



August 14, 2017

Casetrack ID # 2017-NEEE-022
Milwaukee County

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, WI 53717

Subject: **Enforcement Conference Summary Letter**

Dear Mr. Slenska:

The Department of Natural Resources would like to thank the representatives of Beazer East, Inc. (Beazer) for meeting with the department on July 26, 2017 to discuss the violation alleged in the July 14, 2017 Notice of Violation (NOV). This letter serves as a summary of the Enforcement Conference and attached is a list of the individuals that attended.

Beazer provided a background of its company.

Beazer indicated it is comprised of environmental experts, accounting, and legal assets that in part restore contaminated sites across the United States. In total, Beazer has interest in 100 – 150 sites across the United States, and approximately four sites in Wisconsin. Beazer acquired Kopper Company assets and properties, and currently has ownership in approximately 10% of the properties it is involved with.

Beazer provided its perspective regarding the violations alleged in the NOV.

Beazer does not believe that it is in violation of the spills law. It agrees that it is a party responsible to remediate the site, but believes that it has yet to fail to respond. Beazer is in the Voluntary Party Liability Exemption (VPLE) program and does not believe it is fair that the department has proposed an order or issued the NOV. Beazer has submitted the required paperwork and responded to department questions. However, Beazer believes that the department has been less than responsive to Beazer questions. Beazer would like to hear technical reasons as to why the proposed remedial actions do not meet state standards. If the proposed remedial action does not meet state standards, why hasn't the department provided specific alternatives to the proposed remedial actions? Beazer is frustrated that the department has cited state requirements in the NR 700 series, but Beazer believes that the department has not provided specific examples that would help Beazer for the site. Beazer has stated multiple times that it is willing to make adjustments, but needs more guidance on the department's expectations and what the department would prefer as a remedial action.

Department staff responded to the statements and questions.

Department staff believes that it has provided adequate verbal and written technical responses on numerous occasions including at the October 2015 technical meeting and in the department's December 2016 and July 2017 letters. The department believes it has been clear to Beazer and its consultant that Wisconsin's administrative code that governs environmental cleanups, ch. NR 700, Wis. Admin. Code rules series, is a self-implementing rule. The department must be sure that it is not acting as a consultant while also ensuring each responsible party understands the requirements of the spills law. The department is willing to have a technical meeting to detail the department's and the law's expectations. However, it is Beazer's responsibility to propose a remedial action that meets state laws and rules.

There are two options for proceeding with an environmental cleanup. Most cleanups in Wisconsin are conducted under s. 292.11, Wis. Stats., where the responsible party addresses the known discharges of hazardous substances. The other option is for the responsible party to enter into the VPLE program pursuant to s. 292.15, Wis. Stats. Under VPLE, the responsible party addresses both known and suspected discharges. Both options are similar in the fact that a responsible party identifies a contamination, submits required information, and remediates the respective site under Wis. Admin. Code NR 700 rule series. VPLE provides protection to a responsible party after the department issues a certificate of completion. If the department becomes aware of additional contamination after the certificate is issued, the responsible party would not be required to remediate the additional contamination. Beazer is presently participating in the VPLE program.

Regardless of whether Beazer is proceeding under s. 292.11 or 292.15, Wis. Stats., over the last nine years Beazer has not completed a site investigation at the impacted properties nor has it proposed a remedial action option that meets state law. As in every situation, the department made the decision that the most appropriate step in the stepped enforcement process was a Notice of Violation in order to try to obtain Beazer's voluntary compliance. Please be advised that the department will continue to implement the stepped enforcement process that may include the department's enforcement authority to issue an order or refer a case to the Department of Justice. Being in the VPLE program does not prevent or limit the department's enforcement authority.

The department does not expect Beazer to remove all contaminated soil and waste materials across the entire site. That type of remedial action is neither practical nor feasible to be completed. The department does not believe that capping the area with minimal excavation will successfully remediate the site. The department suggests and is willing to have a technical meeting in order to further discuss the department's technical comments on Beazer's submittals and what other remedial action options would more likely comply with state law.

Actions moving forward and enforcement were discussed.

After a technical meeting is complete, the department will be expecting Beazer to commit to a timeline to return to compliance. One option to meet compliance requirements proposed by the department is to enter into a Consent Order to complete the response actions needed at the site. The department understands that Beazer is not in a position to discuss the draft Consent Order at this point. Please be advised that throughout this process, the department will consider its authority to refer this case to the Department of Justice to obtain court ordered compliance and penalties as appropriate. It is Beazer's best interest to continue to work towards successful remediation that meets the requirements of state laws and rules.

The department has scheduled and Beazer agreed to attend a technical meeting. The meeting is scheduled for August 17, 2017 at 1:00 pm at the Milwaukee Service Center.

Thank you for your time and attention to this matter. The department looks forward to meeting with you during the above scheduled meeting. If you have any questions regarding this letter or the scheduled meeting, please feel free to contact me at (920) 662-5163.

Sincerely,

A handwritten signature in black ink, appearing to read "Kody C. Hansen". The signature is stylized with a large initial "K" and a long horizontal stroke extending to the right.

Kody C. Hansen
Environmental Enforcement Specialist

Enclosed: Enforcement Conference Sign-In Sheet

Cc: Eric Amadi, DNR
Michele Norman, DNR
Darsi Foss, DNR
Jessica Kramer, DNR

Enforcement Conference Sign- In Sheet

BEAZER EAST, INC.
DNR Service Center - Milwaukee
July 26, 2017 at 10:30

Present for Conference

Representing

Phone Number(s)

~~Kody Hansen~~

~~DNR/EE~~

~~(970) 602-5163~~

Michele Norman

DNR/RR

414-263-8697

Eric Amadi

DNR/RR

414-263-8639

David Swiman

DNR/RR

608-264-8766

Darsi Foss

DNR/RR

608 2676713

Judy Fassbender

DNR/RR

608-266-7278

Mike Ribordy

(via phone)

EPA/Removals

Nuria Muniz

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PHILLIP BOWER

Husch Blackwell LLP/Beazer

608-258-7391