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## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

February 4, 2013

Mr. Rick Wenzel  
[RWenzel@dow.com](mailto:RWenzel@dow.com)  
Remediation Project Manager  
The Dow Chemical Company  
6519 Hwy 225  
Deer Park, Texas 77536

Re: November 2012 "Phase 3 Enhanced Anaerobic Bioremediation Work Plan", Richards Road, Spring, Montgomery County, Texas; Voluntary Cleanup Program (VCP) No. 421

Dear Mr. Wenzel:

The VCP of the Texas Commission on Environmental Quality (TCEQ) has reviewed the above-referenced submittal. The TCEQ approves the work plan with the following clarifications:

- 1. Underground Injection Control (UIC) authorization:** Section 2.2.1 of the work plan discusses the injections on the Wert Property will be added to the current UIC authorization by modifying the current UIC Class V Authorization. While it may be implicit that the VCP applicant will both modify the authorization and submit it for TCEQ approval, the TCEQ believes that it is prudent to ensure that TCEQ UIC authorization is secured for the modifications, unless the activities fall within the scope of approvals already issued by the UIC program. Please clarify this matter.
- 2. Access agreements and additional proposed work:** The TCEQ has not evaluated the access agreement for the property upon which the Phase 3 bioremediation activities will commence; however, the TCEQ notes that additional work may or may not be captured in the terms of property-specific access agreements with the land owner. The VCP applicant should ensure that the access agreement either allows for such work or seek to resolve with the landowner the terms under which the additional work can be completed (subject to the terms of reasonable access that may be requested). The VCP is aware of some ongoing discussions with the landowner of the tract where the Phase 3 bioremediation is being implemented; however, the exact nature of these discussions in the context of the modification is not known. Therefore, the TCEQ is advising the VCP applicant of this issue. Please clarify this matter.
- 3. Investigation derived waste (soil):** The work plan documents that investigation derived soil waste will be moved to the source tract where it will be stored in a secured area, characterized, and disposed by either spreading the soil on the source area ground surface or by hauling the waste to a licensed disposal facility, depending upon the results of the characterization analyses. The TCEQ does not object to the latter, with the assumption that the waste will be disposed at a facility authorized to accept the waste based on the waste characterization results. However, while not necessarily objecting to

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the former, the spreading of the investigation derived waste on the source property would be considered soil reuse and is subject to the provisions of 30 TAC §350.36, including 30 TAC §350.36(d), regarding written landowner consent for the placement of soils containing chemical of concern concentrations above naturally occurring background levels. The TCEQ notes that there does not appear to be any exemption or exclusion for investigation derived waste in 30 TAC §350.36.

Additionally, while it is unlikely that such a small volume of soil along the surface of the ground would introduce an unprotective exposure scenario for the land use previously recognized to have been met for soils at the source tract, the TCEQ believes that care should be taken regarding this matter and notes that institutional controls may be necessary even if the representative concentration over an appropriately sized exposure area were to still be protective for the land use. The TCEQ notes this concern and uncertainly because 30 TAC §350.36 speaks both in terms of the concentrations of chemicals of concern in soil brought to the receiving property and in terms of attainment of land use standards at the receiving property. Please clarify this matter.

A response to these comments should be provided to me at the letterhead address within 60 days of the date of this correspondence. Should you need additional information or wish to discuss these comments, please call me at (512)239-6753.

Sincerely,



Joe Bell, P.G., Project Manager  
VCP-CA Section  
Remediation Division  
Texas Commission on Environmental Quality

JB/jdm

cc: Ms. Nicole Bealle, TCEQ, Waste Program Manager R-12  
Mr. Michael Traill, 1014 Forestburg Drive, Spring, Texas 77386