



November 17, 2021

TECUMSEH PRODUCTS COMPANY
ATTN: CARRIE WILLIAMSON, GENERAL COUNSEL
5683 HINES DRIVE
ANN ARBOR, MI 48108

[Via Electronic Mail Only to carrie.williamson@tecumseh.com]

Subject: Remedial Action Standards Documentation Report Not Approved
ACTION REQUIRED: Submit a revised Remedial Action Standards Documentation Report
by February 15, 2022.
Hayton Area Remediation Project, BRRTS # 02-08-281506

Dear Ms. Williamson:

Thank you for submitting the Remedial Action Standards Documentation Report (RASDR) for the Hayton Area Remediation Project (HARP) in accordance with state law and the Negotiated Agreement of November 2018. The proposed report is not approved because the data does not meet the standards required by state law and specified in the Negotiated Agreement. This report does not confirm that the past remedial actions taken at this site are protective of public health, safety, welfare and the environment.

The RASDR is a requirement of the Negotiated Agreement Section III, Paragraph N, Determination of Ordinary High Water Mark (OHWM):

...[T]o ensure that all contaminated media has been addressed to confirm whether or not the Response Actions are protective of public health, safety, welfare and environmental exposure pathways. Tecumseh shall use the results of that determination to prepare a report which documents that the remedial action standards in Wis. Admin. Code chs. NR 720 and 722 for soil and sediment have been achieved.

The purpose of this RASDR is to document that the past Response Actions are protective and achieve the environmental standards for soil and sediment, in accordance with chs. NR 700 – 799, Wis. Admin. Code rule series and ch. 292, Wis. Stats. This document was mutually agreed upon by all parties of the Negotiated Agreement in anticipation of Tecumseh submitting this project for case closure in the future as required by and agreed to in the Negotiated Agreement. While the past, operable unit-specific, interim action response actions have received No Further Action letters based on the interim action goals established, those letters are not case closure approvals, by the Department of Natural Resources, that the response actions adequately satisfy the closure criteria in Wis. Admin. Code chs. NR 725 and 726. Additionally, the No Further Action letters previously issued clearly state that no further remediation is anticipated “at this time” and:

TRC and Tecumseh remain subject to the terms of the 2018 Negotiated Agreement and final Department review, approval, and case closure for the site pursuant to Wis. Admin. Code chs. NR 725 & 726.

The June 2021 RASDR proposes soil and sediment standards that are not consistent with state law. The standards for soil per Section III, Paragraph H of the Negotiated Agreement specifies “Wis. Admin. Code § NR 720.05(5) land use classification of ‘**non-industrial**’.” The responsible parties at this site have two options to document that the actions taken to date to address contaminated soil are consistent with state law. First, the RPs may use Wis. Admin. Code ch. NR 720 Residual Contaminant Levels for PCBs in soil which are designated as 0.0094 ppm for

protection of ground water and 0.234 ppm for protection of human health for non-industrial direct contact exposures. The second option that the RPs could include in their revised RASDR is to use Wis. Admin. Code ch. NR 720.08 that allows for development of a site-specific standard. If TRC and Tecumseh are to develop and utilize an alternative site-specific soil standard other than the default values for non-industrial land use (0.0094 ppm for protection of ground water and 0.234 ppm for protection of human health for non-industrial direct contact exposures), such as the methodology found in NR 720.08, a request accompanied by necessary documentation must be submitted to the Department of Natural Resources for review and approval *prior to* use at the site. The site-specific standard for sediment is described in the Negotiated Agreement Section III, Paragraph H, as 1 ppm for PCBs.

Based on review of the proposed RASDR, the environmental standards concerning sediment and soil outlined in state law and the Negotiated Agreement have not been met. The RASDR selectively presents data and does not provide all applicable sampling results, omitting any data points and sample results from the report below the applicable environmental standards. The RASDR should follow Wis. Admin Code § NR 724.15 and all sampling results should be clearly articulated and explained. The data presented in the proposed RASDR is used by Tecumseh as the technical justification and illustration of a successful remedy. The selective data presented fails to demonstrate that a successful remedy was implemented for soil and sediment. For example:

- The 182 sediment samples from Pine Creek, Jordan Creek, and unnamed tributaries presented in the proposed RASDR do not meet the site-specific standard of 1 ppm total PCBs in sediment.
- Only 3 soil sample results are presented for this entire site in the proposed RASDR – a site that spans approximately 8 miles. All 3 soil samples indicate results higher than 5 ppm total PCBs on properties not owned by the responsible parties. This is significantly above the Non-Industrial Direct Contact Residual Contaminant Level for PCBs in soil of 0.234 ppm.

To satisfy the requirements of the Negotiated Agreement and state law, Section III, Paragraph N, Determination of Ordinary High Water Mark (OHWM), submit a revised RASDR with fee that demonstrates how the past Response Actions are protective and achieve the environmental standards for soil and sediment, within 90 days of the date of this letter, on February 15, 2022. The revised RASDR needs to indicate how the Response Action adequately satisfies the closure criteria in the Wis. Admin. Code ch. NR 700 rule series.

In addition, incorporate the following general comments in the revised RASDR:

- 1) Provide all post-remediation soil and sediment sampling data and residual soil and sediment sampling data included in the analysis. As an example, there are significant areas of OU2 Upper that were not remediated. These residual samples must be included in the analysis.
- 2) Demonstrate, by using one of the two options in ch. NR 720, how soil standards selected are protective of groundwater and direct contact for non-industrial use.
- 3) Demonstrate how soil and sediment standards utilized are in compliance with surface water administrative rules in Wis. Admin. Code chs. NR 102 to 106.
- 4) Clearly distinguish soil and sediment sample results in summaries and in data reports. Sediment results must include all sampling below the approved OHWM, and soil results must include all sampling above the approved OHWM regardless of what the sample was identified as at the time of sampling.

Please be aware, Section III, Paragraph N of the Negotiated Agreement provides:

If the standards have not been achieved, Tecumseh will submit a Remedial Action Options Report to address those media and pathways of exposure to ensure that they are protective of public health, safety, welfare and the environment.

Should the revised RASDR fail to demonstrate that the environmental laws, including those standards for soil and sediment, have been achieved and that the response action fails to adequately satisfy the closure criteria in the Wis. Admin. Code ch. NR 700 rule series, the Department of Natural Resources may elect to pursue options outlined in the Negotiated Agreement or in state law.

As stated in Section XIV of the Negotiated Agreement, “[n]othing herein shall preclude the State from requiring Tecumseh to undertake other or additional environmental response actions at the Site that may otherwise be require of Tecumseh as a responsible party pursuant to Wis. Stats. ch. 292 and the Wis. Admin. Code ch. NR 700 administrative rule series.”

Please contact me at (920) 510-8277 or at sarah.krueger@wisconsin.gov if you wish to discuss any aspect of this letter further.

Sincerely,



Sarah Krueger
HARP Project Manager
Remediation & Redevelopment Program

cc: Jason Smith, Tecumseh Products Co. – jason.smith@tecumseh.com
Chris Harvey, TRC - CHarvey@trccompanies.com
William J. Nelson, DNR – William.Nelson@wisconsin.gov