



United States Department of the Interior
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

August 2, 2021

VIA Email

Jim Sprague

Remediation Leader

The Dow Chemical Company

Michigan Operations – 25 Building

693 Washington St

Midland MI 48667

JESprague@dow.com

RE: South Charleston Facility and Kanawha River: Notice of Intent to Conduct a Natural Resource Damage Assessment and invitation to join in a Cooperative Natural Resource Damage Assessment

Dear Mr. Sprague:

The Union Carbide Corporation's South Charleston Facility, located in South Charleston, West Virginia on the banks of the Kanawha River ("Facility"), is currently undergoing corrective action through the U.S. Environmental Protection Agency's authority under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 *et seq.*. Through the RCRA investigation, releases of hazardous substances at and from the Facility into the Kanawha River have been identified (collectively referred to herein as "Releases."). Further, the draft ecological risk assessment (May 2020) prepared by Union Carbide Corporation (UCC), who owns and operates the Facility, proposed that concentrations in certain areas of the river were high enough to cause risk to benthic invertebrates and that removal and/or capping of the sediments in certain locations was warranted. Additionally, separate from the RCRA investigation, UCC conducted mussel surveys in this area of the Kanawha River in 2018 and 2019 and discovered federally listed and proposed species for the first time. As you know, preliminary findings of a U.S. Fish and Wildlife Service -sponsored mussel toxicity study demonstrate mortality of juvenile mussels after four weeks of exposure to sediments collected from the back channel near the middle of the island. Additional toxicity testing is ongoing.

The Releases of hazardous substances may give rise to liability for Natural Resource Damages under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§9601 *et seq.*. The United States Fish and Wildlife Service (USFWS), on behalf of the Department of the Interior (DOI), the West Virginia Department of Environmental Protection

Mr. Sprague
South Charleston Facility-Kanawha River NRDA
Invitation to Participate
August 2, 2021

(WVDEP) and the West Virginia Division of Natural Resources (WVDNR) (collectively referred to herein as "Trustees") are trustees with responsibility for managing natural resources and their associated services actually or potentially injured as a result of the Releases.

Pursuant to the CERCLA Natural Resource Damage Assessment and Restoration ("NRDAR") regulations, 43 CFR Part 11, the Trustees have prepared a Preassessment Screen, 43 CFR §§ 11.23-11.25, a copy of which is enclosed. Also enclosed is the Trustees' Notice of Intent to Perform an Assessment pursuant to Section 11.32(a)(2)(iii).

The goal of the NRDAR process is to efficiently and effectively restore injured natural resources and their services to baseline conditions and compensate the public for interim losses to both ecological services and human use. Under 43 CFR § 11.32(a)(2)(iii)(A), Trustees are required to invite the participation of known Potentially Responsible Parties ("PRPs") in the assessment process to best facilitate achieving this restoration goal. DOI, WVDEP, and WVDNR have determined that natural resources under each of their trustee jurisdictions have potentially been exposed to and injured by the release of hazardous substances and oil, and are participating in the South Charleston Facility/Kanawha River NRDAR.

Within thirty (30) calendar days of your receipt of this notice, please provide a written response to each of the Trustee contacts below indicating whether you would like to proceed with a cooperative NRDAR for the South Charleston Facility/Kanawha River Site. If you have any questions or comments concerning this matter feel free to contact me at (202) 669-3771.

Sincerely,

Amy Horner Hanley
Senior Attorney-Advisor

Encls: PAS and NOI

cc: J.E. Wandling, WVDEP
John S. Gray, WVAGO