



BEAZER EAST, INC.

c/o Three Rivers Management, Inc. (Agent for Beazer East, Inc.)
600 River Avenue, Suite 200, Pittsburgh, PA 15212-5994

September 29, 2021

Christine Haag, Program Director
Remediation & Redevelopment Program
SER-Milwaukee Service Center
Wisconsin Department of Natural Resources
2300 N Dr Martin Luther King, Jr. Drive
Milwaukee, WI 53212-3128

Re: Notice of Removal from the VPLE Program

**Former Koppers Tar Plant and Wabash Alloys Site
9100 South 5th Avenue, Oak Creek, WI 53154
BRRTS #: 02-41-553761; FID #: 241379050; VPLE BRRTS #:06-41-561509**

**City of Oak Creek Utility Corridor Lot 1
9170 South 5th Avenue, Oak Creek, WI 53154
BRRTS #: 02-41-561425; FID #: 341074470; VPLE BRRTS #: 06-41-561426**

Dear Ms. Haag,

The purpose of this letter is to: (1) inform the Wisconsin Department of Natural Resources (DNR) that Beazer East, Inc. (Beazer) hereby withdraws from the Voluntary Liability Party Exemption (VPLE) Program for the above-referenced properties (Site); and (2) reject the assertions of, and purported notification in, your letter emailed on August 31, 2021 (the Letter) that Beazer has made inadequate progress in the VPLE Program.

Beazer received the Letter by email on August 31, 2021. The Letter referred to DNR's review of the Site's *Revised Interim Action Work Plan* dated May 3, 2021 and *Revised Remedial Action Options Report* dated July 1, 2021, both prepared by Tetra Tech, Inc. (Tetra Tech) for Beazer. The Letter further contended that DNR has removed Beazer from the VPLE Program. Unfortunately, the Letter contained several incorrect assertions and failed to address the DNR's repeated dilatory conduct during Beazer's tenure in the VPLE Program.

- First, in the Letter, DNR stated *“Previous work plans, as well as this most recent Work Plan, have not presented an action that makes reasonable progress toward environmental restoration of the property. For more detail on the recent lack of progress, refer to the Notice of Noncompliance issued to Beazer, dated August 31, 2021.”* These characterizations are incorrect. Beazer hereby corrects the record as to these statements as follows:
 - Beazer entered the VPLE Program on January 6, 2014; since that date, DNR has repeatedly¹ responded to Beazer’s submissions with vague and ambiguous requests, with an incomplete understanding of the technical facts, and by presenting imprecise written answers to Beazer’s technical questions;
 - In addition, DNR has repeatedly refused Beazer’s requests to convene meetings to address technical questions, and DNR has arrived at the very few such meetings that were convened unprepared to discuss the technical questions for which the meeting was requested.
 - To the extent DNR points to its Notice of Noncompliance dated August 31, 2021 and issued contemporaneously with the Letter as evidence of *“recent lack of progress,”* Beazer disagrees, objects, and contends that certain DNR statements made in the Notice of Noncompliance are categorically false. A more complete and comprehensive discussion of such incorrect statements will be provided by Beazer in its forthcoming response to the August 31, 2021 Notice of Noncompliance.
- Second, the Letter states that *“A requirement of the VPLE Program includes meeting the statutory obligation to restore the environment to the extent practicable and minimize harmful effects. To date, Beazer has not made adequate progress since being referred to DOJ on December 15, 2017.”* Again, these characterizations are incorrect. Beazer hereby corrects the record as to these statements as follows:
 - Since it entered the VPLE Program in January 2014, Beazer has timely submitted each and every document, analysis, and report that DNR requested of it, and Beazer has proposed work plans and remedial approaches which, if implemented, would restore the environment to the extent practicable and minimize harmful effects.

¹ See, e.g.: the timeline of events described in the March 6, 2020 letter to DNR from Michael Noel of Tetra Tech.

- In the over 7 years since Beazer entered the VPLE Program, the DNR has been the source of nearly all delays in progress at the Site. For example, the DNR has approved, and then months or years later inexplicably disapproved, documents and reports, and the DNR has failed to take action on Beazer's submittals in a timely manner – including waiting to approve or disapprove documents for as long as 11 months at a time.
- Under the statutory requirements of the VPLE Program, which mandate that Beazer may not implement a work plan unless and until it receives approval to do so from DNR, DNR's misguided conduct and unresponsiveness is not only unacceptable, but also unreasonable, arbitrary and capricious.

Beazer understands that it has a right of appeal and various avenues through which it could contest DNR's attempt to remove Beazer from the VPLE Program. But given DNR's conduct in the Program to date, Beazer believes a better course of action would be for Beazer to remove itself from the VPLE Program so that Beazer can make meaningful progress at the Site. To that end, Beazer formally withdraws from the VPLE Program. Beazer reserves the right to re-enter the VPLE Program in the future, but for now Beazer looks forward to advancing remedial efforts at the Site under Wisconsin Administrative Code chapters NR 700-799.

If you should have any questions or concerns, please contact me at 412 208 8864.

Sincerely,



Mike Bollinger
Sr. Environmental Manager
Three Rivers Management, Inc.
Agent for Beazer East, Inc.
600 River Ave, Suite 200
Pittsburgh, PA 15212
412-208-8864

cc: Charles McChesney, Esq. / Beazer
Brett Philpotts, Esq. / Beazer
Mike Slenska / Beazer
Eric McLeod, Esq. / Husch Blackwell / representing Beazer
Mike Noel / Tetra Tech
AAG Brad Motl, Esq. / DOJ
AAG Tressie Kamp, Esq. / DOJ
Larry Haskin, Esq. / Haskin Karls / representing City of Oak Creek
Mike Kellogg / Connell
Mark Thimke, Esq. / Foley / representing Connell