



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
S-6J

Daniel L. Meyer, Secretary
Wisconsin Department of Natural Resources
101 South Webster Street
Box 7921
Madison, Wisconsin 53707-7921

Re: Wisconsin Department of Natural Resources' Request for Deferral of Burnham Canal Site, Milwaukee, Wisconsin

Dear Mr. Meyer:

I am writing to respond to WDNR's November 7, 2017, letter to Margaret Guerriero requesting that EPA defer proposed listing of the Burnham Canal Superfund Site (Site) on the National Priorities List (NPL) while Wisconsin Department of Natural Resources (WDNR) oversees the remaining response actions at the Site. As further discussed below, EPA will conditionally defer the Site from potential listing on the NPL to allow WDNR the time to present to the affected community and natural resource trustees its plan for addressing the remaining response actions at the Site under state law. Provided WDNR's proposed plan is consistent with EPA's objectives and concerns at the Site, and the potential responsible party (PRP) enters into an agreement with WDNR to implement the remaining response actions and enters into a settlement agreement with EPA for the recovery of past and future response costs, EPA will transfer lead-agency authority of the Site to WDNR.

Site Status

The Burnham Canal Site is currently being addressed by EPA. Under an agreement with EPA, PRPs completed a site investigation and a study of cleanup options. Based on the results of that investigation, EPA prepared a proposed cleanup plan for the site and made it available for public comment. EPA then issued a Record of Decision (ROD) documenting the cleanup plan for the site, and approved a design to implement the plan. Per its standard practice, it was EPA's intention to enter into another agreement with the PRPs for performance of the cleanup.

WDNR's Deferral Request

In support of your request, you described WDNR's legal authority for addressing the response action in EPA's ROD, WDNR's capabilities, resources, and expertise for managing the response actions and commitment to involve the affected community. You also stated that WDNR will

meet site-specific community participation criteria beyond the public participation provisions in Wisconsin's administrative code. EPA appreciates WDNR outlining its authority and capabilities to address the remaining response actions at this Site. This information and commitment to address site-specific community participation criteria helps address EPA's objectives and

concerns at the Site. Prior to and following your November 7, 2017, request, EPA and WDNR have discussed other site-specific criteria for deferral related to, among other things, public notice of WDNR's proposed plan to address the remaining response actions, implementation of the remedy, documentation and oversight which are necessary to address concerns at the Site.

Public Notice of Proposed Plan

Prior to transferring lead-agency authority for the Site to WDNR, WDNR should seek affirmation from the affected community and natural resource trustees of its proposed plan to address the remaining response actions at the Site under state law. During a thirty-day public notice period, the State should inform the affected community and natural resource trustees of how its plan is substantially similar to actions that would otherwise be taken under the Comprehensive Environmental Response, Compensation, and Liability Act and the National Contingency Plan or, if applicable, any differences. WDNR should document interactions with the community and inform Region V of any opposition to or support for the plan. Opposition to WDNR's proposed plan and inability to address such opposition may result in WDNR's proposed plan being inconsistent with EPA's objectives and concerns at the Site.

PRP and WDNR Enforceable Agreement

At the end of the 30-day public notice period, if there is support from the community and trustees for WDNR's proposed plan and opposition is addressed, the PRP and WDNR should enter into an enforceable agreement to implement the response actions at the Site under state law prior to any transfer of this Site to WDNR. The agreement should require the PRP to implement the remedy selected by EPA in the ROD, including attainment of performance standards, and incorporate the other site-specific criteria applicable to the PRP.

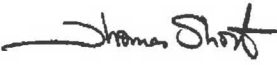
PRP and EPA Settlement Agreement

The PRP and EPA should enter into a settlement agreement for past and future costs prior to any transfer of this Site to WDNR. This agreement will address all of EPA's past and future response costs associated with the deferral and as defined the agreement.

If you have any questions regarding this conditional deferral, please feel free to contact me or Leah Evison, Remedial Project Manager, of my staff, at (651) 757-2898 or via email at evison.leah@epa.gov.

Sincerely,

6/7/2018

X 

Douglas Ballotti
Acting Director, Superfund Division
Signed by: THOMAS SHORT