



October 2, 2019

FROM: Linda Michalets, Remediation and Redevelopment Program

TO: Meeting Participants as Talking Points for Sigma's September 12, 2019 Agenda
Ms. Anne Viner, Corporate Law Partners
Mr. Sean Flanagan, HSA Commercial Real Estate
Mr. Steve Meer and Mr. Josh Neudorfer, The Sigma Group, Inc.
Mr. Lee Delcore, DNR

This document was presented to participants listed above during our meeting on October 2, 2019 to discuss the request for additional PECFA funding, as outlined in the September 12, 2019 Agenda document prepared by Sigma on behalf of Oak Creek Rawson Industrial LLC. This document provides reasons for the DNR's decisions on PECFA eligibility that were discussed in detail during the meeting, as needed. Each point in the document below is in response to the respective point in Sigma's 9/12/19 request. This document does not reflect any decisions made during or after the meeting.

Response for Review of Previous Ineligibility Determination

- 1. Select Soil Borings – August 2018.** All 14 borings advanced in August 2018 should be PECFA eligible. Four borings that were determined to be ineligible.

The borings are not PECFA eligible for the following reasons:

- Two borings in the southwest corner of the property:

The southwest corner of the property is a chlorinated contamination hotspot that also includes high concentrations of some petroleum compounds. There were no elevated concentrations of petroleum compounds to the northeast of this area (at SGP-10, -11, -12, -15, and -16) to indicate that the petroleum contamination would have migrated to the southwest corner from the ASTs, USTs or distribution piping to the northeast. The highest naphthalene concentration (a petroleum constituent) in soil on the whole property was 61 milligrams per kilogram (mg/kg) at SGP-44 in the southwest corner of the property. This the farthest side-gradient and potentially upgradient location from the PECFA-eligible sources. Soil samples closer to the eligible petroleum sources had much lower naphthalene concentrations, which indicates that there are other not PECFA-eligible sources of naphthalene at the property. In addition, all sidewall soil samples collected after the SGP-44 area excavation had non-detectable naphthalene concentrations at 4 to 6 feet below ground surface, further indicating that this was a separate naphthalene source and not associated with migration from the UST or AST fuel systems.

- Two in the Mill Scale pile area:

These two borings were outside the AST area and not shown to be in an area where distribution piping would have been. As this was a storage area for non-petroleum mill scale and drums, the borings were less necessary for the PECFA-eligible source investigation than the non-eligible sources along the western property line.

Based on soil and groundwater data collected, the DNR disagrees with Sigma's conclusion that "the extent of impacts [is] clearly associated with the former tank systems due to the widespread nature of petroleum impacts at the site." As reported on invoices of drums that were removed in 2018, some drums held petroleum products that were stored on site, which are not PECFA-eligible sources. These invoices provide clear evidence that there were

ineligible sources of petroleum products on this property, potentially wherever drums were located. The poor storage and maintenance of drums has been documented by the DNR since the early 1990s.

Per Wis. Admin. Code ch. NR 747, PECFA eligibility is tied to eligible petroleum underground and aboveground tank systems (USTs and ASTs), which include the piping and dispensers. This code references Wis. Admin. Code ch. ATCP 93 for the definition of “tank”. Per §ATCP 93.020 (6) Exclusions, the definition of “tank” does not include ASTs and intermediate bulk containers that have a capacity of less than 110 gallons. Therefore, in determining eligibility of costs for the investigation and remediation at this site, the DNR must consider that not all petroleum contamination at this site is from eligible petroleum “tank systems.” The site has a history of improperly stored, maintained and discarded drums across the western portion of the property. Drum removal invoices from 2018 confirm that some drums held petroleum products. In addition, petroleum contamination has been documented in areas that are not near the eligible tank systems, with non- or much less-contaminated borings between these areas and the eligible tank systems, which is indicative of a different source.

Per Wis. Admin. Code § NR 747.30 (2) (a) 8. Exclusions from eligible costs include “costs that are associated with, but not integral to, the remediation of a petroleum product discharge from a petroleum product storage system...” The DNR determined that the four borings along the western portion of the site were not integral to the remediation of the PECFA-eligible sources at this site.

2. Select Remedial Excavation Areas – Excavation Area 23/24 – costs for the excavation of soil in this area should be PECFA eligible.

Costs for the excavation of contaminated soil in this area, on the far western portion of the property were determined to be ineligible for PECFA reimbursement because, per Wis. Admin. Code § NR 747.30 (2) (a) 8. Exclusions from eligible costs, includes “costs that are associated with, but not integral to, the remediation of a petroleum product discharge from a petroleum product storage system...” Although there were elevated petroleum compounds detected in shallow soil in this area, those concentrations did not exceed direct contact residual contaminant levels (RCLs) and were not even the highest concentrations in that portion of the property. It is clear that the main purpose of the soil excavation in that area was to address the high PCB concentrations.

3. Select Off-Site Disposal – March 2019. Additional petroleum impacted material not approved if off-site disposal necessitated due to site constraints.

Additional soil disposal costs are not eligible as the soil was generated as part of the overall site redevelopment, with no clear evidence that the off-site disposal was the most cost-effective activity to get the PECFA-eligible contamination site to closure. Again, these costs cannot be considered eligible per Wis. Admin. Code § NR 747.30 (2) (a) 8. Exclusions from eligible costs, this includes “costs that are associated with, but not integral to, the remediation of a petroleum product discharge from a petroleum product storage system...”

Response to Costs Essential to Remediation for Which Eligibility is Requested

1. Building Demolition. A portion of the building demolition costs should be eligible in the areas of B-98 and B-105.

The DNR specifically approved excavations in these two areas because they would be accessible after building demolition, making it a cost-effective remedial approach. To include the building demolition costs as part of this effort would have required that you demonstrate, prior to excavation, that demolition of the buildings overlying these locations and subsequent soil excavation was the most cost-effective remedial approach to move this case to closure. Including the building demolition as “integral to remediation” after the fact. Per Wis. Admin. Code § NR 747.30 (3) (b) 11. Penalized Ineligibles include “costs associated with razing of buildings...removal of footings and foundations, or other destruction of structures, or other redevelopment costs, unless written department approval is received prior to performance of the corresponding work.”

2. Removal and Disposal of Residual Petroleum Materials. Costs for the disposal of containers containing petroleum products within the site buildings should be eligible for PECFA reimbursement.

Activities required to address the containers filled with petroleum are not eligible for reimbursement. Eligibility is directly related to the petroleum discharges from the *tank system*; that is the UST, AST, piping and dispensers. Per §ATCP 93.020 (6) Exclusions, the definition of “tank” does not include ASTs and intermediate bulk containers that have a capacity of less than 110 gallons. Product released outside the tank system, such as surface spills caused by poor tank operations, or releases from petroleum held in drums, are not eligible. The petroleum-filled drums had to be removed for multiple reasons (safety, improper storage, redevelopment, etc.), and was not dependent on the soil excavation activities.

Eligibility Requests Moving Forward

1. **Vapor Intrusion Mitigation System/Evaluation** The DNR has determined that half of the VMS installation and post-installation testing can be eligible for reimbursement. Of the \$94,984 requested, PECFA will approve reimbursement of \$48,992. A portion of the evaluation costs will be eligible. PECFA funding can be used for installation and monitoring of 4 vapor points – in the three areas with high concentrations and one point between these areas. PECFA funding can be approved for \$6,359.73

2. **Post-Remediation Groundwater Well Installation/Development/Sampling**

Costs for the reinstallation of monitoring wells to establish that natural attenuation as the final remediation for closure are not eligible if they were removed for reasons not associated with remediation. At this site, almost all of the monitoring wells were removed to accommodate property redevelopment with a large building and parking lots. Per § NR 747.30 (2) (b) 3. Exclusions from Eligible Costs include costs “associated with rework on remedial systems to accommodate construction... or redevelopment projects.” In addition, per § NR 747.30 (2) (b) 6. Exclusions, costs to reinstall monitoring wells are ineligible as they are “associated with the re-installation or modification of the remedial equipment for purposes other than effective remediation.”

The DNR considers the replacement of SMW-6 (replaces MW-14, removed by remedial excavation) to be eligible for reinstallation, because it was specifically removed (excavated out) as part of remediation of PECFA-eligible petroleum contaminated soil.

The remainder of the replacement monitoring wells, 9 total, cannot be considered to be PECFA eligible for installation, as they were not removed for remediation, are not in the best locations for plume characterization, or are needed for complete characterization of the non-petroleum contaminant plume rather than the PECFA-eligible petroleum plumes:

- SMW-14R (non-petroleum source area)

- PZ-2R (non-petroleum source area)

- SMW-3, -4, -5, -7, -8 and -9 (are not being installed in better locations for plume characterization than the wells that were removed; rather, their locations are dependent on the new building location)

- SMW-27R and SMW-104R (are not being installed to replace wells removed as part of PECFA-eligible remediation).

The be clear, the DNR recognizes that the new monitoring well network is needed to complete the characterization of the groundwater contaminant plumes after remediation. The DNR will approve costs to monitor the 13 monitoring wells (not piezometers) for 4 rounds maximum, with PVOC + naphthalene analysis, after which a revised sampling plan or closure should be requested.

3. **Case Closure/Well Abandonment**

These costs are eligible and will be approved, using the U&C rates, for the wells that were determined to be PECFA-eligible for installation in the previous point. If monitoring well abandonment costs for previously installed wells has not been reimbursed, then all MW abandonment costs should be eligible. Costs for installation, monitoring and abandonment of the piezometers are not PECFA-eligible, as they are solely for characterization of the non-petroleum compounds that are heavier than water.