

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
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March 28, 2024

Douglas Ballotti
 Director, Superfund Division
 United States Environmental
 Protection Agency-Region 5
 77 West Jackson Boulevard
 Chicago, IL 60604

Re: Solvay Coke & Gas – Deferral to Wisconsin Department of Natural Resources

Dear Mr. Ballotti:

In accordance with discussions between the State of Wisconsin (“State”) and the United States Environmental Protection Agency (“U.S. EPA”) regarding a site-specific Memorandum of Understanding, the State requests the EPA allow WDNR to implement the remedial action to address the environmental concerns at the Solvay Coke & Gas site (“Site”) in Milwaukee, Wisconsin, pursuant to a formal agreement between WDNR and Wisconsin Gas LLC, a Wisconsin limited liability company doing business as We Energies (“WE”). This Site is currently being addressed by U.S. EPA through the Superfund Alternative Approach program. Wisconsin law provides the Wisconsin Department of Natural Resources (the “Department”) authority to require environmental response actions at the Site, and Department staff have the expertise and capabilities to effectively manage the implementation of the response actions for the Site.

1. Legal Authority

Wisconsin Statute (Wis. Stat.) ch. 292, as further implemented through the Wisconsin Administrative Code (Wis. Admin. Code) ch. NR 700 rule series, provides legal authority for the Department to assure that the response action called for in the Administrative Order by Consent dated February 14, 2003 (V-W-03-C-733), Administrative Settlement Agreement and Order on Consent on January 31, 2007 (V-W-07-C-861), Administrative Settlement Agreement and Order on Consent on August 31, 2017 (V-W-17-C-010), Memorandum of Understanding between U.S EPA Region 5 and DNR, and the Negotiated Agreements for the upland and sediment sites can and will be carried out. Wis. Stat. § 292.11(3) specifically requires actions be taken by a responsible party to restore the environment to the extent practicable. The Wis. Admin. Code ch. NR 700 rule series, which expressly applies to sites being responded to under Wis. Stat. ch. 292, provides further authority to compel response actions to be taken by responsible parties. In a prior U.S. EPA review of Wisconsin’s remediation program, U.S. EPA concluded that “WDNR has adequate enforcement resources and authority to ensure completion of response actions, including operation and maintenance or long-term monitoring if the responsible party fails or refuses to complete the required actions.” One Cleanup Program Memorandum of Agreement (Nov. 27, 2006) (“One Cleanup MOA”).

Since the signing of the One Cleanup MOA, updates to Wis. Stats. ch. 292 and the Wis. Admin. Code ch. NR 700 rule series add to and clarify the Department’s response action authority. These changes to the Wisconsin program now unambiguously address sediment, including specific requirements addressing the use of engineering controls and long-term stewardship.

2. Protection of Human Health and the Environment

Wis. Stat. § 292.11(3) requires “restoration of the environment to the extent practicable.” The Wis. Admin. Code ch. NR 700 rule series further sets forth specific requirements that must be met in order to “protect public health, safety, welfare and the environment”. In the One Cleanup MOA, U.S. EPA affirmatively stated that, after reviewing Wisconsin’s cleanup standards-setting process, the Department’s procedures and standards “will result in cleanups that meet the objectives of ... CERCLA” The refinements to the Wis. Admin. Code ch. NR 700 rule series and the recent statutory additions dealing with sediment (as incorporated in Wis. Stat. § 292.12) further reinforce the conclusion that the Wisconsin program will result in a CERCLA-protective cleanup that will safeguard human health, safety, welfare and the environment.

3. Department Capabilities, Resources and Expertise

The Department’s responsibilities for responding to hazardous substance discharges and environmental pollution at sites are accomplished through the Bureau of Remediation and Redevelopment Program. With respect to the Site, the Department has assigned staff to work with EPA on this project since it first entered the Superfund Alternative Approach program. This same Department staff will oversee responsible party actions upon deferral of the Site to the Department. Funding will be provided by WE, the responsible party, under the terms of the Negotiated Agreements to be entered into between the Department and WE. Thus, the Department is fully capable of managing the response action activities at the Site.

4. Involvement of Affected Community

Wis. Admin. Code chs. NR 714, 716, 725 and 726 sets forth specific public participation and notification activities to be undertaken at response sites in Wisconsin. Publicly available databases are maintained, and the above-referenced administrative code chapters require responsible parties performing a remedial action to undertake specific public participation activities, as warranted.


Prior to deferral, a public notice will be placed seeking comment on the proposed deferral. A public meeting may be held if requested.

In addition to the specific public participation provisions in administrative code, the Department staff involved in the project will meet all requirements of the site-specific MOU regarding community participation and will be available by telephone to answer questions from the public regarding the project.

5. Deferral Request

Based on the above and the Department’s commitment to meeting the requirements of the site-specific MOA, all of the criteria for deferral will be satisfied. As such, the Department requests deferral of the Site.

Sincerely,

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3/29/2024 | 11:38 AM CDT

Steven Little, Deputy Secretary
Wisconsin Department of Natural Resources

Cc: Christine Sieger, WDNR
Scott Hansen, U.S. EPA