



November 19, 2020

Mr. Mike Bollinger
Beazer East, Inc.
c/o Three Rivers Management, Inc.
600 River Avenue, Suite 200
Pittsburgh, PA 15212

Subject: Review of Site Conditions and Progress in the VPLE Program
Interim Action Work Plan Required by December 21, 2020
Immediate Action Required by January 28, 2021

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

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

Dear Mr. Bollinger:

The Wisconsin Department of Natural Resources (DNR) has reviewed the site conditions and progress of Beazer East, Inc. (Beazer) as a voluntary party conducting appropriate remedial action response activities in the Voluntary Party Liability Exemption (VPLE) Program. The DNR has determined that due to Beazer's inaction, contaminant migration continues. Therefore, immediate action to halt the hazardous substance migration is required for Beazer to remain in the VPLE Program.

Requests for Remedial Action

In December 2015, the DNR received Beazer's Remedial Action Options Report (RAOR). Since 2016, the DNR has requested inclusion of remedial options that address the DNAPL tar contamination, in compliance with Wis. Admin. Code ch. NR 722, in the following response letters:

Dec. 21, 2016 "Review of Remedial Actions Options Report"
July 14, 2017 "Supplemental Information for Review of Remedial Actions Options Report"
June 29, 2018 "Approval of Work Plan – Revised Supplemental Site Investigation"

Specifically, Wis. Admin. Code § NR 722.07(4)(a)l.a. requires remedial action selection to include evaluation of the degree to which the mobility and volume of the contamination is expected to be reduced. Wis. Admin. Code § NR 722.09(2)(a) and (b) states the responsible party shall select remedial action(s) that achieve restoration of the environment to the extent practicable, minimize the harmful effects from the contamination on the air, lands and waters of the state, and comply with all applicable state and federal public health and environmental laws and environmental standards.

In July 2017, Beazer was issued a Notice of Violation by the DNR for failure to respond to Wis. Stat. § 292.11(3) to address a hazardous substance discharge by taking actions to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands, or waters of the state. Beazer failed to define the degree and extent of the contamination and propose a remedial action that will effectively restore the environment, consistent with applicable laws and rules. In 2018, the DNR referred Beazer to the Wisconsin Department of Justice for failing to take appropriate action.

Following submittal of a “Supplemental Site Investigation Report” on February 8, 2019, the DNR identified an expanding groundwater plume. The DNR subsequently sent Beazer a letter for “Review of Supplemental Site Investigation Results,” dated January 8, 2020, that required an interim action to immediately address continued contaminant migration, halting a discharge in compliance with Wis. Admin. Code § NR 708.05(3).

Wis. Admin. Code § NR 708.05(3) states that responsible parties are required to take all necessary, non-emergency immediate actions to halt the discharge of a hazardous substance, and to contain, treat, or remove discharged hazardous substances environmental media or both, in order to minimize the harmful effects of the discharge to the air, lands, or waters of the state and to restore the environment to the extent practicable.

Additionally, Wis. Admin. Code § NR 716.17(3) states that when a site investigation conducted under this chapter indicates that an immediate, interim or remedial action is necessary, the responsible parties shall identify, evaluate and select an immediate or interim action in accordance with Wis. Admin. Code ch. NR 708 or a remedial action in accordance with Wis. Admin. Code ch. NR 722.

On March 19, 2020, the DNR received Beazer’s “Q1 2020 Groundwater Sampling Event” report. The data collected in January 2020 identified notable differences in the groundwater plume that are indicative of mobile tar continuing to migrate, both horizontally and vertically. Most notably, monitoring wells MW-130 and MW-134 were not sampled in 2020 due to the presence of DNAPL tar. However, in preceding years, from 2016-2018, those same wells had no reported DNAPL and were successfully sampled. Also, piezometers P-110 and P-120 in 2020 had concentrations above enforcement standards, where previously, from 2015-2018, reported concentrations were below detection levels in P-110 and below regulatory standards in P-120. The changed conditions, indicative of migrating contamination and an expanding groundwater contaminant plume, were not identified or assessed by Beazer in their report. In the multiple DNR response letters sent to Beazer since Beazer submitted the RAOR in 2015, the DNR has repeatedly requested remedial action to restore the environment and interim action to immediately address continued contaminant migration, which includes the DNAPL tar source material. Most recently, in a response letter dated May 5, 2020, the DNR identified and provided discussion of the migration of the DNAPL tar source material and expanding groundwater plume, and again requested the submittal of an interim action work plan to address free product removal.

Wis. Admin. Code § NR 708.13 specifically addresses free product removal. In this situation, DNAPL is considered a free product. Responsible parties shall conduct free product removal whenever it is necessary to halt or contain the discharge of a hazardous substance or to minimize the harmful effects of the discharge to the air, lands or waters of the state.

In the January 2014 Site Investigation Report, Beazer reported that in 2013 they performed mobility/recoverability testing in monitoring wells with observations of DNAPL. The amount of product that was able to be removed was minimal. This is largely due to the thick, viscous nature of the tar material. However, due to the shallow depth of the DNAPL material, excavation would be a practicable interim remedial action. Most recent data indicate tar is continuing to impact the groundwater quality.

Beazer has failed to provide an adequate response to repeated requests from DNR for a revised or interim remedial action made between December 2016 and June 2020.

On June 19, 2020, the DNR granted Beazer an approved delay for the submittal of an interim action work plan until the DNR completed review of the revised figures incorporating additional site investigation data. Following DNR's review of Beazer's "Q1 2020 Groundwater Sampling Event" report, the DNR identified concerning site conditions indicating ongoing contaminant migration. Due to Beazer's inaction, and Beazer's inability to present accurate figures with delineation of contamination that is supported by a conceptual site model incorporating the site conditions and history, DNR directs you to perform immediate action. Therefore, **submit an interim action work plan to prevent the further migration of contamination** in compliance with all regulatory code requirements, including Wis. Admin. Code § NR 708.11, **by December 21, 2020 and commence work by January 28, 2021.**

Progress in the VPLE Program

Applicants in the VPLE program are required to make reasonable progress towards completion of both the site investigation and remediation of the property to comply with Wis. Stat. § 292.15(2)(av)1. and Wis. Admin. Code § NR 750.05(4).

Wis. Stat. § 292.15(2)(av)1. states that if at any time after a voluntary party submits an application to obtain an exemption under this section the voluntary party fails to make reasonable progress toward completion of an environmental investigation and environmental restoration of the property identified in the application, the department (DNR) may withdraw the voluntary party from the process of obtaining an exemption under this section.

Wis. Admin. Code § NR 750.05(4) states that any time after an application is submitted to the department (DNR), if an applicant fails to make reasonable progress towards completion of the site investigation and remediation of the property, the department (DNR) may withdraw the voluntary party from the process to obtain the liability exemption.

As an applicant in the VPLE Program, Beazer has failed to make reasonable progress towards the completion of the remediation of the property, despite repeated requests from the DNR as outlined above. Therefore, DNR intends to administratively withdraw Beazer from the VPLE Program under the statutory procedure outlined in Wis. Stat. § 292.15(2)(av) if Beazer fails to meet the following two conditions: 1) submit an interim action work plan to the DNR by December 21, 2020 and 2) commence implementation of the work plan at the site by January 28, 2021 mitigate the ongoing migration of hazardous substances.

Regarding overall progress through the NR 700 process at this remedial action site, the site investigation is currently incomplete. Depending on the scope of the work plan and interim action completed, additional response actions may be necessary under Wis. Admin. Code § NR 708.07.

Beazer's Request for a Meeting and Future Technical Assistance Requests

On October 30, 2020, Beazer requested a meeting to discuss necessary actions at this site. In response, the DNR directs Beazer to address the above comments and adhere to the specific direction for next steps at the site. Once Beazer submits the remedial action workplan, the DNR welcomes a meeting.

If you have any questions regarding this letter, please contact Eric Amadi, the DNR Project Manager, by calling (414) 405-0752 or by email at eric.amadi@wisconsin.gov.

Sincerely,



Christine Haag, Program Director
Remediation & Redevelopment Program

cc: Mike Slenska - Beazer (electronic)
Mike Noel - Tetra Tech (electronic)
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