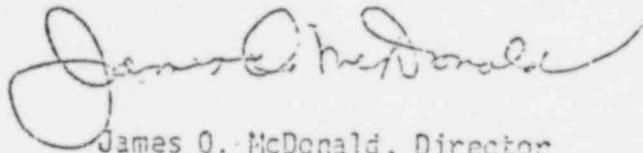
In addition, if you are in compliance with the above-cited Michigan Air Pollution Control Commission Regulations, you are hereby required to certify such compliance to this agency and to indicate the basis for your certification. Further, for any regulations with respect to which you do not certify compliance, you are hereby required to state whether letters of intent or plans and specifications have been submitted to the State of Michigan under the provisions of the above-cited regulation.

Additionally, you are required under authority of Section 114(a) to allow EPA personnel to freely enter any of your facilities at Midland, Michigan to review any records, inspect any monitoring equipment or method, and sample or observe any emissions. Your cooperation in this matter will be appreciated.

The information required by this letter shall be submitted to Mr. David Kee, Chief, Air Enforcement Branch, Enforcement Division, Region V, no later than 15 days after the date of its receipt. A copy of this reply should also be sent to Mr. Lee E. Jager, Chief, Division of Air Pollution Control, Michigan Department of Natural Resources, 3100 North Logan Street, Lansing, Michigan 48914. If you are in the process of carrying out a compliance program, whether formal or informal, which has been approved in any manner by the Michigan Air Pollution Control Commission, a copy of such program should be attached to your reply to Mr. Kee. Any changes in the information provided pursuant to this request must be reported no later than five days after such change occurs. This continuing requirement to provide notification of changes in the information covered by this letter shall remain in effect for a period of six months from the date of this letter. Any question concerning this request may be directed to Mr. William Beyer or Mr. Peter Kelly of Mr. Kee's staff, who may be contacted by telephone at (312) 353-8730, or 1346.

You are hereby advised that if the Environmental Protection Agency, on the basis of any information available to it, determines that your firm is in violation of any applicable regulation and is not following an acceptable compliance program, your firm will be liable for appropriate action pursuant to Section 113 of the Clean Air Act.

Very truly yours,



James O. McDonald, Director  
Enforcement Division

Attachments a/s

cc: Mr. Lee E. Jager  
Chief, Division of Air Pollution Control  
Michigan Department of Natural Resources