

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
Northeast Region Headquarters
2984 Shawano Avenue
Green Bay WI 54313-6727

Scott Walker, Governor
Cathy Stepp, Secretary
Telephone 920-662-5100
FAX 920-662-5413
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July 14, 2017

Casetrack ID # 2017-SEEE-022
Milwaukee County
CERTIFIED MAIL
Return Receipt Requested

Michael Slenska
Beazer East, Inc.
1910 Cochran Road
Manor Oak One, Suite 200
Pittsburgh, PA 15220

Corporation Service Company
Reg. Agent: Beazer, East, Inc.
8040 Excelsior Drive, Suite 400
Madison, Wisconsin 53717

Subject: **NOTICE OF VIOLATION / ENFORCEMENT CONFERENCE: July 26, 2017**

Dear Mr. Slenska:

The Department of Natural Resources has reason to believe that Beazer East, Inc. (Beazer East) is in violation of state environmental response action laws related to the properties located at 9100 S. 5th Avenue, Oak Creek, Milwaukee County Wisconsin (Connell Parcel) and 9170 South 5th Avenue, Oak Creek, Milwaukee County Wisconsin (City Parcel). For the purposes of this letter, the "Site" will be used when referring to both the Connell and City Parcels. BRRTS case numbers associated with the Site are: 06-41-561509, 02-41-553761, 06-41-561426, 02-41-561425, and 07-41-421661

The department alleges the following violation:

- 1. Section 292.11(3), Wisconsin Statutes: A person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state.**

In an April 7, 2008 letter, the department named Beazer East and Connell Aluminum Properties, LLC (Connell) parties responsible to investigate the impacts at the Site and restore the Site to the extent practicable. The department is working with Connell separately with the goal of entering into a Negotiated Agreement, pursuant to s. 292.11(7)(d), Wis. Stats., that outlines actions Connell will take as required by law. This letter is regarding Beazer East.

On May 5 2009, Beazer East met with department staff during an Enforcement Conference and agreed to submit plans to investigate and remediate the Site. Department records indicate Beazer East submitted an Environmental Site Assessment Report, Site Investigation (SI) Report, and a Remedial Action Options Report (RAOR). The enclosed July 10, 2017 letter is in response to the information submitted and contains the department's findings upon review of the information.

Based East on the department's findings, the department is rescinding its September 22, 2014 SI Report approval. The information submitted by Beazer East has failed to define the degree and extent of the contamination and failed to adequately evaluate all potential pathways for contaminant migration. Beazer is still required to propose a remedial action that will effectively restore the environment, consistent with applicable laws and rules.

As a result, the department is issuing this Notice of Violation and proposing to enter into a Consent Order with Beazer East. A draft Consent Order is enclosed for your review.

We have scheduled an Enforcement Conference to discuss this matter in more detail:

Conference Date/Time: Wednesday July 26, 2017 at 10:30
Conference Location: Milwaukee Service Center
2300 N Dr. Martin Luther King Drive
Milwaukee, Wisconsin

In preparation for the meeting, please be prepared to discuss steps you will take to return to compliance and a timeline to which you will be strictly adhered. In addition, plan to discuss the contents of the enclosed draft Consent Order.

We request you attend the Enforcement Conference as it is an important opportunity to discuss the circumstances surrounding the alleged violation and to learn your perspective on this matter. Please note that in an effort to encourage a candid and productive conversation, attendance is limited to you, your legal counsel and others with the technical expertise necessary to understand, evaluate and correct the violation. A fact sheet describing the Enforcement Conference is enclosed.

The department's enforcement decision will be based upon available information if you do not attend the Enforcement Conference.

Please be advised that pursuant to s. 292.93, Wis. Stats., the department has the authority to issue orders to effectuate the purposes of ss. 292.31 and 292.35, Wis. Stats, and pursuant to s. 292.11(7)(c), Wis. Stats., the department has the authority to issue orders to fulfill the duty imposed under s. 292.11(3), Wis. Stats. Please also be advised that the department has the authority to refer the violation alleged above to the Wisconsin Department of Justice to obtain court ordered compliance and penalties of up to \$5,000 per day of violation pursuant to s. 292.99, Wis. Stats.

If you have any questions or would like to reschedule the meeting, please call me at (920) 662-5163.

Sincerely,



Kody C. Hansen
Environmental Enforcement Specialist

Enclosures: July 10, 2017 Supplemental Information for Review of ROAR Letter
Draft Consent Order # 2017-SEEE-022
Enforcement Conference Fact Sheet

Cc: Eric Amadi – DNR
Michele Norman – DNR
Darsi Foss – DNR
Jessica Kramer – DNR
Michael Kellogg – Connell Aluminum Properties, LLC



July 14, 2017

Mr. Michael Slenska
Beazer East, Inc.
c/o Three Rivers Management, Inc.
One Oxford Center, Suite 3000
Pittsburgh, PA 15219

Mr. Michael Kellogg
Connell Aluminum Properties, LLC
One International Place
Boston, MA 02110

Subject: Supplemental Information for Review of Remedial Action Options Report

Former Koppers Tar Plant and Wabash Alloys Site
9100 S. 5th Avenue, Oak Creek, WI
BRRTS # 02-41-553761, FID # 241379050
Connell VPLE BRRTS # 06-41-560058
Beazer VPLE BRRTS # 06-41-561509

City of Oak Creek Utility Corridor, Lot 1
9170 S. 5th Avenue, Oak Creek, WI
BRRTS # 02-41-561425, FID # 341074470
Beazer VPLE BRRTS # 06-41-561426

Dear Mr. Slenska and Mr. Kellogg:

On March 30, 2017, the Wisconsin Department of Natural Resources (DNR) received a letter submitted by Tetra Tech, Inc. on behalf of Beazer East, Inc. (Beazer), with comments to the DNR's review of the "Remedial Action Options Report" (RAOR), dated December 30, 2014. In Tetra Tech's recent letter, a meeting was proposed with the DNR to discuss adjustments to the remediation approach outlined in the RAOR. While a meeting with the DNR and Beazer is in the process of being scheduled, the DNR has reviewed the RAOR in greater technical detail and provides the following supplemental information regarding the inadequacies of the proposed remedial actions presented in the RAOR and shortcomings regarding aspects of the site investigation.

Vapor Intrusion in Future Construction

Vapor intrusion (VI) risk to future building structures presents a likely exposure concern due to the presence of potent, dense non-aqueous phase liquid (DNAPL) source material (i.e., coal tar contained mostly in clay soil fractures) and its associated shallow groundwater contamination. While the RAOR indicates residential construction would be prohibited through site-wide institutional controls, commercial construction would likely also be impacted adversely. Existing evidence confirms that the DNAPL tar is more mobile than previously represented and appears to periodically migrate upward. The groundwater contamination, which can be as shallow as 0-1 foot below ground surface (bgs) across the extensive area of the source material (5-6 acres), contains elevated contaminant levels likely indicative for vapor intrusion (specifically benzene and naphthalene

at and in excess of 1,000 ug/L). Data from several groundwater sampling points confirm little reduction in contaminant concentrations has occurred since the contaminant release over more than 80 years ago. Mobile DNAPL tar and highly contaminated groundwater have potential to migrate toward building sub-structures and/or vapor intrusion mitigation systems and could permeate building materials or system components rendering them contaminated and/or unusable.

The suggested remedies in the RAOR are either inappropriate (cover only) or inadequate (limited excavation). Regarding covers, upwardly migrating DNAPL appears to be related to the existing fill, foundations, and covers. Consequently, new construction, fill, and covers could exacerbate or redirect mobile DNAPL to new seep locations or to building sub-structures. The impermeable membranes suggested in the RAOR would be either inconsequential in regards to infiltration (limited coverage and shallow groundwater) or would become permeated themselves with upwardly migrating DNAPL tar. Limited excavations removing the surficial 4 feet of material, would not address significant remaining source material that continues to be very potent. This limited shallow excavation would likely allow significant shallow groundwater contaminants to remain at elevated levels that would be problematic for vapor intrusion. Deeper excavation in areas where DNAPL tar is present to remove most of the source material will be necessary to reduce vapor intrusion risk to future building structures. Excavations to approximately 10-20 feet bgs are practical. To reduce disposal costs, on-site treatment technologies could be employed. NR 726.05(8) requires remediation to the extent practical to reduce the mass of volatile compounds associated with vapor intrusion sources; mitigation alone is not considered a remedial action.

Mobility of DNAPL Tar

Site evidence indicates the DNAPL tar is more mobile than previously reported. Mobile DNAPL is demonstrated by surface seeps and accumulations in wells, storm water catch basins, and utility corridors. While migration rates are acknowledged to be slow as measured in wells, the widespread presence of the DNAPL identified near building sub-structures and utility corridors (and their associated preferential pathways) confirm that even slow rates are problematic. Since the Wabash facility fill is not likely a source of the DNAPL tar, the seep along the southeast parking lot area seems to reflect upwardly migrating DNAPL. This is counterintuitive since the dense nature of these fluids tends to cause them to sink – in this case to the bottom of the clay fractures – and vertical hydraulic gradients at the site are strongly downward.

The DNAPL migration mechanism is important to understand to effectively evaluate remedial strategies, especially covers that may cause or redirect the upward flow. It appears the surface seepage is episodic, documented during discharges in 2006, and also more recently during 2014/15. Periodic upwardly mobile DNAPL does not appear to be limited to only the southeast parking lot seep area. The presence of DNAPL source material in the Wabash facility fill suggests upwardly mobile DNAPL over a majority of the DNAPL source accumulations across the western portion of the site. For the southeast parking lot seeps, the hydraulic mechanism for upward DNAPL migration appears to be temporary variations in the horizontal component of shallow groundwater flow. It varies because of differential infiltration caused by the existing Wabash facility foundation and covers. As such, the horizontal flow variability may cause subtle changes in the compressive stress acting on the vertical DNAPL tar-filled fractures (i.e., squeezing the DNAPL upward). Additional evaluation beyond the single water table flow map provided in the January 2014 Site Investigation Report (Figure 10) is required showing the horizontal flow variability that is present. Along the eastern portion of the site (wetland areas), mobile DNAPL has been reflected in tar seepage to the former catch basins/conduits and along the nearby ravine slope, and in well accumulations. DNAPL in borings downgradient of the clay cut-off wall (i.e., B-110, B-113, and B-114) suggest DNAPL has potentially migrated around the wall. A significant hydraulic head differential exists across the clay wall, which seems a likely force for lateral DNAPL migration. The remedy suggested for the wetland areas is excavation to 4 feet bgs; excavation to 10-12 feet in these areas would remove most, and in some instances, all of the source material.

The continued characterization that the DNAPL is only *potentially* mobile is misleading and inaccurate given the ongoing nature of the surface seep discharges. There are indications of upward DNAPL migration in the accumulations across the western portion of the site and the appearance that differential infiltration caused by existing foundations and covers is driving episodic upward tar migration. The DNAPL and the mechanics controlling migration must be adequately assessed and addressed to avoid problems for future buildings and covers (i.e., vapor intrusion risk). The subtle compressive mechanism suggested above implies the DNAPL saturation in the fractures is far higher than previously reported. The DNAPL saturations in the clay fractures may be at levels similar to those present when the DNAPL was released 80-100 years ago. The clay soil fractures limit lateral migration and the overlying clay fill tends to confine thereby limiting the ability of the DNAPL to dissipate saturations over time (as it would in a more permeable soil) and significantly limits natural source zone depletion mechanisms.

Potency of DNAPL Tar

The contaminant concentrations in the DNAPL source material are still potent. With the exception of the utility corridors, it is acknowledged that groundwater contaminants have only migrated a short distance from the DNAPL sources in more than 80 years. However, contaminant levels remain high over the extensive area where source materials are found; some remain near or in excess of saturation values. Sampling data shows that water level variations influence contaminant concentrations in some wells, and trend analyses have not fully considered these effects. In many cases, water level measurements were not contemporaneous with the analytical sampling. Although NR 726.05 (6) (b) allows natural attenuation for reducing contaminants, elevated, persistent groundwater contamination levels present after a contaminant release that occurred over 80 years ago is contrary to the reasonable period of time requirement specified in NR 726.05 (6)(b), especially considering the vapor intrusion potential discussed above.

Incomplete Site Investigation

Several aspects of the site investigation are not complete. Within the utility corridor, the downgradient extent of groundwater contamination has not been defined. Presently, the most downgradient well is MW-134, and it is coincident with a significant hydraulic sink. It appears either the wells closer to Lake Michigan did not sample the lower portion of the utility corridor (i.e., larger diameter storm sewer), which appears to control groundwater flow in the corridor, or the trench itself intersects permeable native soils in the area of the sink. Consequently, the efficacy of the suggested clay plug remedy (i.e., placement downgradient of impacted groundwater) is premature. Additional characterization to fully assess the hydrogeologic conditions and migration pathways is required as indicated in NR 716.11(5).

In addition, some DNAPL source areas require further definition. The shallow borings at B-32, B-35, and B-36 were not completed deep enough to determine whether the nearby DNAPL accumulations are separate or contiguous. Also, some borings within the DNAPL accumulations were not completed to a depth adequate to determine the vertical extent. These include B-81, MW-122, and SB-713 near the former Tar Barrel Platform, B74 and B05 (poorly documented) near the former naphthalene ASTs, B92 near the former Pitch Bay, and the separate DNAPL accumulation defined by SB-724.

Due to these shortcomings and the apparent mischaracterization of DNAPL mobility in a potential migration pathway that has not been adequately evaluated, the DNR is rescinding its former approval of the site investigation. Completion of the site investigation within the utility corridor is anticipated to require assessment of groundwater flow trends and will likely take more time than other assessment work required, in particular completion of the additional soil borings needed to fully define the DNAPL accumulations. Consequently, the

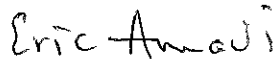
timeframe for completing the additional soil borings and assessing the DNAPL results should be prioritized and reported in advance of the full assessment of the utility corridor. Furthermore, all future groundwater analytical sampling, including any sampling conducted after completion of the site investigation, require contemporaneous water level measurements and analyses of trends that account for water level variation influences, per NR 716.13 (15).

Additional Comments

Following completion of the site investigation, the RAOR must be revised to present a more comprehensive understanding of the DNAPL tar migration and its persistent contaminant potency, especially in the context of vapor intrusion risk for future development. Using covers to address the DNAPL source material is not feasible, since the existing fill, foundations, and covers appear to cause periodic upward DNAPL tar migration. Partial excavation remedies should be expanded to remove most/all of the DNAPL source material, since it is not depleting or naturally attenuating on its own.

The DNR proposes to discuss the above comments during a future meeting to be scheduled. If you have any questions regarding this site or this letter, please contact the DNR Project Manager, Eric Amadi, at 414.263.8639 or eric.amadi@wisconsin.gov.

Sincerely,



Eric Amadi
Hydrogeologist
Remediation & Redevelopment Program
SER-Milwaukee Service Center

cc: Julie Zimdars, NRT (via e-mail)
Michael Noel, Tetra Tech (via e-mail)
Larry Haskin, Haskin & Karls (via e-mail)
Kathryn Huijbregtse, Ramboll Environ (via e-mail)
SER case file BRRTS # 02-41-553761; FID #: 241379050
SER case file BRRTS # 02-41-561425; FID #: 341074470

**BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**

In the Matter of Response Action Needed to Address)	Consent Order No. 2017-SEEE-022
Discharged Hazardous Substances and Environmental)	BRRTS #: 06-41-561509
Pollution at Former Koppers Gas and Coke Company,)	BRRTS #: 02-41-553761
by Responsible Party Beazer East, Inc. at the Properties)	BRRTS #: 06-41-561426
Located at 9100 South 5 th Ave., Oak Creek, Milwaukee)	BRRTS #: 02-41-561425
County, Wisconsin and 9170 South 5 th Avenue, Oak)	BRRTS #: 07-41-421661
Creek, Milwaukee County Wisconsin)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND CONSENT ORDER

The following constitutes a summary of the Findings of Fact and Conclusions of Law upon which the Department of Natural Resources bases Consent Order No. 2017-SEEE-022 (Order):

I. FINDINGS OF FACT

1. The former Koppers Gas and Coke Company (Koppers Company) site is located at 9100 South 5th Avenue, Oak Creek, Milwaukee County, Wisconsin and can also be described as being in the SW ¼ of the NW ¼ and the NW ¼ of the SW ¼ Section 24, T5N, R22E (Connell Parcel). The site is owned by Connell Aluminum Property, LLC (Connell) (Connell Parcel).

The City of Oak Creek Corridor Lot 1 property is located at 9170 South 5th Avenue, Oak Creek, Milwaukee County Wisconsin and can also be described as being in the NW ¼ of the SW ¼ of Section 24, T5N, R22E (City Parcel). The City Parcel is owned by the City of Oak Creek and portions of the property were formerly owned by the Koppers Company.

For the purposes of this Order, the "Site" describes the Connell Parcel, the City Parcel and any area where a hazardous substance discharge has been discharged or environmental pollution discovered associated with the Koppers Company.

2. Beazer East, Inc. (Beazer East) which is the successor corporation to the Koppers Company and assumed the Kopper Company's environmental liabilities through an acquisition in 1988, operated a tar and chemical manufacturing facility from 1917 thru 1960. The Connell Parcel was vacant from 1960 thru 1968, and owned by a trust. In 1968, Vulcan Materials purchased the Connell Parcel and conducted aluminum smelting activities at the Site from 1968 thru 1987. Between 1987 and 2001 Wabash Alloys owned and operated an aluminum smelting facility. The Connell Parcel has been owned by Connell since 2007. Based on a review of available information, the department determined discharges of hazardous substances and environmental pollution adversely impacted environmental media, including volatile organic compounds (VOCs), semi-volatile organic compounds/polycyclic aromatic hydrocarbons (SVOCs/PAHs), polychlorinated biphenyls (PCBs) and metals.
3. Koppers Company, through the operation of the tar and chemical manufacturing facility, was responsible for the discharge of, specifically, the VOCs, SVOCs, and PAHs. Beazer East, as the successor corporation to Koppers Company, is, therefore, liable pursuant to ch. 292, Wis. Stats., for the VOC, SVOC, and PAH impacted environmental media at the Site.
4. The following is a record of events that have been reported to the department related to hazardous substances and environmental pollution at the Site:

- a. In a 1980 US Environmental Protection Agency (EPA) "Notification of Hazardous Waste Site" form, Vulcan Materials Company voluntarily reported to EPA:
 - i. An oily substance was reportedly encountered in 1968 in the soils "and was probably the result of a wood treating process by previous owners". Surface soils from construction excavations were disposed off-site; however, the quantity or quality of the excavated material was not documented. Coal-tar contaminated materials were disposed of by Wabash Alloys at the 7th Avenue and Flynn Avenue property, known as Foresight Development (BRRTS # 02-41-521660). Wabash Alloy has been identified as a responsible party for the Foresight Development property.
 - ii. Vulcan Materials reported to the department that "black ooze" was emanating from a bluff located near the south-southeast portion of the Site. It was speculated that the substance was originating from lagoons used by Koppers Company.
 - b. In 1984, the department completed a Preliminary Assessment of the Site and required Vulcan Materials to contain residue on-site.
 - c. In 1989, a Screening Site Inspection was conducted for possible inclusion on the National Priorities List (NPL). Soil samples were collected and laboratory analysis confirmed the presence of high concentrations of volatile organic compounds, semi-volatile organic compounds, PAHs, and metals in the soils. The Site was not placed on the NPL.
 - d. In 1995, an off-site discharge was reported when a black substance was observed on the walls of catch basins and a pipe in a storm sewer system installed at the eastern portion of the Site. The substance was labeled as hazardous creosote and debris.
 - e. In 1996, RMT, Inc. conducted work to "remedy" the DNAPL tar that had seeped into the surface water drainage system across the eastern portion of the Site. The work was to modify a 10 foot deep by 4 foot wide cut-off wall installed in 1980 by Vulcan Materials.
 - f. In 1990, two 1,000 gallon underground storage tanks were removed; one stored gasoline and one stored diesel fuel. Impacts were noted during the tank removal.
5. On April 7, 2008, the department identified Beazer East as a Responsible Party pursuant to ch. 292, Wis. Stats., via a Notice of Contamination letter because Beazer East is the successor corporation of Koppers Company. The letter explained that state law requires a responsible party to investigate the extent of the impact of a discharge of a hazardous substance and environmental pollution and to restore the environment to the extent practicable.
 6. On April 20, 2009, the department issued Beazer East a Notice of Violation alleging Beazer East failed to take the necessary actions in response to a discharge of a hazardous substance and environmental pollution.
 7. On May 5, 2009, the department met with Beazer East during an Enforcement Conference. Beazer East agreed to either submit a Scope of Work Plan or notification that it plans to take no action by June 2, 2009. The conversations are documented in the May 12, 2009 Enforcement Conference Summary Letter.
 8. On June 11, 2009, Beazer East submitted a Work Plan pursuant to the agreement on May 5, 2009.

9. On August 3, 2011, the department conditionally approved the work plan submitted on June 11, 2009. However, the department requested additional information.
10. Beazer East supplied information in response to the August 3, 2011 request. On November 16, 2011, the department conditionally approved the Site Investigation (SI) Work Plan, but requested additional information related to monitoring well construction and variance requests.
11. On December 7, 2012, Beazer East submitted an addendum to the SI work plan.
12. On January 25, 2013, department staff met with Beazer East to discuss department recommendations. The department requested more specific data, additional laboratory analysis of the free product "Tar", and additional description of proposed borehole locations.
13. On January 16, 2014 the department provided approval for Beazer East to proceed in the Voluntary Party Liability Exemption Process for the City Parcel and the Connell Parcel.
14. On September 22, 2014, the department approved the on-site SI, but requested information to make a determination regarding completeness of the SI.
15. On January 2, 2015, (dated December 30, 2014) the department received a Remedial Action Options Report (RAOR) submitted on behalf of Beazer East and Connell by Tetra Tech, Inc. and Natural Resource Technologies, Inc. (Consultants). The report proposed two methods to remediate the Site. The Consultants concluded that both alternatives would be protective of public health, safety and welfare and the environment.
16. On June 4, 2015, the department received a SI Report Addendum sent on behalf of Beazer East that included the off-site information requested on September 22, 2014.
17. Beazer East, as part of its response actions at the Site, estimated the presence of 90,000 cubic yards of free product in the form of coal tar impacted soil at the Site. (The department has not confirmed this information as fact, but was provided documentation submitted by Beazer East)
18. On August 12, 2015, the department responded to the SI and RAOR and determined that the degree and extent of the contamination at the Site was not defined.
19. On October 1, 2015, the department met with representatives of Beazer East, Connell, the City of Oak Creek and their respective environmental consultants. In the meeting, the department provided verbal, technical comments to Beazer East and Connell. The department relayed to Beazer East and other attendees that Beazer East's recommended remedial action option was not acceptable to the department in that it would be highly unlikely that it would meet the requirements of the ch. 292, Wis. Stats., or chs. NR 700 to 754, Wis. Admin. Code.
20. On December 21, 2016, the department provided its written review of the RAOR submitted on January 2, 2015. The department requested Connell and Beazer East to re-evaluate the remedy selection process in consideration of rules and laws associated with the remediation of the Site. A revised RAOR was requested to be submitted by April 1, 2017.
21. On March 31, 2017, Beazer East submitted a letter in response to the department's December 21, 2016 comments. Response to comment 11 states that Beazer East believes:

“The proposed Site remedy outlined in the RAOR is, in fact, an appropriate remedial action that will successfully mitigate potential risks to human health and environment that may exist at the site in a technically practicable and economically feasible manner that is consistent with Wis. Admin. NR 700 rule series.”

22. On July 14, 2017, the department notified Beazer East that the revised report submitted on March 31, 2017 did not meet the minimum requirements set forth in ch. 292, Wisconsin Statutes (Wis. Stats.). The department is prepared to utilize its stepped enforcement process to ensure the Site is restored in accordance with ch. 292, Wis. Stats.

II. CONCLUSIONS OF LAW

1. Section 292.11(3), Wis. Stats., requires a person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance to take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state.
2. Pursuant to s. 292.11(7)(c), Wis. Stats., the department has the authority to issue Special Orders to the person possessing or controlling hazardous substances that have been discharged, or who caused the discharge, to fulfill the duty imposed by ss. 292.11(3), Wis. Stats., NR 700 – 754, Wisconsin Administrative Code.
3. Pursuant to s. 708.13, Wis. Adm. Code, the department has the authority to require free product removal whenever it is necessary to minimize the harmful effects of the discharge to the air, lands or waters of the state.
4. The department concludes that VOCs and SVOCs/PAHs are “hazardous substances” as defined by s. 292.01(5), Wis. Stats., and environmental pollution as defined in s. 292.01(4).
5. Beazer East meets the definition of a “person” as that term is defined in s. 292.01(13), Wis. Stats., and has been identified as a responsible party pursuant to ss. 292.11, Wis. Stats., and NR 700.03(51), Wis. Admin. Code.
6. Beazer East’s investigation of the Site is incomplete per ch. NR 716 Wis. Admin. Code and the recommended remedial action in the 2015 and 2017 RAOR for the Site is not approvable by the department per s. NR 722.15(2), Wis. Admin. Code, as noted in the department’s December 21, 2016 and July 10, 2017 Supplemental Technical Issues letters.
7. Pursuant to s. 292.94, Wis. Stats., the department may assess and collect fees from a person who is subject to an order or other enforcement action for violation of s. 292.11, Wis. Stats., to cover the costs incurred by the department to review the planning and implementation of any environmental investigation or environmental cleanup that the person is required to conduct. Fees to be assessed by the department are identified in ch. NR 749, Wis. Admin. Code.
8. This Order is reasonable and necessary to accomplish the purposes set forth in chs. 292, Wis. Stats., and NR 700 to 754, Wis. Admin. Code, and is enforceable through prosecution by the Attorney General under ss. 299.95 and 299.97, Wis. Stats., and ch. NR 728 Wis. Admin. Code.

III. CONSENT ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the department orders and Beazer East agrees to complete the following response actions in accordance with all applicable local, state

and federal laws. In particular, the requirements in chs. NR 700 – 749, Wis. Admin. Code, shall be met for all response action work, including but not limited to investigative, free product removal, remedial planning, remedial action and other necessary response actions.

1. Within 60 days of the effective date of this Order, Beazer East shall submit a supplemental SI Work Plan that addresses the Site, per ch. NR 716, Wis. Admin. Code, for department approval. The purpose of the work plan is to define the degree and extent of contamination in all known and potential migration pathways on the Site (i.e., the source property and all affected off-site properties). The SI Work Plan shall address all the department's concerns outlined in the department's December 21, 2016 and July 10, 2017 Supplemental Technical Issues letters.
2. Within 60 days after completion of the field investigation and receipt of laboratory data, Beazer East shall submit a SI Report, per ch. NR 716, Wis. Adm. Code, for department approval. The supplemental SI Report for the Connell Parcel shall be submitted to the department within that timeframe, or by December 1, 2017, whichever occurs first. The supplemental SI Report for the City Parcel shall be submitted to the department within that timeframe, or by June 1, 2018, whichever occurs first.
3. For the Connell and City Parcels, Beazer East shall submit a revised RAOR per ch. NR 722, Wis. Adm. Code, for department approval based on a non-industrial land use classification, per s. NR 720.05(5), Wis. Admin. Code. The RAOR for each parcel shall propose a remedial action strategy for department approval that addresses all the department's concerns outlined in the department's December 21, 2016 and July 10, 2017 Supplemental Technical Issues letters, and meets the requirements of chs. 292 Wis. Stats., and NR 700 to 754, Wis. Admin. Code. For the Connell Parcel, the RAOR shall be submitted to the department for approval by December 1, 2017, and for the City Parcel, the RAOR shall be submitted to the department for approval by June 1, 2018.
4. Per s. NR 708.13, the RAOR for each parcel shall include a response action proposal to address free product removal (i.e., DNAPL) appropriate for the hydrologic conditions at the Site consistent with the Supplemental Technical Issues letters referenced in #3 above.
5. Beazer East shall submit a Remedial Design Report, per ch. NR 724, Wis. Adm. Code, for the selected remedial actions for department approval and implement the approved Remedial Design Report and any other applicable actions, within 90 days of department approval.
6. Beazer East shall submit a construction documentation or as-built report, per ch. NR 724, Wis. Adm. Code, for department approval within 60 days after the remedial action is completed.
7. Beazer East shall comply with all the requirements in chs. NR 714 and 725, Wis. Admin. Code, and regarding notifications for residual contamination continuing obligations and public notice and outreach.
8. Upon completion of all interim and remedial activities for hazardous substance discharges and environmental pollution at the Site, Beazer East shall submit a request or requests for case closure, according to the requirements of ch. NR 726, Wis. Admin. Code.
9. Beazer East must request department approval prior to the abandonment of any groundwater monitoring wells or remedial system(s).

IV. PROJECT COORDINATORS AND SUBMISSION OF DOCUMENTS AND CORRESPONDENCE

1. For the department:

- a. All correspondence, including required plans and reports shall be sent to the attention of the Remediation & Redevelopment Environmental Program Associate, Department of Natural Resources, 2300 N. Dr. M L King, Jr. Drive, Milwaukee, WI 53212.
- b. Eric Amadi is the department's project manager and Jessica Kramer is the department's legal counsel. Ms. Kramer will be copied on correspondence but does not need to receive plans or reports.

Eric Amadi (414) 263-8639
Remediation and Redevelopment
2300 N. Dr. M L King, Jr. Drive
Milwaukee, WI 53212
eric.amadi@wisconsin.gov

Jessica Kramer (608) 267-0846
Bureau of Legal Services – LS/8
101 S. Webster St.
Madison, WI 53707
jessica.Kramer@wisconsin.gov

2. For the Respondent:

- a. Beazer East, Inc.
Michael Slenska
Beazer East, Inc.
1910 Cochran Road
Manor Oak One, Suite 200
Pittsburgh, PA 15220

V. RESERVATION OF RIGHTS

Except as otherwise provided in the last sentence of this section, nothing herein shall waive the right of the department to enforce this Order or to take any action under a RCRA Citizens Suit, CERCLA, ch. 292, Wis. Stats., or any other available legal authority.

Nothing herein is intended to release, discharge or in any way affect any claims, causes of action or demands in law or equity which each party may have against any person, firm, partnership or corporation for any liability it may have arising out of, relating in any way to, the generation, storage, treatment, handling, transportation, release or disposal of any materials, hazardous substances, solid or hazardous waste, contaminants or environmental pollution at, to or from the Site. Beazer East and other parties to this Order expressly reserve all rights, claims, demands and causes of action they may have against any and all persons not party to this Order.

Beazer East expressly recognizes that the signing of this Order and the successful completion and approval of the schedule and work identified herein does not represent satisfaction, waiver, release or a covenant not to sue (except as expressly provided elsewhere herein) of any claim of the State of Wisconsin against Beazer East related to the Site (including claims to require Beazer East to undertake further response actions and claims to seek reimbursement of response costs pursuant to s. 292.31, Wis. Stats., or any response costs not paid by Beazer East pursuant to this Order), except that, upon receipt of written notice of satisfaction as provided in Section XIII of this Order, Beazer East shall have no further obligations under this Order.

VI. COMPLIANCE WITH APPLICABLE LAWS

Beazer East is responsible for complying with all applicable federal, state and local legal requirements. Beazer East is responsible for obtaining all federal, state, and local permits or licenses, which are necessary for the performance of this Order.

VII. INDEMNIFICATION

Beazer East agrees to indemnify and save and hold the State of Wisconsin, the department and its officers, employees and authorized representatives, harmless from any and all claims or causes of action arising from, or on account of, acts or omissions of Beazer East, its officers, employees, receivers, trustees, agents, assigns or authorized representatives, in carrying out the activities pursuant to this Order.

The department is not a party to any other Order entered into by Beazer East with its consultants, contractors or subcontractors concerning the Site.

If an entity indemnified under this section receives notice of a claim or action covered by this indemnity, it shall notify Beazer East immediately of any such claim or action. Further, the indemnified entity shall keep Beazer East apprised of how the claim or action is proceeding through its resolution. The indemnified entity shall notify Beazer East, in advance, of any intention to settle a claim covered by this section.

VIII. REIMBURSEMENT FOR COSTS INCURRED BY THE DEPARTMENT

Beazer East agrees to pay the department all costs incurred by the department either directly or through a contractor for any response actions at the Site. The department has the right to pursue cost recovery under ch. 292, Wis. Stats., 42 U.S. Code § 6972 or 42 U.S. Code §9601, should Beazer East fail to conduct the response actions determined to be appropriate and timely by the department.

IX. FEES FOR DEPARTMENT SERVICES

In accordance with s. 292.94, Wis. Stats., and ch. NR 749, Wis. Admin. Code, Beazer East shall pay the department the hourly fees per ch. NR 750, Wis. Admin. Code, for department review or assistance requested by Beazer East or required by the department under the provisions of this Order. The department will send a quarterly, financial invoice to Beazer East for these services.

X. FORCE MAJEURE

Beazer East shall cause all work to be performed within the time limits set forth in this Order unless performance is delayed by events that constitute a force majeure. For purposes of this Order, a "force majeure" is any event arising from causes beyond the reasonable control of Beazer East or any entity controlled by Beazer East, including their contractors and subcontractors, which delays or prevents performance of any obligations under this Order. Force majeure events include, but are not limited to denial or delay in obtaining a permit, review of a work plan, or other authorization from a government agency that is necessary to implement the work required under this contract, provided, however, that Beazer East has submitted a timely application for the permit or authorization, and have used all reasonable efforts to obtain such permit or authorization.

XI. EFFECTIVE DATE

The Order is effective on the date it is signed by the department.

XII. SUBSEQUENT AMENDMENT

The Order may only be amended by mutual agreement of the department and Beazer East. Any amendment of the Order shall be in writing, signed by the department and Beazer East, and shall have as the effective date that date on which the last party signed such amendment.

XIII. TERMINATION AND SATISFACTION

The Provisions of the Order shall be deemed satisfied upon receipt by Beazer East of written notice from the department that Beazer East has documented that all of the terms of the Order, including any modified or additional work, or amendments, have been completed in accordance with the terms hereof to the satisfaction of the department. Upon such demonstration by Beazer East, said written notice shall not be unreasonably withheld or delayed by the department.

XIV. WAIVER AND STIPULATION

Beazer East stipulates to the issuance of this Order and hereby waives further notice and statutory rights to demand a hearing before the department regarding the foregoing Findings of Fact, Conclusions of Law and Consent Order under ss. 227.42, 227.52, 227.53, 292.11, Wis. Stats., under s. NR 1.50(3)(b), Wis. Admin. Code or under any other provision of law and waives its rights to challenge this Order in circuit court under ss. 227.52 and 227.53, Wis. Stats., or any other provision of law. Beazer East further stipulates and agrees that the Order is effective and enforceable after being signed by Beazer East and may be enforced in accordance with ss. 299.95 and 299.97 Wis. Stats.

The undersigned certify that they are authorized to execute such Consent Order, Waiver, and Stipulation.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
For the Secretary

By: _____
Steven L. Sisbach, Section Chief
Environmental Enforcement & Emergency Management
Bureau of Law Enforcement

Date: _____

Beazer East, Inc.

By: _____
FACILITY CONTACT
Title, Beazer East, Inc.

Date: _____



Environmental Enforcement Conference

An Enforcement Conference (EC) is a meeting between Department of Natural Resources (Department) staff and representatives of a person or business that the Department believes has violated an environmental law. The Department issues a Notice of Violation (NOV) when it has reason to believe that a violation of a permit condition, administrative rule or statutory requirement has occurred. The NOV either offers or schedules an EC.

Why Should I Attend?

The EC is an important opportunity to discuss the Department's basis for the alleged violation(s) and learn more about what happened, why it may have happened, and any factors you believe the Department should consider, such as steps that have been or will be taken to stop the violation, correct any effects of the violation, and prevent violations from occurring in the future. It is also your opportunity to explain why you might disagree with the factual and legal conclusions underlying the NOV.

Historic data shows that most violations are resolved at the EC level, without the need for court ordered compliance and/or penalties. In situations where the significance of the violation warrants further enforcement action, your cooperative efforts to resolve the violation and prevent future violations will help minimize your legal and financial liability.

Who Should Attend the EC?

Department staff involved in the EC typically consists of an Environmental Enforcement Specialist and regulatory staff that are familiar with the issues identified in the NOV.

While not required, you may seek representation by legal counsel or the assistance of an environmental consultant to prepare for and/or attend the EC. The EC is most productive when all involved are well-prepared to discuss the allegations and any corrective actions that may be necessary.

To ensure a productive candid discussion, participation in the EC is limited to the person or business involved and others with the legal or technical expertise necessary to understand, evaluate, mitigate and correct the violation. The EC is not an open meeting under state law and the Department will limit participation to those directly involved in the resolution of the matter.

What Happens if I don't Attend the EC?

If a party is unable to attend the EC, they should immediately contact the Environmental Enforcement Specialist at the phone number in the NOV to reschedule. When a party refuses to attend the EC and provides no further information to the Department, the Department's enforcement decision will be based upon available information.

What Happens Following the EC?

The EC is part of the Department's stepped enforcement process. At the EC, Department staff will explain the process and options available to address the alleged violation. Generally, the options range from closing the matter with no further action to referral to the Wisconsin Department of Justice (DOJ) or to U.S. EPA, for further enforcement action. In limited circumstances, the Department can issue citations, which are handled in local court similar to traffic offenses. If a case is referred to DOJ, the DOJ may initiate an action in court on behalf of the State. The State typically asks the Court to impose financial penalties and order completion of any necessary corrective actions. In most of the Department's cases, a cooperative return to compliance with any necessary restoration results in close out of the case. At close out, the Department will send a letter advising of no further enforcement action.