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Sent: Thursday, March 25, 2021 3:22 PM
To: Grittner, Paul V - DNR
Subject: Klinke Cleaners Fox Run - 02-68-535535

Based on a review of the existing analytical data, the soils likely to be disturbed during the proposed development at the Klinke Cleaners Fox Run site contain a maximum PCE concentration of 11.2 mg/kg in the sample collected from one-foot (1') below the ground surface at the GP-7/MW-14 location. In regards to toxicity, the toxicity characteristic leaching procedure (TCLP) limit for PCE is 0.7 milligrams per liter (mg/L). As a rule of thumb, total concentrations (in mg/kg) which are less than 20 times the TCLP limit (in mg/L) are generally accepted to be considered not in exceedance of the TCLP limit. As the maximum PCE concentration in the soils likely to be disturbed is 11.2 mg/kg which is less than 14 mg/kg, we can assume the soils to be disturbed and consolidated onsite are not considered a characteristic hazardous waste. Furthermore, the WDNR developed detailed guidance for addressing situations where environmental media has been contaminated with a listed hazardous waste. In November 2013, the WDNR revised the "contained-out" value for PCE to 153 milligrams per kilogram (mg/kg).

However, it has come to our attention that the Wisconsin Administrative Code (WAC) Chapter NR 718.12 – Management of Contaminated Soil process cannot be applied to a Site containing a listed or characteristic hazardous waste. While it is shown above that the soils likely to be disturbed and consolidated on site are not classified as a characteristic waste and a Contained-Out determination was previously approved by the WDNR on May 21, 2009, we respectfully request the WDNR to consider the Material Management Plan submitted for review with fee on February 9, 2021 with an addendum submitted on February 15, 2021 under the consolidation within an area of contamination (AOC) guidelines discussed below.

On March 8, 1990 in the Preamble to the National Contingency Plan (NCP), the United States Environmental Protection Agency (USEPA) first articulated the AOC policy. This policy indicates that USEPA interprets the Resource Conservation and Recovery Act (RCRA) to allow certain discrete areas of generally dispersed contamination to be considered RCRA units. Because an AOC is equated to a RCRA land-based unit, consolidation and in-situ treatment of hazardous waste within an AOC does not create a new point of hazardous waste generation for the purposes of RCRA. This interpretation allows wastes to be consolidated or treated in-situ within an AOC without triggering the land disposal restrictions (LDR's) or minimum technology requirements (MTR's). The AOC policy may be applied to any hazardous remediation waste (including nonmedia wastes) that is in or is on the land. WDNR stated that it would allow Project Managers to continue to use their judgment, in a reasonable, common-sense manner on a site-specific basis, as to when contamination at a site would be considered "generally dispersed" and therefore potentially able to utilize the AOC policy. The technical requirements set forth in the NR 700 series, including ch. NR 718 would form the basis for determining the merits of the proposal. If approval is granted by WDNR, the act of consolidating the contamination would not constitute "active management" and therefore would not be considered hazardous waste generation. As a result, LDR's and MTR's would not be triggered by these consolidation efforts.

If you have any questions regarding this request, please feel to contact me.

Thanks,

Bob

STAY SAFE – WASH YOUR HANDS – WEAR A MASK

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