



July 21, 2015

Ms. Nancy Ryan
Ms. Pamela Mylotta
Wisconsin Department of Natural Resources
2300 North Martin Luther King, Jr. Drive
Milwaukee, Wisconsin 53212

Re: Former Express Cleaners Pilot Test - Regulatory Matters
BRRTS #: 02-52-547631

Dear Ms. Ryan and Ms. Mylotta:

For the reasons below, the Department should allow the Pilot Test to proceed without issue as to hazardous waste, or the Department should exercise its discretion to approve the proposed Pilot Test such that it may be conducted under the Area of Contamination (AOC) policy. The issue is whether a minor amount of soil that is temporarily excavated from an area believed to be contaminated, will become hazardous waste upon excavation. The soil will be temporarily removed from the ground to allow collecting a sample of the removed soil, to allow access to collect a sample of the in-place soil beneath the soil that was removed, and to allow treating all of the removed and in-place soil according to the Pilot Test procedure. The Pilot Test procedure requires the temporarily excavated soil to be replaced in the excavation to perform the treatment. The duration of time the soil will be out of the ground is a maximum of four hours. The soil removed from the ground will at all times remain within the AOC. Only the samples actually sent to the laboratory will leave the AOC.

The purpose of the Pilot Test is to take samples for testing and perform a specified treatment exercise to determine if treatment by Cool-Ox™ is sufficiently effective under the circumstances presented, including contaminant concentration, dosage of treatment compound, mixing procedure and dwell time. The “waste generator” has determined that the soil removed from the ground for the purposes of collecting samples and conducting treatability studies is not waste and is therefore not hazardous waste, because it serves the purpose of providing the materials necessary to conduct the proposed treatability studies. Moreover, the federal law excludes from regulation as hazardous waste “samples” of soil collected for the purpose of testing (40 CFR 261.4(d)) and samples collected for “treatability studies” (40 CFR 261.4(e)) when the sample is being collected, prepared, accumulated or stored prior to transportation to lab or test facility. “Treatability studies” is defined in section 260.10.¹ If the

¹ “Treatability Study means a study in which a hazardous waste is subjected to a treatment process to determine: (1) Whether the waste is amenable to the treatment process, (2) what pretreatment (if any) is required, (3) the optimal process conditions needed to achieve the desired treatment, (4) the efficiency of a treatment process for a specific waste or wastes, or (5) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of the § 261.4 (e) and (f) exemptions are liner compatibility,

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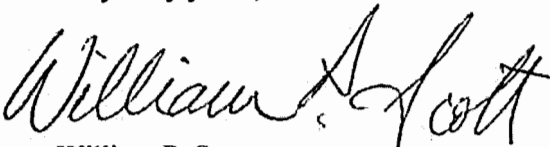
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Department believes the soil removed from the ground is a waste, then the Department should find that the soil removed for the Pilot Test is exempt from regulation under 40 CFR 261.4(d) and (e).

The writer believes the Department has determined the Area of Contamination (AOC) policy will apply to this site for the remediation, and thus the AOC policy should also apply to the Pilot Test. Under the One Cleanup MOU with US EPA, the Department has broad authority to exercise its discretion in furtherance of the Department's consolidated approach to cleanups. Remediation wastes may be moved within the AOC without triggering land disposal restrictions (LDRs) or minimum technology requirements (MTRs), and consolidation and in-situ treatment within the AOC does not constitute "disposal" and does not trigger LDRs or disposal unit standards. As provided in RR-705 and EPA's AOC policy document entitled "*Management of Investigation-Derived Waste During Site Inspections*", the Department has determined that contaminated media, such as groundwater, may be withdrawn from the ground within the Area of Contamination (AOC) so long as it is returned to the ground within the AOC (email from Michael Ellenbecker to Nancy Ryan dated November 12, 2014 and email from Nancy Ryan to Bill Scott dated April 23, 2015). The Department also verified that the AOC concept would apply to the contiguous contaminated area of this site (email exchange between Bill Scott and Nancy Ryan dated April 17, 2015 and April 23, 2015).

If further approval is necessary to utilize the AOC policy to allow conduct of the Pilot Test in the manner proposed, such approval is hereby requested, and any necessary fee will be forwarded upon request. If you would like to consider the Department's agreement, approval or consent provided pursuant to this request to apply only to the Pilot Test, please so state in your reply. In that case, I will then submit a formal request for the AOC determination. I would submit a request for a Contained Out determination for contaminated soil based upon satisfactory results of the Pilot Test, or wait until confirmation samples are available after the full scale remediation is performed. The remedial consultant plans to submit a request for a Contained Out determination for the contaminated debris in the near future.

Very truly yours,



William P. Scott

WPS/sv
Enclosures
cc: James C. Small

corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste."

Bill Scott

From: Ellenbecker, Michael J - DNR [Michael.Ellenbecker@wisconsin.gov]
Sent: Wednesday, November 12, 2014 1:39 PM
To: Ryan, Nancy D - DNR
Subject: RE: Haz Waste questions - Express Cleaners site

Nancy regarding your two questions:

Disposal of groundwater in AOC:

1. The disposal of groundwater, an investigative derived waste, back into an Area of Contamination (AOC) is consistent with the Department's guidance document entitled "Guidance for Hazardous Waste Remediation RR-705" and EPA's AOC policy document entitled "Management of Investigation-Derived Waste During Site Inspections".

Disposal of Concrete Debris:

1. There is a question if representative sampling – as defined by RCRA - was done, as only 1 of the 3 samples showed tetrachloroethylene (PCE) at 84 ug/kg.
2. The contained out determination, as covered by Guidance for Hazardous Waste Remediation (RR705), only applies to contaminated media (e.g., soil, groundwater), so it would not be applicable to the concrete.
3. The concrete is classified as debris under s. NR 668.02(7) WAC and possibly as hazardous debris under s. NR 668.02(8) WAC.
4. There are two ways that the concrete could be managed as a non-hazardous waste:
 - a. Under s. NR 661.03(6)(a) WAC hazardous debris that has been treated using one of the required technologies under 668.45 (1)(a) WAC (e.g., high pressure washing with cleaning agent to surface of concrete floor) could be managed as a non-hazardous waste if the PCE LDR treatment standard of 6.0 mg/kg is met. Note that the treatment residues (e.g., rinsate from the cleaning) would need to be managed as a F002 hazardous waste.
 - b. Under s. NR 661.03(6)(b) WAC the Department, considering the extent of contamination of 84 ug/kg, would conclude that the concrete is no longer contaminated with a listed hazardous waste - since the PCE contamination in the concrete is 71 time lower than the LDR treatment standard of 6.0 mg/kg. Note that this is a Department determination only.

Obviously item 4.b is the exemption to use as this option requires no treatment prior to disposal.

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Mike Ellenbecker
Phone: (262) 884-2342
Michael.ellenbecker@wi.gov

From: Ryan, Nancy D - DNR
Sent: Tuesday, November 11, 2014 3:55 PM
To: Ellenbecker, Michael J - DNR
Subject: Haz Waste questions - Express Cleaners site

Hi, Mike,

Thanks for talking to me about the Express cleaners site. I attach a copy of the letter (minus attachments except for the waste determination attachment)

Specifically, the RP is asking that I confirm their interpretation about purge water in response to question 11. And also, they had asked about disposal of impacted concrete and disposal of it as non-hazardous and I attach an email string between Mr. Scott and Gary Edelstein.

Any assistance or steering me in the right direction is greatly appreciated Mike. And, of course, let me know if I should go through some other process to ask you questions. Like I said, we have a meeting Thursday morning, but I will just tell Mr. Scott I'm/haz waste personnel are working on answering his questions.

Thanks!

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Nancy D. Ryan

Hydrogeologist, Bureau for Remediation and Redevelopment

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nancy.ryan@wisconsin.gov



Bill Scott

From: Ryan, Nancy D - DNR [Nancy.Ryan@wisconsin.gov]
Sent: Thursday, April 23, 2015 8:35 AM
To: Bill Scott
Subject: RE: Ehrlich / Former Express Cleaners BRRTS #02-52-547631
Attachments: RE: Haz Waste questions - Express Cleaners site

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Bill,

My recollection of our conversations and comments on your proposed remedial direction are provided below and highlighted in red text and it might be a good idea if you let me see the RFP before you send it out. My general comment is that you cannot be so prescriptive as to dictate clean-up numbers. You can/should provide information on the desired future use of these parcels.

From: Bill Scott [mailto:Bill_Scott@gshllp.com]
Sent: Friday, April 17, 2015 3:32 PM
To: Ryan, Nancy D - DNR
Subject: Ehrlich / Former Express Cleaners BRRTS #02-52-547631

April 17, 2015

Ms. Nancy Ryan
Wisconsin Department of Natural Resources
2300 N. Dr. Martin Luther King, Jr. Drive
Milwaukee, WI 53212

Dear Nancy,

I have a draft RFP ready to seek rebid of the remediation for the above referenced site to address the concerns raised by you and other Department staff over the incomplete or otherwise un-approvable remedial proposals received in the last round. In an effort to ensure this is the last time it must be re-bid, I have several questions I would like you to address by reply email to make sure the bids we seek are directed toward remedial goals and demolition and waste handling positions supported by the Department. I also raise some other points on which we reached agreement at our meeting last November 20, to ensure they still meet the Department's satisfaction. If you want me to send another technical review form and fee, please advise.

1. Demolition. Based on the remedial proposals previously received, the Department agreed that the site is most effectively remediated by removal of the floor slab and foundation elements (the Department agreed that removal of the slab would accommodate better access to highly contaminated soil and that we would approve up to \$15,000 in costs associated with demolition if the proposed remedy included removal of the slab). I also suggested, that you can explain in the RFP that the costs for any building demolition will be the responsibility of the RP so need not be included in the bid if that's the way you want to do it. Of course the remedial proposal should indicate the extent of needed building/slab removal. Accordingly, the Department stated it would pay up to \$15,000 of demolition costs. The Department also said my client could contract directly for the remediation work rather than pass it through a remediation contractor. So long as my client goes through a bidding process for the demolition work, will the Department reimburse the \$15,000 based on the decisions made to date, or must my client require the new bids to separately propose remediation with and without demolition? Yes, if the selected bid includes slab removal, the Department would approve up to \$15,000 and the RP could solicit separate bids for demo costs.

2. Waste Handling. Based on test data previously provided, it was determined that certain portions of the slab, and probably any underlying concrete foundation elements, are contaminated with dry cleaning solvent and would become hazardous waste upon demolition. In response to my inquiry, the Department took the position that it would grant a contained out determination to allow the concrete to be disposed as solid waste at a licensed landfill See Mike Ellenbecker's email response with respect to concrete and groundwater disposal. Similarly, the Department took the position that the soils and groundwater at the site would also be determined to be contained out upon demonstration of contaminant content being less than applicable media standards. I need you to confirm that any impacted media remaining at the site will be "contained out" if it is shown to be less than the contained out media standards, regardless of whether it has been actively remediated. I'm not sure I understand what you're asking here. Do you mean, upon excavation, it would be considered to be non-hazardous for disposal purposes if it is less than contained out media standards? If so, yes.

3. Cleanup Goals. Clean up goals are those necessary to meet the NR 700 closure requirements. For this site, this includes conducting remedial actions necessary to eliminate concerns related to direct contact with soil, protection of groundwater contamination from contaminated soil, prevention of contaminant migration and protect against vapor intrusion. These are the goals that should be included in a RFP. And the responses must indicate how the proposed remedial actions will accomplish closure.

a. The Department has expressed the desire that the relatively contained contaminated mass be remediated more than actually required for soil (direct contact) RCLs, to minimize vapor intrusion risk and future direct contact exposure. Soil RCLs include direct contact and protection of groundwater. The proposed remedial strategy should consider alternatives that will provide mass reduction, and accomplish groundwater cleanup goals, prevent migration of contamination offsite and eliminate the threat of vapor migration. An acceptable plan should justify how each pathway of concern will be addressed successfully (includes vapor). Given the low RCL for PCE/TCE based on protection of groundwater, the remedial strategy may propose an alternate clean-up goal, (i.e. mass reduction) which is more practicable but may be expected to adequately remediate groundwater and reduce the potential for vapor intrusion. We determined the I-O zoning of the North Bay Drive property would allow for types of use such as parks and playgrounds as permitted use, and day care centers and community gardens as conditional uses. However, the North Main Street property is zoned differently and would be commercial use. It would be helpful to know what the desired future use of each of the parcels is.

b. Based on the remedial proposals previously received, the Department agreed that it would reimburse costs to try to achieve a relatively low cleanup goal because the highly contaminated "source" materials are not widespread and would serve as a continuous source of vapors (and impact to groundwater) if not controlled to a low concentration. Consequently, the Department agreed it would reimburse costs to try to attain a 1 pm concentration of contaminant in soil and saturated soil within limited areas of the site. (this was based on two proposals that proposed clean-up goals of 1-1.25 mg/kg) We recognize that current vapor intrusion regulations were not in effect when the previous bidding took place, but we have reason to believe the cost of achieving a site-wide 1 ppm cleanup goal will substantially exceed previous bid amounts. Previous bid amounts did propose to clean up to this level) Consequently, we have elected to strive for 1 ppm only on the North Bay Drive parcel (because?) and believe our 30 ppm goal is sufficient for the North Main Street parcel because it will allow case closure (this clean-up goal addresses only the direct contact component. It would not be a given that you could achieve case closure with this strategy - other pathways, including groundwater, future use with respect to vapor, must be considered). I attach a map showing our proposed remedial goals for the indicated three-dimensional areas and ask you to pre-approve these goals before we send out the RFP. We will not approve these goals and as indicated above, for DERF eligibility, you cannot prescribe the clean-up goals. The remedial proposals must come from the consultants. In addition to these specific area goals, the RFP seeks the overall goal of case closure, with or without a NA Closure using insurance.

c. The Department indicated it would like the soil and saturated soil/groundwater in the sewer line corridor. We are seeking bids for this treatment to extend from the service entry to the building to the property boundary, to be remediated down to the depth of 8 feet and extending 1 foot wider than the trench backfill on each side of the trench. We propose to apply the same 30 ppm cleanup goal within that area. Does that meet your approval? No, I don't agree with the 30 ppm cleanup, and you cannot dictate the cleanup goal. That is up to the bidders. But the RFP should say that the Department expects all migration pathways to be addressed, including the impacted sewer.

4. Area of Contamination. The Department took the position that the "area of contamination" rule will apply to allow removal of soil or groundwater from one portion of the contaminated area and deposition in another portion of the contaminated area for treatment, without said materials being considered "generated" waste, without triggering the need for any solid waste permit or approval and without making the site a RCRA site or its state-law equivalent. I would like to encourage the consultants to consider removing the slightly contaminated soil from the North Bay Drive property for treatment at the North Main Street property. If that is not agreeable to the Department, please let me know.

5. VPLE Coverage for Affected Area. The Department took the position that no additional investigation needs to be completed to enroll in the VPLE Program but that only the Main Street property would be accepted into in the VPLE program. I have recently emailed Michael Prager in that regard. Pending conclusion of those discussions with Mr. Prager, a VPLE application will be submitted to enroll one or both of the properties in VPLE.

6. Need for Additional Vapor Assessment. As previously reported, a vapor assessment was performed on the structure proposed for demolition and not surprisingly, significant sub-slab vapor concentrations were encountered. Removal of the slab by demolition would allow for thorough remediation of the key source area and alleviate the need for a vapor mitigation system to protect the existing or a future building. However, the Department indicated a vapor assessment must be performed on the former Pugh Oil property. When should such assessment be performed? We believe the most appropriate time would be after remediation of the Main Street Property, because the Pugh Oil property is not residential (it is a dry cleaner) and because any vapors detected in advance of remediation could very well dissipate as a result of remediation. Consequently, we ask the Department to either approve the vapor assessment to be performed now, without bid, as a continuation of the site inspection, or be performed after the remediation as part of the remedial bid. We also request clarification of the Department's intended scope of the vapor investigation such as, 'investigate vapors from the property boundary to the outside wall of the former Pugh Oil building' or 'investigate at the property boundary and only if present there in excess of standards conduct additional tests for vapors in the soil just outside and the near wall of the former Pugh Oil building.' Given the current use of the property, I believe that we can wait until after implementation of the remedy to assess the vapor intrusion potential at the Pugh Oil property. (As this decision is based on the current use of that property, we would like to know what chemical the dry cleaner is using). The RFP should stipulate that the bid must include costs to conduct a vapor assessment for the neighboring property to the north post remediation – again, these can be included as contingency costs.

7. Need for Additional Monitoring Well. The Department has stated that one additional monitoring well is needed to define the eastern end of the plume. Please clarify whether that well can be installed now without bid as a continuation of the site inspection, or must be part of the remedial bid. We will suggest and verify your satisfaction the appropriate location for the well. The requirement of installation of another well east of MW-6 should be included in the remedial bids as an contingency cost. Additional groundwater monitoring will be required (8 rounds)– and, it may be beneficial to collect a round of samples prior to implementation of any remedy. The RFP should stipulate a minimum of eight rounds of monitoring, with one round conducted pre-remedy. Based on the results of groundwater at MW-6, either pre-or post remediation, an additional well may be required. The cost to install an additional well (with costs for 7 rounds of

sampling) should be added to the RFP as a contingency – the need being evaluated after a minimum of one round of monitoring.

I recommend that the RFP include the following elements:

Include collection of soil confirmation samples post remediation

1 round of groundwater monitoring pre-remediation -

Minimum 7 rounds of groundwater monitoring post-remediation

Costs to install a contingency well: Based on pre or post-remediation monitoring, costs to install an additional monitoring well to the east of MW-6. (i.e. if an enforcement standard is exceeded in that well)

Post remediation - vapor intrusion assessment of the property to the north (former Pugh Oil) – can be provided as a contingency cost

RFP should identify cleanup goals as those necessary to meet NR 700 closure requirements (not providing specific clean-up numbers)

I will call you to discuss, Bill.

Regards,

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Regards,
Bill.



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