

DATE: August 16, 2024 FILE REF: 02-38-000047

TO: Margaret Gielniewski, US EPA Region 5

FROM: Sarah Krueger, WDNR Remediation and Redevelopment

SUBJECT: DNR Comments on the Proposed Plan for the WPSC Marinette MGP

Thank you for the opportunity to review and provide comment on the Proposed Plan. DNR concurs with the proposed remedy on a conceptual level, but there are some specific details needing resolution before we can provide full concurrence on the proposed remedy. After the DNR understands how the concerns stated below will be addressed, DNR may provide a concurrence letter prior to the issuance of the Record of Decision. The specific items are listed below in more detail, but briefly the two primary concerns are:

- Soil Preliminary Remediation Goals (PRGs) presented in the PP are from 2014/2015. Under Wisconsin law, responsible parties are required determine residual contaminant levels to protect public health from direct contact with soil contamination using toxicological values approved by the DNR. Accordingly, the DNR recommends that the PRGs are updated to reflect current toxicological information.
- The cap thickness being proposed for Inaccessible Source Area (ISA), Alternative 2 is 6 inches. This is not consistent with DNR guidance document RR-709, Cover Systems as Soil Performance Standard Remedies (October 2013). The DNR recommends that the cap thickness not be defined in the Record of Decision (ROD) and that the PRP is asked to reevaluate the proposed 6-inch cap for ISA Alternative 2 as part of the remedial design to ensure long-term protectiveness considering principal threat waste will remain in place.

General Comments:

1. General Comment: If a POTW discharge with pre-treatment is necessary for the Wastewater Treatment Plant North Source Area (WWTP NSA) Alternative 4 or the Boom Landing Source Area (BLSA) Alternative 2, Wisconsin Wastewater Engineering Plan Review is necessary prior to discharge.
2. Description of Remedial Alternatives Section – cost estimates provided for all alternatives are likely inaccurate if they are based on out-of-date PRGs from 2014/2015. These cost estimates may need to be updated in the ROD.

Specific Comments:

3. Section 1, pg. 4: The site background information references a 1428 Main Street Holdings property which is not identified in the Approved Focused Feasibility Study or on Figure 1 or 2 of the Proposed Plan. According to the county GIS, the only property owners within the upland site extent are the City of Marinette, Canadian National/Wisconsin Central Ltd Railroad, Wisconsin Public Service Corporation, and Marinette Central Broadcasting. The property located at 1428 Main Street is owned by Northeast Wisconsin Technical College and not included in the upland site extent. Clarify if there is a need to modify the upland site boundary. Consider adding a figure that depicts the affected parcels and ownership to better illustrate the site boundaries.
4. Section E, pg. 12: The scope of the action includes long-term sediment monitoring. DNR was not aware that this was part of the scope of the ROD amendment. Discussion related to sediment monitoring on page 17 indicates that monitoring following the Non Time Critical Removal Action (NTCRA) met the conditions for monitoring to cease until the Five-Year review. **If there**

is a sediment component related to the action, then additional ARARs and review may be necessary.

5. Section E, pg. 12: The scope of the action does not mention whether a groundwater remedy is included. The proposed alternatives all have a groundwater component, and the original planned action is likely no longer feasible as excavation is no longer feasible. Please clarify.
6. Section G.2, Preliminary Remediation Goals, pg. 19: The PRGs referenced in this section refer to WDNR guidance from 2014 and EPA RSL web calculator results from 2015. We expect that the ROD will have updated PRGs for all contaminants of concern, and especially for naphthalene, as the toxicity values used in the EPA RSL calculator have been updated since 2015. The most up-to-date toxicological values should be applied to establish final remedial goals for all contaminants of concern in the ROD. The ROD should also reference what exposure assumptions were used to establish the final remedial goals for soil – are these based on the default residential or commercial/industrial exposure scenarios in the RSL calculator, or site-specific exposure assumptions? Reference the Baseline Risk Assessment (BLRA) in the Remedial Investigation (RI), if the same exposure assumptions are used (along with updated toxicity values) to generate new soil cleanup numbers. Please include information in the ROD that documents the technical basis for the numeric soil cleanup values based on human health risk from direct contact with contaminated soil. Additional information is needed to determine whether soil cleanup levels comply with State requirements in Wis. Admin. Code § NR 720.12.
7. Continuing Obligations (COs) and Institutional Controls (ICs), pg. 23: This section states that “For the purposes of this Proposed Plan, and per the existing Remedial Action Consent Decree, WDNR’s Geographic Information System (GIS) Registry will be used to implement COs.” The ROD should reference the Wisconsin Remediation and Redevelopment Database (WRRD) instead of “GIS Registry” because COs are required to be included on WRRD under Wis. Stat. § 292.12(3), and Wisconsin no longer requires the recording of deed restrictions. The State will impose COs through an enforceable document (CO letter) upon finalization of the ROD and approval of the Remedial Action Plan, and the CO letter will be included on the WRRD. The Proposed Plan indicates additional ICs may be necessary in addition to Wisconsin COs including “prohibition of groundwater from being used as a drinking water source, and maintenance of an engineered barrier to prevent exposure to contaminants.” Please note that both of these are COs that the DNR would impose under Wis. Stat. § 292.12(2)(a), (c). Please clarify whether any ICs are anticipated to be imposed for this site that would not qualify as Wisconsin COs under Wis. Stat. § 292.12(2).
8. ISA Alternative 2, Horizontal Engineered Barriers, pg. 32: A cap consisting of a visual barrier and 6 inches of topsoil is not consistent with State guidance ([RR-709](#)) and may not be protective. On page 5, RR-709 states: “Soil covers may be used to prevent direct contact exposure to contaminated soils. Generally, a 2-foot thickness of clean soil should be placed over the contaminated soil. Soil covers should be vegetated to prevent erosion and deterioration. Therefore, at least 6 inches of topsoil, with appropriate seeding or sod, to establish a good growth of grass should be placed on top of the clean soil. If topsoil is used, then consideration can be given to reducing the minimum thickness of the clean soil layer by the same amount as the topsoil layer thickness.” Thus, minimum cap thickness implemented in the State is generally 24 inches; however, with a visual indicator such as the orange warning barrier geotextile suggested in the Proposed Plan, the DNR has approved a cap thickness of as little as 12 inches. DNR understands that specification for the cap design will be included as part of the remedial design process; however, if a barrier as described in the Proposed Plan is selected, the State may not be able to concur with that remedy component.
9. ARARs Table, Appendix, p.54 in pdf – DNR proposes the following State Requirements as ARARs identified for these remedial alternatives:
 - Chemical-specific ARARs, Soil, Wis. Admin. Code § NR 720.12(1) – Because there are numeric PRGs listed in the Proposed Plan for contaminants of concern in soil, these should

be documented in the ROD and the relevant required target risk criteria used to develop the soil cleanup standards should be documented as an ARAR in this table. Although EPA does not concur with DNR's position, DNR maintains that Wis. Admin. Code § NR 720.12(1), which establishes soil cleanup standards for protection of human health from direct contact with soil, meets ARAR criteria under current EPA guidance. Wis. Admin. Code § NR 720.12(1) contains a promulgated, substantive standard, it is of general applicability and legally enforceable, is more stringent than federal CERCLA requirements, and it has been consistently applied throughout the State as the relevant standard for establishing soil cleanup standards at both Superfund sites and State sites administered under the Wis. Admin. Code NR 700 series. DNR may not be able to concur with Alternatives for soil utilizing soil cleanup levels that do not comply with State requirements, including the target risk criteria established in Wis. Admin. Code § NR 720.12(1). If Wis. Admin. Code § NR 720.12(1) is not included in the ARARs table, the DNR requests that this standard is communicated in the letter to the PRP regarding state requirements.

- Action Specific ARARs, Wis. Stat. § 292.12(2)(a) and (b) – Wis. Stat. § 292.12(2)(a) and (b) provides the State with statutory authority to impose a continuing obligation for a cap and structural impediment. Their exclusion may impact the State's ability to implement necessary institutional controls/continuing obligations at the site. Wis. Stat. § 292.12(2)(a) and (b) meet ARARs criteria. These statutory provisions are substantive in nature, generally applicable, and legally enforceable. The State may impose a continuing obligation requiring the maintenance of an engineering control and an investigation of the extent of residual contamination if a structural impediment is removed that prevented a complete investigation (and the performance of any necessary remedial action) at both Superfund sites and State sites administered under the Wis. Admin. Code NR 700 series. If there is specific federal law that requires long-term monitoring and operation and maintenance of a cover system or that requires investigation of the extent of residual contamination if a structural impediment is removed, the State requests that those laws be cited in the ARARs table. In the absence of a federal law equivalent, the State requests that Wis. Stat. § 292.12(2)(a)-(b) are listed in the ARARs table.
- Action Specific ARARs, Wis. Admin. Code § NR 724.13(1)(b) – Wis. Admin. Code § NR 724.13(1)(b) provides that “[r]esponsible parties shall operate and maintain any cover systems...for which they are responsible until no longer required by the department.” This requirement is substantive in nature, generally applicable, and legally enforceable. If there is a federal law that includes a similar requirement, the State requests that the relevant law is cited in the ARARs table. In the absence of a federal law equivalent, the State requests that Wis. Admin. Code § NR 724.13(1)(b) is included in the ARARs table.
- To Be Considered (TBC) WDNR PUBL-RR-819- This document provides guidance related to continuing obligations imposed under Wis. Stat. § 292.12. The guidance document does not include numbered subsections. Relevant sections of the guidance detail different types of continuing obligations, special considerations for continuing obligations for off-site contamination, which may be necessary to consider at offsite locations such as Boom Landing, and notification requirements. DNR has provided a copy of the guidance with relevant sections highlighted.

DNR response to the ARARs determination letter provided to DNR on July 9, 2024, and ARARs included in the Proposed Plan Table(s).

The letter provided to the DNR by EPA on July 9, 2024 states that, “Within the week, EPA intends to transmit a letter to the PRP as we prepare to publish the proposed plan for public comment.” In that letter, EPA plans to highlight, as identified below, Wisconsin laws and guidance that will not be included in the

ARARs table but that the PRP should consider when drafting workplans and Site documents as appropriate during the Superfund remediation process. EPA also intends to emphasize in the letter that CERCLA does not provide an exemption from offsite legal requirements. DNR requests a copy of this letter so that DNR knows what was communicated to the PRP.

The DNR understands that the following Wisconsin state law requirements are being communicated to the PRP in the letter sent by EPA: Wis. Stat. § 292.12(4), Wis. Admin. Code §§ NR 725.05, 725.07, 724.17(1), 724.19(1), 726.05(4), 211.10, and the WDNR Guidance Document, “Wisconsin Consensus-Based Sediment Quality Guidelines” (WDNR Publication WT-732, Dec. 2003)

The DNR requests the following additional Wisconsin state requirements to be communicated to the PRP:

Wis. Admin. Code §§ NR 108.02(6) and (13), define industrial pretreatment facilities to include facilities that reduce or remove pollutants from industrial wastes prior to discharge to a publicly owned sewerage system and designates these systems as reviewable projects. The inclusion of these references is to provide context for the Wis. Admin. Code § NR 108.05(1) requirement for an engineering plan review prior to discharge to a POTW.

Wis. Admin. Code § NR 108.03(1) This administrative rule requires review and approval of final plans and specifications prior to construction of any reviewable project. As with past remedial actions, there is a requirement for a wastewater engineering plan review and DNR will coordinate the review of the necessary information. The request for inclusion in the letter to the PRP is not requiring that a separate formal request for review be submitted; rather, that the necessary information, outlined in Wis. Admin. Code § NR 108.04(2)(a), and coordination be completed for the state to be able to concur with the final remedial design.

Wis. Admin. Code §§ NR 108.04(2)(a) and (e), provide the requirements for submission of final plans and specifications, and any revisions due to plan modifications. These requirements are meant to inform the PRP what information should be provided to DNR in order for DNR to provide review and communicate any specific design requirements as part of Wis. Admin. Code § NR 108.05(1).

Wis. Admin. Code § NR 108.05(1), requires that the plans and specifications incorporate accepted engineering practices. Due to the diverse assortment of pretreatment projects, DNR does not have explicit design requirements for these systems, but rather works with the design engineer to address concerns when the review of the plans and specifications do not adequately incorporate accepted engineering practices. As with past remedial actions, there is a requirement for a wastewater engineering plan review prior to discharge to a POTW. The request for inclusion in the letter to the PRP is not requiring that a permit application be submitted; rather, that the necessary information and coordination be completed for the state to be able to concur with the final remedial design. The specific requirements are dependent on the type and design of pre-treatment needed, which will not be determined until the remedial design and may be complex for the WPSC Marinette site due to the presence of PFAS in groundwater in the area.

Wis. Admin. Code § NR 140.28(5)(c), defines the necessary information and requirements in order to attain a temporary exemption for injection as a remedial action. If there is specific federal law that requires that the type, concentration and volume to be injection to be minimized, that there is no expansion of soil or groundwater contamination or migration of injected material beyond the limits of contamination, and that the injection not significantly increase the threat to public health or welfare, the State requests that those laws be provided in letter to the PRP. The request for these provisions to be highlighted to the PRP is not requiring that a permit form/application be submitted; rather, that the necessary information and coordination be completed for the state to be able to concur with the final remedial design if injection is carried forward to the ROD.

Wis. Admin. Code § NR 214.05(2) This administrative rule lists several requirements for land treatment systems that may be pertinent to this site, and the DNR requests these to be communicated to the PRP if not included in the ARARs table. Specifically, additional requirements may be necessary if the wastewater contains a substance or concentration of substances not normally associated with the type of discharge allowed by Wis. Admin. Code § NR 214.02, and if the treatment may contaminate surface water or groundwater contamination or cause a public nuisance. These code requirements are requested to be communicated to the PRP to help ensure that all Wisconsin substantive requirements are met before remedial actions are completed by this PRP in the State of Wisconsin.

WDNR PUBL-RR-935 The document provides guidance and checklists for required information related to injection into groundwater as a method of remediation. While the PRP is not required to obtain a WPDES permit, the PRP may be required to submit certain information, such as an injection specific monitoring plan, and to take certain steps before conducting an injection into groundwater, such as pre-injection vapor screening. DNR has provided a copy of the guidance with relevant sections highlighted.

DNR understands that EPA is carefully reviewing state statutes and administrative rules included in the ARARs table to determine whether they meet ARARs criteria based on the updated ARAR guidance issued in March 2023. The DNR remains committed to working together with the EPA as it implements its new guidance. DNR appreciates that EPA has agreed to communicate some of the State requirements in a separate letter to the PRP that EPA has determined will not be included in the ARARs table. The DNR continues to request that the EPA communicates substantive state requirements applicable to the site to the PRP as early in the process as possible, regardless of whether EPA views these requirements to meet ARARs criteria.