

From: [Sager, John E - DNR](#)
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Cc: ["terry@omahatrack.com"](mailto:terry@omahatrack.com); ["lisa@omahatrack.com"](mailto:lisa@omahatrack.com); [Saari, Christopher A - DNR](#); [Nelson, William J - DNR](#); [Carey, Angela J - DNR \(Angela.Carey@wisconsin.gov\)](mailto:Angela.Carey@wisconsin.gov)
Subject: TRP property (Beazer/Koppers CAMUs)
Date: Tuesday, July 27, 2021 4:32:00 PM
Attachments: [image007.png](#)
[image008.png](#)
[image009.png](#)
[image010.png](#)

Shaun,

Below are WDNR's answers to your questions regarding your property in Superior Wisconsin. The WDNR answers are strictly pertaining to the requirements of Wisconsin Statutes and Wisconsin Administrative Code and do not comment on any agreements between TRP and Beazer or Koppers. Your original questions are in italics and the WDNR responses are in roman. Please contact me if you have any questions or would like to discuss this further.

- *Does Beazer and/or Koppers have the right to request permission to remove the covers to the CAMU sites on TRP's property? My understanding is that only the property owner (TRP) could make that request. If that is not correct, please let me know.*

The caps in place on TRP's property now are for the protection from direct contact with remaining contamination that is on TRP's property and the capped former retention ponds. These caps are not considered CAMUs. The CAMU that has been proposed for TRP's property in the past is a separate constructed containment area for contaminated soil and sediment brought in from off site during a cleanup of the Crawford Creek area of the site. Beazer is currently working on a feasibility study looking at various cleanup options for the Crawford Creek area of the site. A constructed CAMU on TRP's property may be one of the options Beazer is considering.

In order to remove a cap or a cover that is currently in place on TRP property, Beazer and/or Koppers would need to prove to the WDNR that the cover is no longer needed to protect human health and the environment. This could be done through investigation of the areas of contamination where caps were placed or through remedial action of the contamination making the caps unnecessary. Currently, contamination remains on site beneath the caps. DNR has not given approval to remove or modify any of the caps currently in place.

- *Does Beazer and/or Koppers have any right to pursue removal of the drip track? Again, this is on TRP's property so I would hope that TRP has a legal right to be involved in those discussions going forward.*

The DNR has determined that the drip track is currently acting as a cap for protection from direct contact with contamination beneath the drip track. Neither Beazer or Koppers has done the investigation or remedial actions necessary to show the drip track is not needed as a cap and DNR has not approved removal of the drip track "cap". If and when it is shown a cap is not necessary in the area of the drip track, Koppers or Beazer can request DNR's

approval to not have the drip track considered a cap. If WDNR approves then it would be a matter between the property owner and Koppers and/or Beazer to determine the disposition of the drip track.

- *Regarding the off-site, downstream contamination caused by Beazer and/or Koppers, is TRP required to allow them to store the contaminated soil on the TRP property? I assume the answer is not, but this also relates back to the first issue about the right to request the removal of the CAMU covers in order to add more materials.*

Under Wis. Admin. Code NR718, a responsible party may move contaminated material from one portion of a site to another as long as the requirements of NR718 are adhered to. There is no requirement in Wisconsin Statute or Administrative Code that requires a property owner to accept contaminated material from a property they do not own even if the source of the contamination is from that property.

- *Would WDNR be willing to require that any further discussions with Beazer and/or Koppers about the use of the CAMUs or the investigation or removal of the drip track on the TRP property include TRP at all stages? I have the sense that Beazer/Koppers has been trying for permission from WDNR without full disclosure to TRP. I could be wrong, but that is my impression.*

The WDNR does not have the ability to require Beazer and/or Koppers to involve or copy TRP on submittals regarding TRP's property. However, submittals from Beazer and/or Koppers is public record and is available to TRP through an information request. A portion of the WDNR's Koppers file is available electronically from the WDNR's database [BRRTS on the Web](#). Much of the recent correspondence regarding the drip track is available. The BRRTS ID number of the Koppers site is 02-16-000484 and the BRRTS ID number for the Koppers Inc – Superior Drip Pad site is 02-16-585874. Also, under [Wis. Admin. Code ch. NR 714.05 \(5\)](#) TRP may request the WDNR keep TRP informed of approvals or rejections of the response actions being taken at a site or facility.

- *Last point, there are two publicly recorded agreements regarding the CAMU sites and restrictions on use and access. The first is Document # 853679, a Declaration of Restrictions recorded September 20, 2012 in the Douglas County Wisconsin Recorder office, and the second is document # 853678, a Post-Closing Access Agreement recorded September 20, 2012 in that same office. Since these are public documents, please let me know if you can obtain those directly or if you need to have copies sent to you from my office. The only other document involved was the purchase agreement between TRP and Koppers which has provisions that survived the closing on the sale. I need to confer with my client about whether we may provide this document to you, or perhaps just the relevant sections regarding the environmental matters.*

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John Sager

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From: Shaun James <sjames@smithslusky.com>

Sent: Thursday, July 8, 2021 3:43 PM

To: Sager, John E - DNR <John.Sager@wisconsin.gov>

Cc: Terry Peterson <terry@omahatrack.com>; Lisa Roberts <lisa@omahatrack.com>

Subject: TRP property (Beazer/Koppers CAMUs)

John,

Thanks again for taking my call today. A quick recap of what I'm trying to determine for my client:

- Does Beazer and/or Koppers have the right to request permission to remove the covers to the CAMU sites on TRP's property? My understanding is that only the property owner (TRP) could make that request. If that is not correct, please let me know.
- Does Beazer and/or Koppers have any right to pursue removal of the drip track? Again, this is on TRP's property so I would hope that TRP has a legal right to be involved in those discussions going forward.
- Regarding the off-site, downstream contamination caused by Beazer and/or Koppers, is TRP required to allow them to store the contaminated soil on the TRP property? I assume the answer is not, but this also relates back to the first issue about the right to request the removal of the CAMU covers in order to add more materials.
- Would WDNR be willing to require that any further discussions with Beazer and/or Koppers about the use of the CAMUs or the investigation or removal of the drip track on the TRP property include TRP at all stages? I have the sense that Beazer/Koppers has been trying for permission from WDNR without full disclosure to TRP. I could be wrong, but that is my impression.
- Last point, there are two publicly recorded agreements regarding the CAMU sites and restrictions on use and access. The first is Document # 853679, a Declaration of Restrictions recorded September 20, 2012 in the Douglas County Wisconsin Recorder office, and the second is document # 853678, a Post-Closing Access Agreement recorded September 20, 2012 in that same office. Since these are public documents, please let me know if you can

obtain those directly or if you need to have copies sent to you from my office. The only other document involved was the purchase agreement between TRP and Koppers which has provisions that survived the closing on the sale. I need to confer with my client about whether we may provide this document to you, or perhaps just the relevant sections regarding the environmental matters.

Please let me know what you find out from your RCRA specialist, and any other information that you are able to share with me at this time regarding the above issues or any other issues that could impact the TRP property.

Thank you again.

Shaun

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