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**Department of Justice**

U.S. Attorney's Office

Eastern District of Michigan

FOR IMMEDIATE RELEASE

Friday, November 8, 2019

## **Settlement Reached With Dow Chemical Co. To Restore Natural Resources In Three Mid-Michigan Counties**

Midland, MI – Under a proposed settlement announced today by the United States, the State of Michigan and the Saginaw Chippewa Indian Tribe of Michigan, The Dow Chemical Company will implement and fund an estimated \$77 million in natural resource restoration projects intended to compensate the public for injuries to natural resources caused by the release of hazardous substances from Dow's Midland, Michigan facility. The proposed settlement, which was lodged today in the United States district court for the Eastern District of Michigan, is subject to public comment and to approval by the court.

U.S. Attorney Matthew Schneider will join trustees at a public meeting to provide more information on the plan and to answer questions at 7 p.m. Thursday, Nov. 21, at the Four Points by Sheraton Saginaw, 4960 Towne Centre Road in Saginaw.

According to a complaint filed on behalf of federal, state and tribal natural resource trustees, Dow released dioxin-related compounds and other hazardous substances from its Midland, Michigan, facility, and such releases caused injuries to natural resources. The complaint alleges that hazardous substances from Dow's facility adversely affected fish, invertebrates, birds and mammals, contributed to the adoption of health advisories to limit consumption of certain wild game and fish, and resulted in soil contact advisories in certain areas including some public parks.

The settlement identifies a number of specific natural resource restoration projects that will be

implemented in different parts of Midland, Saginaw and Bay counties, consistent with provisions of a natural resource restoration plan developed by designated natural resource trustees, including the Department of the Interior's U.S. Fish and Wildlife Service and Bureau of Indian Affairs; the State of Michigan's Department of Natural Resources (DNR), Department of Environment, Great Lakes, and Energy (EGLE), and Department of Attorney General; and the Saginaw Chippewa Indian Tribe of Michigan.

Dow will implement eight natural resource restoration projects described in the settlement at the company's expense, subject to oversight and approval by the natural resource trustees. In addition, Dow will pay \$6.75 million, plus interest, to a Restoration Account that will be used by Trustees to fund five other restoration projects described in the settlement.

The settlement also requires Dow to pay another \$15 million, plus interest that will be used by the Trustees for various purposes. At least \$5 million of this funding will be used to support implementation of additional natural resource restoration projects that will be selected by the trustees in the future, after a separate opportunity for public input on restoration project proposals. This funding will also be used to cover costs of long-term monitoring and maintenance of restoration projects under the settlement, as well as costs that the Trustees will incur in overseeing restoration projects.

Finally, Dow is required to reimburse costs previously incurred by federal and state trustees in connection with the assessment of natural resource damages relating to Dow's releases.

"Today's settlement is good news for communities in this region, and it builds upon ongoing cleanup efforts under the direction and supervision of the EPA and the Michigan Department of Environment, Great Lakes and Energy," said Principal Deputy Attorney General Jonathan Brightbill of the Justice Department's Environment and Natural Resources Division. "The extensive habitat restoration provisions of this settlement will help accelerate recovery of natural resources over a large area where resources have been adversely impacted as a result of decades of exposure to Dow's hazardous substances."

"With this settlement, the natural resources in the Saginaw Bay area will be restored through the creation of natural habitat areas, nature preserves, hiking and biking trails, and greater access for fishing, hunting, and canoeing," said U.S. Attorney Matthew Schneider of the Eastern District of Michigan. "We are thankful to Dow and the trustees for their work in reaching this excellent result, which will benefit the residents of the Saginaw Bay area and the wildlife and waterfowl that inhabit it."

"The settlement requires Dow to implement and fund restoration projects outlined in a draft restoration plan that will benefit fish and wildlife and provide increased outdoor recreation opportunities for the American public," said Charles Wooley, Regional Director for the U.S. Fish and Wildlife Service. "This restoration work can now begin even while separate, ongoing clean-up efforts continue."

"The trustees are working to compensate the public for past and expected future losses to recreational fishing, park use and hunting as a result of public health advisories issued because of releases from Dow's Midland facility," said Michigan DNR Director Dan Eichinger. "We appreciate being at the table to ensure that the citizens of Michigan are appropriately compensated for resource damage, and we look forward to continuing to improve the natural resources, wildlife and fisheries opportunities for people within these areas."

“In addition to the Natural Resource Damage Assessment and Restoration settlement, the State is simultaneously resolving some claims with Dow that will result in both the funding and the property to support two additional projects that benefit the community,” said Michigan EGLE Director Liesl Eichler Clark. “These projects include a docking facility and education center to bolster BaySail’s environmental science program and the renovation of the Saginaw River Rear Range Lighthouse to allow public use.”

### ***Restoration Projects Highlights***

The restoration projects described in the settlement compensate the public for injuries to natural resources, including lost uses of natural resources by recreational anglers, park users, and hunters, by improving habitat for fish and game species, and through creating new – or improving existing – habitat areas that also provide public access to natural resources in and around the Tittabawassee River, Saginaw River and Saginaw Bay.

Several restoration projects under the settlement will benefit fishery resources through measures that include construction of fish spawning areas in Saginaw Bay, construction of a rock ramp or similar structure to promote increased fish passage over a dam situated at Dow’s Midland facility and improvements to water control structures in the Shiawassee National Wildlife Refuge.

Other projects will enhance and preserve natural habitat on thousands of acres of property. Several projects will include planting native species and using natural seedbeds to restore diverse types of suitable natural habitats in areas that currently provide limited habitat value to wildlife. Some projects include provisions for creation of new wetland habitat or enhancement of existing wetland areas. One project will preserve an extensive green corridor along the Tittabawassee River that will be beneficial to wildlife.

Several of the restoration projects will establish publicly accessible nature areas that will provide increased opportunities for recreational use and enjoyment of restored natural resources, through establishment of amenities such as nature trails, fishing platforms, and a bike trail. One of the projects will support increased recreational boating and fishing in Saginaw River and Bay by expanding an existing boat launch facility at the mouth of the Saginaw River.

### ***Other Terms of the Settlement***

In addition to resolving natural resource damage claims against Dow, the proposed settlement also incorporates an agreement, exclusively between the State and Dow, that would waive potential State claims for recovery of a limited set of response costs identified in the settlement, in exchange for Dow’s commitment to implement two other projects along the lower Saginaw River that are not part of the Trustees’ proposed natural resource restoration program.

The settlement does not address Dow’s liability to clean up contamination from the Midland facility. Dow has been addressing certain offsite contamination from the Midland facility under a series of administrative orders issued by the EPA. Much of that effort to date has focused on contamination within the Tittabawassee River or in riverbank and floodplain areas adjacent to the river. At this point, EPA mandated cleanup activity is continuing in and along the Tittabawassee River and then downstream into the Saginaw River. Dow has also been addressing other contamination related to the Midland facility under the direction of EGLE. The settlement reserves all rights of the United States and the State to

require Dow to continue and complete cleanup of contamination from the Midland facility.

Similarly, except for the limited waiver of State response costs referred to above, the settlement does not resolve Dow's liability to reimburse the governments for costs they incur in responding to contamination from the Midland facility.

Finally, the proposed settlement will resolve potential claims by Dow against the United States for recovery of a portion of any natural resource damage expenses and cleanup costs relating to any past or future releases of hazardous substances from the Midland facility. Dow contends that the United States is liable for a portion of these costs, based primarily on federal involvement in WWII era production activities at the Midland facility.

### ***Guiding the Settlement***

Concurrently with the settlement, trustees released for public comment a draft restoration plan that will guide restoration activities carried out in response to contamination from Dow's Midland facility. Restoration activities under the settlement must be consistent with the final restoration plan adopted by the Trustees.

The natural resource trustees assessed injuries to natural resources under the Natural Resources Damage Assessment and Restoration program, which aims to compensate the public for past, present and future loss of fish, wildlife habitat and use of natural areas resulting from releases of contaminants into the environment.

As part of this program, the trustees identify parties responsible for contamination and either litigate or negotiate settlements to fund restoration actions.

### ***History of Contamination***

The Dow facility in Midland, Michigan, began operating in 1897. Chemical production through the years resulted in the generation of waste products, including dioxins, which were released into the Tittabawassee River.

These chemical waste products contaminated the Tittabawassee River and its floodplains and moved into the Saginaw River and Saginaw Bay.

The natural resources settlement is separate from the ongoing cleanup of the area being implemented by Dow under the direction of the Michigan Department of Environment, Great Lakes, and Energy and the U.S. Environmental Protection Agency.

Under this settlement, restoration work can begin within the watershed, while cleanup efforts in and along the rivers continue.

### ***Public Review and Comment***

The proposed consent decree and the Draft Restoration Plan and Environmental Assessment are available at <https://www.fws.gov/midwest/es/ec/nrda/TittabawasseeRiverNRDA/>

The Department of Justice will publish a Federal Register Notice advising the public of the opportunity to submit comments on the proposed Consent Decree, as well as on the Draft Restoration Plan and Environmental Assessment, within 45 days from the date of publication of the Federal Register Notice. A copy of the Federal Register Notice will be posted at <https://www.fws.gov/midwest/es/ec/nrda/TittabawasseeRiverNRDA/>.

Comments on the Consent Decree may be submitted to the Department of Justice at [pubcommentees.enrd@usdoj.gov](mailto:pubcommentees.enrd@usdoj.gov) or Deputy Assistant Attorney General, U.S. DOJ – ENRD, P.O. Box 7611, Washington, D.C. 20044-7611.

Comments on Draft Restoration Plan and Environmental Assessment may submitted to [t.river.nrda@fws.gov](mailto:t.river.nrda@fws.gov) or Lisa Williams, U.S. Fish and Wildlife Service, 2651 Coolidge Road, Suite 101, East Lansing, MI. 48823.

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