



BEAZER EAST, INC.

c/o Three Rivers Management, Inc. (Agent for Beazer East, Inc.)
1910 Cochran Road, Manor Oak One, Suite 200, Pittsburgh, PA 15220-1273

July 7, 2016

Judy Fassbender
Section Chief
Wisconsin Department of Natural Resources
101 South Webster Street
Madison, WI 53703

Re: Non-Hazardous Waste Determination for Off-Property Soil/Sediment
Former Koppers Inc. Facility – Superior, WI

Dear Ms. Fassbender,

On May 12, 2016, representatives of Beazer East, Inc. (Beazer), the Wisconsin Department of Natural Resources (WDNR), and the United States Environmental Protection Agency (USEPA) met in Madison, WI to discuss potential corrective actions for the off-property portion of the Former Koppers Inc. Facility in Superior, WI (the Site), which includes affected sediments and/or soils within and adjacent to a tributary to Crawford Creek and a portion of Crawford Creek. As discussed at the May 12th meeting, the purpose of this letter is to present Beazer's position regarding the hazardous vs. non-hazardous waste determination for sediments and soils that may be excavated from the off-property portion of the Site as part of future corrective actions.

As you are aware, under the Resource Conservation and Recovery Act (RCRA), wastes must be characterized prior to treatment, storage and disposal. For waste determination purposes under RCRA, sediments/soils that contain listed hazardous wastes are classified as the listed hazardous waste that they contain (the "contained-in" rule). If the media does not contain a listed hazardous waste, but exhibits a characteristic of a hazardous waste, it is classified as a characteristic hazardous waste.

The determination of whether sediments/soils contain a listed hazardous waste must be made based upon knowledge of the process that caused the impact to the sediments/soils. The USEPA has suggested that site information, such as manifests, storage records and vouchers be used to ascertain the source of the residuals [53 Fed. Reg. 51394, 51444 (December 21, 1988)]. The USEPA has taken the position that if documentation to this effect is lacking, the lead agency may assume that the waste is not a listed hazardous waste [55 Fed. Reg. 8665, 8758 (March 8, 1990)].

There are several listed waste codes associated with specific processes in the wood preserving industry, and four are potentially relevant to the Site:

- U051 – Creosote – discarded commercial chemical product, off-specification species, container residues, and spill residues thereof;
- K001 – Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol;
- F032 – Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes that use chlorophenolic formulations; and
- F034 – Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes that use creosote formulations.

Given the size of the Site and the lack of documentation regarding former operations, it is virtually impossible to determine from which, if any, of the specific process areas the residuals in off-property sediments/soils may have been generated. Therefore, based on the USEPA's guidance in the preamble language cited above, it is not appropriate to assume that the sediments/soils in the off-property portion of the Site contain listed hazardous wastes. Assuming the materials in question did not exhibit a hazardous characteristic, a non-hazardous waste determination would be consistent with the National Contingency Plan and the USEPA guidance, which do not require, and even counsel against, reaching a conclusion that a waste is a listed hazardous waste when evidence for that classification is lacking. Beazer has applied this same rationale for non-hazardous waste determinations at several other sites across the country and received approval from both USEPA and state regulatory agencies.

With respect to the determination as to whether off-property sediments/soils are likely to exhibit a hazardous waste characteristic, Beazer has performed extensive testing of sediments/soils at many wood preserving sites throughout the country that have demonstrated that similar material is not characteristically hazardous. In addition, soil samples were collected from on-Site sources areas during the RCRA Facility Investigation (RFI) in 1996 for Toxicity Characteristic Leaching Potential (TCLP) testing. These data indicate that the TCLP sample results are all below the applicable Toxicity Characteristic Regulatory Levels specified in Table 1 of 40 CFR 261.24. Therefore, based on the Site-specific TCLP data from 1996 and test results for samples of similar materials collected from other sites across the country, Beazer believes that the off-property sediments/soils are not a characteristic hazardous waste.

A non-hazardous waste determination for sediments/soils that may be managed or excavated from the off-property portion of the Site provides increased flexibility for the cost effective management of these materials, either in an on-site Corrective Action Management Unit, at an off-site commercial landfill disposal facility, or other on-site or off-site option.

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Beazer respectfully requests the WDNR give serious consideration to the above-described non-hazardous waste determination for management of the off-property sediments/soils as part of future corrective actions. If you should have any questions or concerns regarding this approach to the characterization and management of sediments/soils at the Site, please feel free to contact me at (412) 208-8813.

Sincerely,



Jane Patarcity

Senior Environmental Manager

Enclosure

Cc: John Robinson, WDNR
Chris Saari, WDNR
Marc Tuchman, USEPA
Brenda Jones, USEPA
Rob Markwell, Beazer
Stu Messur, Anchor QEA
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