Testimony from Karl Tomion, City Manager, for City of Midland

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May 23, 2005

Chairman Leon Drolet
House Government Operations Committee
State Capitol Building
PO Box 30014
Lansing , MI 48909-7514

Dear Chairman Drolet,

Thank-you for the opportunity to address you on House Bill 4617, which Midland residents believe is a "homeowner fairness bill". In order to understand our position on this legislation I think it is important for you to understand the history of this environmental issue in our community.

June 1978 – Dow advised the Michigan Department of Public Health (MDPH) that dioxin was found in fish caught from the Tittabawassee River, and, subsequently, MDPH issued an advisory against eating such fish.

In 1983, the EPA conducted other dioxin studies including Midland community soils. In April 1985, the EPA and the U.S. Center for Disease Control concluded that since Midland community soils were below the federal standard of exposure of 1000 parts per trillion (ppt), they did not pose a health risk.

1997 – The MDEQ undertook additional dioxin soil tests in various areas of the city including some city parks and school sites. In their 1997 press release, the MDEQ announced that the dioxin levels in Midland were below the 1000 ppt federal standard, and the average of the results was below the level set for action by the State.

1998 – A similar study of Dow's corporate site yielded results of 66-476 ppt with an average of 160 ppt. At that time, the MDEQ indicated that the overall level of dioxin contamination for the 50 Midland sampling sites was lower than the previous decade as a result of Dow's adherence to stringent air permits.

December 2002 – The MDEQ and Dow attempted to enter into a consent decree that would issue a new hazardous waste license to Dow and set an initial residential level for dioxin at just over 800 ppt. This agreement was the subject of a suit by various environmental groups that sought an injunction to prevent its execution. It was not signed by the then Director of MDEQ. In that same

month, the 90 ppt residential level for dioxin was administratively established by the MDEQ and the Michigan Department of Community Health as their official standard.

June 2003 – A hazardous waste license was issued to Dow by the MDEQ that included a requirement to conduct additional community soil sampling for dioxin in the city of Midland. In compliance with the provisions of the license, Dow submitted a Scope of Work and Interim Response Activities (IRAs), which was rejected by the MDEQ.

The City became involved in discussions about the IRAs in February 2004 when we learned that the MDEQ's requirements of Dow could result in large residential areas of the City becoming "facilities". MDEQ did not deny that their proposed additional soil tests would result in such a situation. Instead, in a letter of April 21, 2004, they stated:

"Based on existing information from the 1996 DEQ and the 1998 Dow investigations of Midland soils, data is already present to make the reasonable inference that large areas of Midland should (emphasis added) be identified a "facility".

This conclusion was made based upon the MDEQ's promulgation of its 90 ppt standard, which the City and its experts believe was not properly promulgated.

The City advocated that the MDEQ undertake scientific studies to determine a site specific criteria as recommended by guidelines of the federal Agency for Toxic Substances and Disease Registry (ATSDR) which concluded the following:

"The ATSDR concludes that the action level of 1,000 ppt for dioxin and dioxin-like compounds, when coupled to a site-specific context of evaluation for the range >50 ppt to <1,000 ppt TEQs in residential soil is protective of public health and continues to represent a level at which consideration of health action to interdict exposure, should occur."

Dow offered to fund such studies, but the MDEQ declined. MDEQ also opposed State funding of such studies.

When the MDEQ made it clear that they were planning to proceed despite our protests, the City held a public hearing at the Midland Center for the Arts to inform citizens and property owners of the impact of this regulatory decision. An astounding 1600 people filled the center to hear presentations by Dow, the MDEQ, and the City. At the conclusion of the meeting, a survey was administered with 658 (~41% of audience) responding as follows:

I am satisfied with the process that the MDEQ has presented on the dioxin issue and believe that they are adequately addressing my concerns.

Yes 53 (08%)
No 577 (88%)
No opinion/uncertain 28 (04%)

I believe the City Council should continue to seek a dioxin health/exposure study prior to the implementation of additional soil testing.

Yes 605 (92%)
No 39 (06%)
No opinion/uncertain 14 (02%)

As a result of this meeting, Governor Granholm met with State legislators from Midland and Saginaw and our U.S. Congressman. The governor subsequently asked the Lieutenant Governor to mediate discussions between the MDEQ, Dow, and representatives of our area. This effort resulted in a framework agreement in January 2005 that eliminated the use of the 90 ppt standard for evaluating soil tests in the IRA neighborhoods. However, the MDEQ has not:

- agreed to change its approach to making residential properties facilities using the 90 ppt; or
- committed to utilizing a scientifically based site specific criteria.

House Bill 4617 addresses these problems and has been endorsed unanimously by the Midland City Council and many other public and private organizations in our community.

There is no evidence that dioxin is having an adverse health affect on Midland residents. A study by the Midland County Health Department in 2002 found no evidence of increased risks for cancer since 1985 or birth defects since 1992. The study was prepared to address concerns about the health effects of dioxin in the Midland community. Generally speaking, our community members' health by these and other measures is better than State averages.

The issue of dioxin is not one involving an imminent health threat, but it has hung like a cloud over our community for over 25 years. The MDEQ's recent regulatory interpretations of existing State law and regulation in the past two years has been harmful to Midland property owners and pose similar threats to others across the state.

HB 4617 protects innocent third parties without interfering with the ability of the MDEQ to deal with parties suspected of being responsible for harmful contamination; we hope that you will support it.

Sincerely yours,

Karl S. Tomion
City Manager