

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA, <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No. 1:19-cv-13292
)	
v.)	Judge Marianne O. Battani
)	
THE DOW CHEMICAL COMPANY,)	
)	
Defendant.)	

**NOTICE OF LODGING OF PROPOSED CONSENT DECREE
PENDING SOLICITATION OF PUBLIC COMMENTS BY THE
DEPARTMENT OF JUSTICE**

The United States of America (the “United States”) hereby lodges with the Court the proposed Consent Decree that, upon approval by the Court, would resolve all claims that the plaintiffs, the United States of America, the State of Michigan, and the Saginaw Chippewa Indian Tribe of Michigan, have asserted against The Dow Chemical Company (“Dow”) in this action under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607(a), and Sections 3115(2) and 20126a of the Michigan Natural Resources and Environmental Protection Act, MCL 324.3115(2) and 324.20126a. The proposed settlement would also resolve potential liability of the United States

for certain matters described in the proposed Consent Decree. A copy of the proposed Consent Decree is attached to this Notice as Exhibit 1.

The parties do not seek any action by the Court on the proposed Consent Decree at this time. Rather, as provided in Paragraph 106 of the proposed Consent Decree, the proposed settlement is subject to public notice and comment, and the proposed Consent Decree expressly reserves the right of the United States to withdraw from the proposed settlement if public comments disclose facts or considerations indicating that the proposed Consent Decree is inappropriate, improper, or inadequate.

Under the proposed Consent Decree, Dow would, among other things, implement or fund a series of natural resource restoration projects described in the proposed Consent Decree. In addition, Dow would pay additional amounts into a Restoration Account that would be established within the Department of the Interior's Natural Resource Damage Assessment and Restoration ("NRDAR") Fund. Monies deposited in the NRDAR Fund would be managed for the joint use and benefit of federal, state, and tribal natural resource trustees ("Trustees") in restoring, replacing or acquiring the equivalent of natural resources allegedly injured as a result of releases from Dow's Midland Facility. Funds in the NRDAR account would be used by the Trustees for various activities, including:

(1) implementation of one or more additional restoration projects that will be

selected by Trustees in the future, consistent with terms of a restoration plan that is the subject of a separate public notice and comment process; (2) long term operation and maintenance of restoration projects implemented under the proposed Consent Decree, and (3) Trustee restoration planning activities and Trustee oversight of implementation of the restoration projects carried out under the proposed Consent Decree. The proposed Consent Decree also provides for Dow to pay certain unreimbursed costs of federal and state Trustees in connection with their assessment of natural resource damages relating to releases of hazardous substances from Dow's Midland Facility. Finally, the proposed Consent Decree would resolve potential claims of Dow against the United States relating to natural resource damages resulting past or future releases at and from the Midland Facility, as well as potential claims for recovery of response costs incurred or to be incurred in connection with past or future releases at and from the Midland Facility.

Pursuant to Department of Justice policy, the United States will publish notice of the proposed settlement in the Federal Register and provide an opportunity for submission of public comments on the proposed settlement during a 45-day period from the date of publication of that notice. After the public comment period, the United States will evaluate any public comments received. Upon completing its evaluation of public comments, the United States will provide the Court with a copy of the comments and either (1) respond to the public

comments and seek approval of the Consent Decree or (2) notify the Court of that it withdraws its consent to the proposed Consent Decree.

Respectfully submitted,
For the United States of America

s/ Steven J. Willey

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this day, the foregoing Notice of Lodging of Proposed Consent Decree Pending Solicitation of Public Comments by the Department of Justice was served by United States mail upon each of persons listed below:

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