



December 8, 2020

Transmitted via e-mail (Jane.Patarcity@TRMI.Biz)

Jane Patarcity
Three Rivers Management, Inc. (Agent for Beazer East, Inc.)
600 River Avenue, Suite 200
Pittsburgh, PA 15212

File Ref: FID # 816009810
Douglas County
HW Insp

Subject: Notice of Non-Compliance
Beazer East, Inc.
Facility: Koppers Industries Inc./Beazer East, Inc – Superior, WI
Hazardous Waste Compliance Assessment

Dear Ms. Patarcity:

In the department's December 19, 2019 letter to Beazer East, Inc. ("Beazer"), information was requested as part of a hazardous waste compliance assessment of the closed hazardous waste facility located in Douglas County, WI, EPA ID WID006179493 ("Facility"). This letter requested documents to assist the department in this effort. Beazer responded with an initial letter dated February 14, 2020, and subsequently provided further documents (via electronic file sharing) with its cover letter dated June 17, 2020. Thank you for providing this information.

Beazer has asserted the following:

- Through contracts with other parties, Beazer's responsibilities related to the Facility are generally limited to site activities and conditions prior to December 29, 1988;
- Beazer is responsible for long-term care for two licensed, closed hazardous waste surface impoundments;
- Beazer is generally responsible for corrective actions for the Facility that are being implemented in coordination with the department's Remediation and Redevelopment program under BRRTS Case 02-16-000484;
- Beazer is not responsible for operations after December 29, 1988, including for example subsequent operation and maintenance of a drip pad by Koppers, Inc or its predecessor; and
- Various legal disclaimers and objections.

Accordingly, the current property owner (TRP Properties, Inc.) and prior occupant (now Koppers, Inc., according to Beazer) have been provided with copies of today's letter. We recommend that the various parties with involvement at the Facility cooperate in following up on today's letter.

The assessment has determined that the Facility does not appear to be in compliance with the hazardous waste requirements of Chapters NR 660 to 679, Wisconsin Administrative Code, the license, and/or approvals issued by the department. Identified below are three alleged areas of noncompliance and the recommended actions needed to resolve these alleged areas of noncompliance. Also identified are six areas of concern (AOCs) and recommended actions to demonstrate compliance; these AOCs could lead to additional alleged areas of noncompliance if not properly addressed and resolved.

Alleged Areas of Noncompliance

1. Long-term care cost estimate and financial assurance. Section NR 665.0144(1), Wis. Adm. Code, requires a detailed written estimate, in current dollars, of the annual cost of long-term care.

In response to the department's request, Beazer provided a long-term care cost estimate in its information submittal dated June 17, 2020. The department's review indicates that this estimate is insufficient to demonstrate compliance, for the following reasons:

- a. Beazer did not provide any description of the work and tasks for which the costs were based.
- b. Beazer did not provide any basis for the unit costs or other assumptions used to develop the extended costs.
- c. It does not appear that the certain costs (e.g. for erosion repairs, mowing and well repairs) are based on the costs to the owner or operator of hiring a third party to conduct the work.
- d. There are no costs presented for hiring and managing a third party or third parties to perform the all of work (project management and administration).
- e. Long-term care costs were estimated for a remaining duration of 9 years, apparently based on the assumption that 31 years of an undefined 40-year period (1988 - 2028) has occurred. [Closure was approved in the department's letter dated August 3, 1990. Section NR 665.0117(1)(a), Wis. Adm. Code, requires that long-term care shall begin after completion of closure of the unit and continue for a minimum of 40 years after that date.] Note that NR 665.0117(1)(a), Wis. Adm. Code, establishes that the department may extend the long-term care period, if necessary to protect human health and the environment. The cost estimate presented no information or rationale justifying why long-term care activities should be expected to cease in 2028.

To demonstrate compliance with this requirement, the Beazer must submit a revised cost long-term care cost estimate that addresses these concerns. This should also consider the consolidated plan recommended in Item 5 of this letter.

Additionally, s. NR 665.0145, Wis. Adm. Code, requires the establishment of financial assurance for long-term care. The department's records indicate that Beazer has established a letter of credit in the amount of \$600,100.00 to cover both long-term care and corrective action financial assurance requirements. Because a proper cost estimates for long-term care and corrective action (as addressed in Item 2) have not been provided, the department cannot determine that adequate financial assurance has been properly established. To assure compliance, Beazer must ensure that its financial assurance mechanism is adequate to cover the long-term care and corrective action cost estimates, after the estimate is revised and after consideration of the consolidated plan recommended in Item 5.

2. Corrective action cost estimate and financial assurance. Section 291.37, Wis. Stat., and s. NR 664.0101(3), Wis. Adm. Code, allows the department to require financial assurance for corrective action. This requirement was presented to Beazer in the department's November 23, 2011 letter.

A proper cost estimate for corrective action is necessary in order to establish adequate financial assurance. After the department's request, Beazer submitted a corrective action cost estimate in its information submittal dated June 17, 2020. The department determined that this does not represent a proper cost estimate, for the following reasons:

- a. Beazer did not provide any description of the work or tasks on which the costs were based.

- b. Beazer did not provide any basis for the unit costs or other assumptions used to develop the extended costs.
- c. It does not appear that certain costs, such as for mowing, are based on the costs to the owner or operator of hiring a third party to conduct the work.
- d. There are no costs presented for hiring and managing a third party or third parties to perform all of the work (project management and administration).
- e. Corrective action costs were estimated for a remaining duration 22 years, apparently based on the assumption that 8 years of an undefined 30-year period (2011 - 2041) have occurred. No explanation of why this period was used. The cost estimate presents no reasons why corrective action activities should be expected to cease in 2041.
- f. It does not appear that any costs were included for off-site remediation costs. (Cost estimate information for this work was included in a report developed by Arcadis dated August 18, 2014).

To demonstrate compliance with this requirement, the Beazer must submit a revised corrective action cost estimate that addresses these concerns and ensure that its financial assurance mechanism is adequate to cover this estimate. This should consider the consolidated plan recommended in Item 5.

- 3. Certification. Section NR 670.011(4)(a), Wis. Adm. Code, requires that information requested by the department shall include specific certification language. The department's December 19, 2019 letter (page 6) indicated that this certification was needed in Beazer's response. In each of its responses (February 14, 2020 and June 17, 2020), Beazer failed to include the required certification, and objected to this requirement. To comply with this requirement, Beazer must provide a letter to the department that provides the required certification for the information in its February 14, 2020 and June 17, 2020 letters.

Areas of Concern

- 4. Emergency Coordinator. Section NR 665.0055, Wis. Adm. Code, requires, "(a)t all times, there shall be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures." Beazer provided a contingency plan with a revision date of June 2020 (prepared by Field & Technical Services, LLC) which identified an emergency coordinator (EC) having an address in Minneapolis, MN, which is approximately 150 miles from the Facility, and two alternates having addresses in Pennsylvania, none of whom meet this requirement. Since these EC's are employees of Beazer's consultant, the department estimates that they would not be able to properly supervise or coordinate emergency response activities that would need to involve the cooperation of the current site tenant or its personnel.

To demonstrate compliance with this requirement, we recommend that Beazer develop a revised and contingency plan (and submit a copy to the department) that:

- a. Identifies an emergency coordinator and alternates that are able to reach the facility within a short period of time.
- b. Confirms that arrangements are in place to assure the emergency coordinators have the authority to coordinate and supervise on-site emergency response measures.

The department suggests that Beazer consider making appropriate arrangements with the property's current landowner/tenant, and/or with a local emergency response entity, to assure these are concerns are addressed.

Alternatively, Beazer may want to consider another approach to demonstrating compliance. This facility is undertaking corrective action as part of remediation under the R&R Program's NR 700-series requirements, and s. NR 724.13(2)(c), Wis. Adm. Code, requires "a contingency plan for any anticipated or potential operation and maintenance problems, including a description of techniques or activities to be conducted by the responsible parties to resolve operation and maintenance problems." If Beazer can demonstrate that its R&R program contingency plan meets the functional intent of the contingency planning requirements of subch. D of ch. NR 665, Wis. Adm. Code, with respect to current site activities and reasonably anticipated needs for emergency planning and coordination, the department is willing to consider recognizing it, for the purposes of this compliance assessment, as providing compliance with some or all of these subch. D requirements. This sort of demonstration could be documented and approved as part of the consolidated plan discussed in Item 5.

5. Preparedness, prevention and contingency planning. Section NR 665.0031, Wis. Adm. Code, requires, "(f)acilities shall be maintained and operated to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste...". Section NR 665.0052(1), Wis. Adm. Code, requires, "(t)he contingency plan shall describe the actions facility personnel must take to comply with ss. NR 665.0051 and 665.0056 in response to fires, explosions or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water at the facility." Beazer does not own or occupy the facility property. It is recommended that Beazer ensure that arrangements are made with the current site occupant/personnel regarding the prevention of, and proper response to, releases or other incidents related to the closed hazardous waste units. The department recommends that these arrangements be documented and referenced in the facility's contingency plan, and that a revised copy be provided to the department.
6. Long-Term Care Plan and Corrective Actions; Consolidated Plan. Section NR 665.0118, Wis. Admin. Code, requires the facility to have a written long-term care plan, and to make its most current version available to the department upon request. The department's December 19, 2019 letter requested this plan. Beazer's June 7, 2020 response letter indicated that Exhibit 3 contained "(d)ocumentation that constitutes and describes the current long-term care obligations for the (S)ite". Exhibit 3 included copies of about 29 separate documents regarding various subjects, such as:
 - The initial long-term care plan dated August 27, 1987 (note that the copy provided was missing the long-term care cost estimates in section XIII, Attachment 1.0).
 - Subsequent long-term care plan modifications and approvals regarding groundwater monitoring.
 - Reports and correspondence regarding surface impoundment closure activities.
 - Reports and correspondence regarding corrective action investigations and design and operation of corrective action activities, up to the corrective action O&M plan dated September 2011.

The department is concerned that this long series of documents does not clearly identify the current long-term care activities that constitute the current relevant components of the required long-term care plan.

The department's December 19, 2019 letter also requested a description of current corrective action requirements. Beazer's (page 4) suggests that on-site corrective actions are complete. However, ongoing requirements for groundwater monitoring and maintenance of the surface cover systems and outfalls are required. See for example the Arcadis report with a revision date of September 2011, titled "Operation and Maintenance Plan - On-Property Corrective Measures Implementation". Ongoing groundwater monitoring is also required. See for example the department's letter dated November 24, 2011, subject "Groundwater Monitoring and Corrective Action". Also, as noted by Beazer in its June 7, 2020 letter (page 5), off-site corrective actions have not been initiated or completed.

Beazer's cost estimates dated May 2020, includes tasks for both long-term care and corrective action, which indicates that corrective action activities continue to be performed.

The department is concerned that Beazer's responses do not clearly identify the requirements for corrective action. At sites with both long-term care and corrective action requirements, the associated activities can overlap, resulting in potential ambiguities regarding specific compliance responsibilities and associated financial assurance amount(s).

The department recommends that Beazer update and submit the Facility's long-term care plan documents so that it is current and organized into a single plan, that also addresses and corrective action requirements. We further recommend that the plan also address the related remediation requirements in the NR 700-series of regulations. Further discussion and recommendations regarding this consolidated plan are provided in Attachment A. Please inform us of your plans to address these recommendations.

7. Annual long-term care and corrective action cost estimate updates: Section NR 665.0075(7), Wis. Adm. Code, requires that the long-term care cost estimate be submitted to the department March 1 of each year. No such submittal has occurred since at least 2013. Section NR 665.0144(2), Wis. Adm. Code, requires that the long-term care cost estimate be adjusted annually for inflation. No such adjustment has occurred since at least 2013.

In the absence of prior annual long-term care cost updates, and in order to demonstrate compliance going forward, the department recommends that Beazer provide confirmation to the department that the new cost estimate provided on June 17, 2020 (or the updated cost estimate per Item 1), is expressed in current-year dollars (meaning, it reflects inflation adjustments or current dollars) and that Beazer intends to provide updated annual cost estimates in the future. We also recommend that Beazer similarly address this for the corrective action cost estimate.

8. Groundwater monitoring. The hazardous waste long-term care monitoring requirements are established in RETEC's Groundwater Monitoring Sampling and Analysis Plan (SAP) dated April 2002, which was approved in a letter dated October 29, 2002. These were developed almost 18 years ago. Beazer confirmed in its June 17, 2020 letter (page 14) that this SAP was being followed. A cursory review of FTS's February 19, 2020 report (which presented the 2019 monitoring results) indicates that some elements of the 2002 SAP are not being followed. For example, SAP section 2.2 lists 28 wells to be monitored for water levels; however, FTS's report (Tables 1 and 2) does not report water levels for 9 of these wells. Beazer has provided no correspondence indicating any long-term care plan approvals of modifications to the 2002 SAP.

The department recommends that Beazer review its current monitoring program, compare it to established hazardous waste long-term care requirements, and report the results of this assessment to the department. If Beazer desires to modify the current hazardous waste long-term care monitoring requirements, the department recommends that it request a long-term care plan modification request for department approval, and that Beazer consider the consolidated plan discussed in Item 5 in developing the request.

9. Training. Section NR 665.0016(1)(b), Wis. Adm. Code, requires that training "shall include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation)...". Section NR 665.0016(1)(c), Wis. Adm. Code, requires that "the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies...". Beazer does not own or occupy the facility property. The training program provided by Beazer in the document titled "RCRA

Hazardous Waste Training” dated January 2020 (prepared by Field & Technical Services, LLC) does not address training for facility personnel. It is recommended that Beazer modify this document and ensure that the training program addresses on-site personnel training requirements, and that Beazer provide a copy to the department.

Additional Information

Licensing History. Available information includes the following hazardous waste license form documents for activities at the Facility or its premises.

- a. Hazardous Waste Facility Interim License for container storage and two surface impoundments, issued with a transmittal letter dated April 1, 1985 (no license number).
- b. License 03157, Hazardous Waste Facility License for container storage (4,950 gallons), initially issued with a transmittal letter dated Sept. 27, 1988. (Department records indicate that closure of this unit was approved in a letter dated December 21, 1990).
- c. License 03046, Hazardous Waste Long-Term Care License for the closed surface impoundments, transmittal letter dated September 21, 1990; this letter referred to a 2-year license period and required that the license application for renewal be submitted before the initial 2-year period ended. The letter indicated that 2-year renewals should occur until the end of the (then) 30-year long-term care period. (Note that Wisconsin later changed the required period of long-term care from 30 years to a minimum of 40 years). No license renewal applications are known to have occurred.
- d. In its June 17, 2020 letter, Beazer provided a copy of a modified version of license 03157, the license previously established in 1988 for container storage. There are several items of interest relating to this document:
 - i. This document describes the facility as “HW DISPOSAL – LONG TERM CARE NON COMMER” but the license number is for the closed container storage facility. (i.e. the license numbers don’t match).
 - ii. This document showed an effective date of December 21, 1990, and an expiration date of September 30, 2020. No transmittal letter was provided by Beazer or is otherwise currently available, so it is not evident when this document was developed. However, it appears that this document was created, perhaps mistakenly, at some time after 1993, based on the date at the bottom of the form (revised 12-93) and the signature (Secretary Meyer’s term began in 1993). These dates do not align with the effective date.

As indicated in its letter to Beazer dated August 18, 2020, the department intends to update the long-term care license for this facility and identify Beazer East, Inc. as licensee. As indicated in its September 17, 2020 letter to the current property owner, TRP Properties, LLC, the department may identify additional licensees. A draft version of the license will be provided to the licensees(s) for comment prior to final issuance. The department would welcome and consider input from Beazer at any time, as this process continues to evolve.

All applicable requirements of chs. 289 and 291, Wis. Stat., and chs. NR 600 through 679, Wis. Adm. Code, will continue to be effective irrespective of any previous licenses and any re-issuance. The department prefers to see resolution of the alleged areas of noncompliance and areas of concern raised in this letter before license re-issuance occurs.

Conclusion

December 9, 2020

The department recommends you take immediate action to address the identified areas of noncompliance and areas of concern, and requests that you provide written documentation, within 60 days of the date of this letter, of the completed or planned actions to demonstrate compliance. While we appreciate receiving such information by this date, please understand that you are currently in noncompliance and will remain in noncompliance until the identified areas are addressed. Failure to respond in a timely manner may result in escalated enforcement actions. Alleged noncompliance may also be enforced by the United States Environmental Protection Agency.

Please contact me with any questions at 608-843-2160 (mobile) or douglas.coenen@wisconsin.gov.

Regards,



Douglas W. Coenen, P.E.
Hazardous Waste Engineer
Hazardous Waste Prevention and Management Section
Waste and Materials Management Program

cc: Jayne Wade, WDNR
John Sager, WNDR
Michael Slenska, P.E., Beazer East, Inc. (Mike.Slenska@TRMI.Biz)
Robert Fisher, Field and Technical Services, LLC (rfisher.2006@ft-s.com)
TRP Properties (terry@omahatrack.com)
Linda Paul, Koppers, Inc. (PaulLS@koppers.com)

Attachment A

Consolidated Plan for Long-Term Care, Corrective Action, and Remediation
Koppers Industries Inc./Beazer East, Inc – Superior, WI

Hazardous Waste Requirements

The Koppers/Beazer Superior facility has two hazardous waste surface impoundment units that were not clean-closed. Therefore, these units are regulated and licensed as closed landfills in long-term care (LTC) under Wisconsin's NR 600-series administrative codes, along with associated LTC approvals dating back to the 1990's.

These units (and other solid waste management units at the site) are also subject to corrective action (a.k.a RCRA corrective action) under the hazardous waste program. The corrective action (CA) process was developed with EPA and DNR in the mid-1980's, and continued with various site investigations, a Corrective Measures Implementation (CMI) Design Report in 2010, a CMI construction documentation report in 2011, and various department approval letters.

Section NR 665.0118, Wis. Admin. Code, requires the facility to have a written long-term care plan, and to make its most current version available to the department upon request. Section NR 664.0101(3), Wis. Adm. Code requires facilities to undertake corrective actions to address releases, although no written corrective action plan is explicitly required. At sites with both long-term care and corrective action requirements, these activities can often overlap.

Also, financial assurance must be established for all long-term care and corrective action activities. Cost estimates cannot be properly developed unless all of these activities are identified and described. Items 3 and 4 of the department's December 19, 2019 information request letter were intended to, in part, to assist in defining this work. Beazer responded by providing over 35 pieces of historical correspondence dating from 1987 to 2015, comprising hundreds of pages. However, no summary or consolidation of current long-term care and corrective action requirements and activities was provided. This makes it more difficult to identify compliance requirements and ensure that they are being met.

Remediation and Redevelopment Background

Because of hazardous substance releases, investigation and remediation of environmental contamination is occurring through the department's Remediation and Redevelopment (R&R) program and its NR 700-series rules. This work is tracked and documented in BRRTS Case 02-16000484 and has generally incorporated many of the activities related to hazardous waste long-term care and corrective action. At sites with long-term care, corrective action and remediation requirements, these activities often overlap.

Compliance Management Challenges

The original hazardous waste long-term care plan was established in a document dated August 27, 1987. Many changes at the site have occurred since, including the completion of hazardous waste unit closure activities, the development of RCRA corrective action investigations and work plans, the implementation of these work plans, the integration of the department's Remediation and Redevelopment (R&R) program requirements, and changes in environmental monitoring plans. Therefore, it is likely that historic site-specific long-term care plans and approvals, though still effective and enforceable, may not represent the optimal and appropriate current

activities and practices, and may not have been updated as the corrective action- and remedial action-related activities continue to have developed.

An example involves groundwater monitoring. These types of activities are addressed in the hazardous waste long-term care monitoring requirements are established in RETEC's Groundwater Monitoring Sampling and Analysis Plan (SAP) dated April 2002, which was approved in a letter dated October 29, 2002. These were developed almost 18 years ago. It is possible, or perhaps likely, that during this time modifications or refinements to the monitoring program may be contemplated or deemed appropriate, based on results from many years of monitoring, changes in technology, changes in site conditions, or other reasons. Under the current arrangement, monitoring program changes would need to be approved by the department's hazardous waste program (as long-term care plan and/or corrective action program changes), and separately authorized through the department's R&R program (for example, under s. NR 724.17, Wis. Adm. Code). Separate review fees and submittal/approval processes may be necessary.

Another example involves cover/cap inspections, maintenance and repair. Required activities for the closed surface impoundment areas are addressed in the long-term care plan was established in a document dated August 27, 1987. Different activities are prescribed in the Arcadis "Operation and Maintenance Plan - On-Property Corrective Measures Implementation" dated September 2011, prepared as the operation and maintenance plan required by s. NR 724.13(2), Wis. Adm. Code. It may be more efficient for Beazer to establish one program that addresses the requirements of both the NR 600- and NR 700-series.

Consolidated Plan

The consolidation of post-closure and corrective action requirements for is generally encouraged by EPA. See for example the October 22, 1998 Federal Register preamble for the "post-closure rule" in 63 FR 56710, at the following link:

<https://archive.epa.gov/epawaste/hazard/web/pdf/f28221-2.pdf>

U.S. EPA also encourages the coordination of RCRA hazardous waste long-term care and corrective action activities with non-RCRA remediation programs, such as U.S. EPA's CERCLA program, or Wisconsin's NR 700-series Remediation and Redevelopment (R&R) program. This sort of approach is articulated in EPA's September 24, 1996 memorandum; see the following link:

<https://www.epa.gov/sites/production/files/2013-10/documents/rcracorrection-mem.pdf>

This consolidated approach to hazardous waste and remedial activities using Wisconsin's NR 700-series R&R program is recognized in the Nov. 21, 2006 EPA/DNR "One Cleanup Program MOA"; see the following link: <https://dnr.wi.gov/files/PDF/pubs/rr/RR064.pdf>.

Section NR 700.01(2), Wis. Adm. Code, establishes that the NR 700-series program is intended to address solid and hazardous waste facilities regulated under chs. 289 and 291, Wis. Stats.

Accordingly, the department believes that long-term care and groundwater monitoring requirements in chs. NR 664-665, Wis. Adm. Code, can be most effectively managed and implemented as part of the corrective action program, and that this all of work can be effectively implemented through the department's Remediation and Redevelopment (R&R) program. In this way, compliance with the NR 600-series hazardous waste requirements for long-term care and corrective action could be facilitated and demonstrated through compliance with the R&R program's NR 700 requirements.

December 9, 2020

Therefore, the department recommends that Beazer develop a single, consolidated long-term care/corrective action/remediation plan that addresses applicable hazardous waste and R&R requirements. The consolidated plan could take the form of and constitute the long-term monitoring plan required by s. NR 724.17, Wis. Adm. Code and the operation and maintenance plan required by s. NR 724.13(2), Wis. Adm. Code. In addition to the information required in these NR 700 regulations, the consolidated plan would:

- demonstrate how the plan addresses the groundwater monitoring and corrective action provisions in Subchapter F of NR 664, or include justification for how it replaces all or part of these requirements as may be allowed for in s. NR 664.0090(6), Wis. Adm. Code.
- identify how the plan addresses the long-term care and long-term care plan provisions of ss. NR 665.0117 and 665.0118, Wis. Adm. Code.
- include cost estimates for use in establishing financial assurance required by s. 291.37, Wis. Stat., and ss. NR 664.0101(3), Wis. Adm. Code (regarding corrective action) and NR 665.0145, Wis. Adm. Code (regarding long-term care).
- propose that the plan, and subsequent changes authorized under the NR-700 rules, establish the activities to assure compliance with hazardous waste long-term care and corrective action requirements, and the establish basis for establishing hazardous waste long-term care and corrective action financial assurance cost estimates.

After approval of the consolidated plan as a modification to replace the old hazardous waste long-term care plan(s), and after the consolidated plan is established in accordance with the NR 700-series program, future changes to the facility's monitoring and long-term care activities that are consistent and compliant with R&R program remediation and corrective action requirements could subsequently occur without additional long-term care plan approvals through the department's hazardous waste program. The hazardous waste program approval would also specify steps to ensure continuing compliance with hazardous waste program cost estimate and financial assurance requirements.

The department believes this sort of consolidated plan approach would facilitate a clearer and efficient compliance management process in the future.