

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,)	
STATE OF MICHIGAN, and THE)	
SAGINAW CHIPPEWA INDIAN TRIBE)	
OF MICHIGAN,)	Civil Action No. 1:19-cv-13292
)	
Plaintiffs,)	HON. MARIANNE O.
)	BATTANI
v.)	
)	MAG. PATRICIA T. MORRIS
THE DOW CHEMICAL COMPANY,)	
)	
Defendant.)	

JOINT STATUS REPORT

In accordance with the provisions of Paragraph 33 of the Consent Decree approved and entered by the Court in this action (ECF No. 8, PageID.572), the United States of America, the State of Michigan, the Saginaw Chippewa Indian Tribe of Michigan, and The Dow Chemical Company (“Dow”) (hereinafter collectively referred to as the “Parties”) provide this joint status report to the Court.

A. Status of Dow-implemented restoration projects:

In the period since the entry of the Consent Decree, Dow has commenced work on each of the Dow-implemented natural resource restoration projects identified in the Consent Decree. Work performed by Dow to date has been consistent with a Master Schedule developed pursuant to Appendix Q of the

Consent Decree.¹ A description of the current status of each of these projects is set forth below.

1. Appendix B: Midland Fish Passage Restoration Project. This project is in the preliminary planning phase. Dow submitted a Fish Survey Plan on November 16, 2020, and the Trustees approved it on December 18, 2020. Dow conducted fish surveys in the spring of 2021 under the approved plan with an adjustment to the target turbidity range for surveys as agreed to by the Trustees. Conditions in the project area changed because of the failure of dams upstream from the project that occurred in May of 2020. The next deliverable due for this project is the Conceptual Design Proposal that is due on January 20, 2023. No disputes have arisen relating to this project.

2. Appendix C: Greater Midland Nature Preserve Restoration Project. This project is in the preliminary planning phase. The first deliverables due are the Preliminary Design, due to the Trustees on July 20, 2022, and the Environmental Characterization Report, due approximately 30 days prior to the Preliminary

¹ Dow submitted a proposed Master Schedule to the Trustees on November 16, 2020, and the Trustees approved it on January 15, 2021, with conditions to be incorporated into the next revision of the Master Schedule. The Consent Decree anticipates that the Master Schedule will be revised as due dates are re-calculated from actual dates of approvals or completion of other milestones. As of July 14, 2021, Dow was preparing the next revision of the Master Schedule to be submitted to the Trustees. No disputes have arisen relating to this requirement.

Design. Both Dow and Trustee representatives have had discussions with local stakeholders about the project, including with representatives from at least one of the townships in which the project is located. No disputes have arisen relating to this project.

3. Appendix D: Eagle Ridge Nature Area Restoration Project. Dow submitted the Environmental Characterization Report and Preliminary Design to the Trustees on January 18, 2021. The Trustees approved the Preliminary Design on March 18, 2021 with conditions to be addressed in the Final Design and Implementation Plan. The Trustees provided comments on the Environmental Characterization on March 18, 2021 and Dow revised and re-submitted it on May 14, 2021. Dow submitted the Final Design and Implementation Plan and the Monitoring and Maintenance Plan for most of the restoration activities for the project to the Trustees on July 2, 2021. Those submissions are currently under review by Trustees. Dow is currently working on the educational signage design and pollinator area design elements to complete the Final Design and Implementation Plan, which is due on September 14, 2021. No disputes have arisen relating to this project.

4. Appendix E: Tittabawassee River Floodplain Restoration and Bike Trail Project. This project is in the preliminary planning phase. Dow is currently in the process of completing site characterization activities and developing

Preliminary Design for this project, which is due to be submitted to the Trustees by October 19, 2021, and the Environmental Characterization Report, which is due approximately 30 days prior to the submission of the Preliminary Design. Dow is working with the Great Lakes Bay Regional Trail non-profit organization to design and implement the Bike Trail portion of the project and is coordinating with permit agencies and the Trustees to determine the optimal trail route in advance. Dow removed trees in the proposed route during the winter of 2020-2021 to avoid impacts to summer tree-roosting bats prior to the potential construction of the trail in the fall of 2021. No disputes have arisen relating to this project.

5. Appendix F: Bay City Ecological Restoration Project. This project is in the preliminary planning phase. The first deliverables due are the Preliminary Design, due to the Trustees on July 20, 2022, and the Environmental Characterization Report, which is due approximately 30 days prior to submission of the Preliminary Design. No disputes have arisen relating to this project.

6. Appendix G: Saginaw River Mouth Boating Access Site Expansion Project. This project is in the 50% design planning phase. Dow is currently developing the Environmental Characterization Report and the 50% Design Plan for this project, with significant input from the Trustees and the Parks and Recreation Division of the Michigan Department of Natural Resources that manages the Boating Access Site. Dow requested two extensions to the due dates

for the first two deliverables for this project and the Trustees approved these requests in accordance with the terms of the Consent Decree. High water levels in the Great Lakes are delaying the earliest possible time for construction and the extensions provide for additional time to get consensus on details of the 50% Design Plan. The Environmental Characterization and the 50% Design Plan are now due to the Trustees by August 27, 2021 and September 24, 2021, respectively. No disputes have arisen relating to this project.

7. Paragraph 7(b): Tittabawassee River Green Corridor Natural Resource Restoration Project. As of July 12, 2021, Dow stated that it had acquired easements and property use restrictions consistent with the requirements described in Section C of Appendix I on 1,860 acres of property within the eight-year floodplain of the Tittabawassee River. Under the Consent Decree, Dow has until July 20, 2024 to complete acquisition of easements on a total of 2,000 acres within the floodplain.

8. Paragraph 10: Shiawassee National Wildlife Refuge Expansion. Dow established the Shiawassee Trust Account and paid \$1.2 million plus interest into it as required by the Consent Decree. Dow and the Trustees have been working together on strategies for land acquisition for this project. Dow has retained a real estate firm and has been providing the required bimonthly progress reports to the Trustees. The Consent Decree sets forth a period of not less than five years for

Dow to use best efforts to identify and acquire properties under paragraph 10. No land has yet been acquired. No disputes have arisen related to this project.

B. List of deliverables currently being developed by Dow and deliverables under review by the trustees:

(1) Deliverables under development by Dow:

- Fish Survey Report
- Eagle Ridge Educational Signage and Pollinator Area Final Design
- Tittabawassee River Floodplain and Bike Trail Environmental Characterization
- Tittabawassee River Floodplain and Bike Trail Preliminary Design
- Saginaw River Mouth Boating Access Site Environmental Characterization
- Saginaw River Mouth Boating Access Site Preliminary Design
- Tittabawassee River Green Corridor Site Control Plan
- Shiawassee National Wildlife Refuge Expansion Report
- Master Schedule Update

(2) Deliverables under review by the Trustees:

- Eagle Ridge Restoration Final Design
- Eagle Ridge Monitoring and Maintenance Plan

- Generic Persistent Pesticide Sampling Plan, as per Appendices C, E, and F
- Baseline Floristic Quality Assessment Plan, in support of one of the elements of the Environmental Characterizations required in Appendices C, E, and F

C. Status of Trustee efforts to utilize funds in the Restoration Account:

1. The Restoration Account is held in the Department of the Interior’s NRDAR Fund in Account #0094 and is currently invested in 30-day Treasury bills.

2. The Trustees have published a final Restoration Plan (Consent Decree paragraphs 4.dd and 5) and approved funding for the following activities and projects:

Project/Trustee Costs²	Consent Decree Appendix or Paragraph	Amount	Activities Funded
Shiawassee National Wildlife Refuge Restoration Project	J	\$1,191,769	Implementation of a channel connection, re-routing of a county drain, replacement/upgrading of equipment needed

² FWS = U.S. Fish and Wildlife Service; EGLE = Michigan Department of Environment, Great Lakes, and Energy; MDNR = Michigan Department of Natural Resources

Project/Trustee Costs²	Consent Decree Appendix or Paragraph	Amount	Activities Funded
			for habitat restoration and maintenance, and purchase of water control structures
Saginaw Riverfront Park Restoration Project	L	\$250,000	Invasive species management, planting native vegetation, interpretative signage, observation platform
Saginaw Chippewa Tribe Restoration Project	N	\$300,000	Saginaw Chippewa Indian Tribe of Michigan is working with partners to find suitable land to purchase
FWS planning and oversight costs	15	\$64,593	Leading Trustee Council, restoration planning, oversight of Dow-implemented restoration projects, management and oversight of Trustee-implemented projects
EGLE planning and oversight costs	15	\$30,000	Restoration planning, oversight of Dow-implemented restoration projects, management and oversight of Trustee-implemented projects

Project/Trustee Costs²	Consent Decree Appendix or Paragraph	Amount	Activities Funded
MDNR planning and oversight costs	15	\$30,000	Restoration planning, oversight of Dow-implemented restoration projects, management and oversight of Trustee-implemented projects
Tribe planning and oversight costs	15	\$30,000	Restoration planning, oversight of Dow-implemented restoration projects, management and oversight of Trustee-implemented projects

3. As a part of restoration planning activities the Trustees have begun working with Thomas Township on planning for the restoration project described in Appendix K.

4. The Trustees' restoration planning activities have also included working with the agencies and other partners that are designing and building fish spawning reefs in Saginaw Bay to plan for the project described in Appendix M.

5. The Trustees are currently designing a pre-proposal process to solicit proposals from the public for Natural Resource Restoration Projects with \$5

million as described in Consent Decree paragraph 16 and to evaluate the pre-proposals using the criteria described in the Restoration Plan.

D. Status of additional projects:

While not required by paragraph 33, Dow and the State are providing the following status report on the two projects that are described in Section IX, Additional State Requirements:

1. Appendix O: Rear Range Lighthouse Renovation and Preservation Funding Project. This project is in the preliminary planning phase. A high-level project schedule has been developed and provided in the Master Schedule for EGLE to review. No disputes have arisen related to this project.

2. Appendix P: BaySail Environmental Education Program Project. A Conservation Easement providing for use of specified property for the BaySail Environmental Education Program is currently being developed in conjunction with the Michigan Attorney General Office. A high-level project schedule has been developed and provided in the Master Schedule for EGLE to review, and preliminary work on surveys, land use restrictions and planning are underway. No disputes have arisen related to this project.

Respectfully submitted,

FOR THE UNITED STATES OF
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CERTIFICATE OF SERVICE (E-FILE)

I hereby certify that on July 19, 2021, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

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