



April 10, 2023

Brown County Port & Resource Recovery Department
Attn: Mr. Dean Haen, Director
2561 South Broadway Street
Green Bay, WI 54304
Via Electronic Mail Only to Dean.Haen@browncountywi.gov

SUBJECT: Response to Objections to Case Closure for Fox River NRDA/PCB Releases OU2-5,
Outagamie/Brown Counties, Wisconsin
WDNR BRRTS Activity #: 02-45-582407

Dear Mr. Haen:

Thank you for your letter to the Wisconsin Department of Natural Resources (DNR) dated February 13, 2023, about the pending case closure for the Fox River and Green Bay site referenced above (Site). DNR appreciates the opportunity to provide this response to address your objections to closure of a portion of the Site.

DNR and the United States Environmental Protection Agency (EPA) have determined that NCR Corporation, Georgia Pacific Consumer Operations LLC, and P.H. Glatfelter Corporation (collectively “*Responsible Parties*”) completed a thorough investigation and remediation, to the extent practicable, of sediments contaminated by polychlorinated biphenyls (PCBs) in the lower Fox River and Green Bay (“*Cleanup Project*”). State rules allow for closure of sites when closure requirements are met, including that remaining levels of PCBs are not likely to pose threats to human health and the environment or cause a violation of an applicable environmental law. *See* Wis. Admin. Code § NR 726.13(1)(b). State rules also allow DNR to impose continuing obligations to ensure site conditions are protective. Objections to site closure must be based on protectiveness of the remedy.

DNR and EPA work together as “*Oversight Agencies*” for the Cleanup Project, with DNR as lead technical agency and EPA as lead enforcement agency. The Cleanup Project was implemented under state and federal law to protect human health and the environment. The Cleanup Project consisted of remedial action (RA), including dredging contaminated sediment and constructing engineered caps over certain PCB contaminated sediments (“*PCB Caps*”). EPA issued a Certification of RA Completion under federal authority in October 2022 after the RA work met standards established by state and federal law (i.e., the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), commonly known as Superfund). PCB Caps and their long-term maintenance are continuing obligations that are considered protective of human health and the environment. The Port Authority (Port) objects to state closure of Operable Units (OUs) 4 and 5 based on the presence of PCB Caps in those areas of the river in relation to potential future development projects. OU4 is the river segment from De Pere dam to the river mouth, and OU5 is the bay of Green Bay. The Port’s objection is based on the presence of PCB Caps and not on protectiveness of those PCB Caps as a final remedy. State closure approval decisions are based on protectiveness of the remedy.

As your letter notes, the Cleanup Project is “one of the most time-intensive and expensive cleanups in the country’s history.” It is also known as one of the largest PCB cleanup projects worldwide and a model for remedy implementation with collaboration between public and private entities. PCB Caps are a remedy that remain in

place forever and must be maintained by the *Responsible Parties*. PCB Caps include specialized caps over utility lines. Working in a PCB Cap area is similar to working near submerged utility lines that require great care to avoid damage. Those who work in the river are an important part of safeguarding the PCB Caps to protect human health and the environment from PCB releases.

The *Oversight Agencies* have been meeting with the Port for many years about its concern with PCB Caps. The Port sent letters about its concern in 2009 and 2015, and the *Oversight Agencies* formally responded each time; first in the Superfund comment response process in 2009 and again by separate response letters from DNR and EPA in 2015. The *Oversight Agencies* met in person with the Port in 2015, and again thereafter, to discuss the capping remedy authorized by federal governing documents for the Cleanup Project. In 2020, DNR and the Port met to discuss PCB Caps near the Pulliam site to inform the Port's decision on whether to acquire that property.

Your recent letter objects to the presence of PCB Caps in the main navigation channel. This concern was addressed through a remedy change for OU4 to remove significantly more sediment by dredging, and construct far fewer PCB Caps, in the main channel. This remedy change was based on the *Oversight Agencies'* investigation of large vessel forces that could disturb PCB Caps, complex engineering issues, and the Port's concerns. The remedy change resulted in the following benefits:

- Dredging to remove more than 700,000 cubic yards of sediment from the main channel, which improved the depth and quality of that channel.
- Elimination of nearly all PCB Caps in the main channel, except in limited areas over utility lines.

PCB Caps are required over utility lines to remediate contaminated sediment around them. These PCB Caps add protection to the utilities crossing the Green Bay harbor. Other benefits of the additional dredging in the main channel include many years of reduced cost and effort by the U.S. Army Corp of Engineers for harbor maintenance dredging. Also, capacity was preserved at the Port's Bayport facility when Cleanup Project sediments went to offsite landfills, while sediments from annual navigation dredging typically go to Bayport.

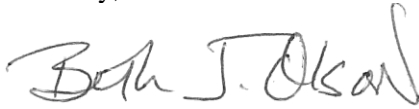
The *Oversight Agencies* will continue overseeing all work by the *Responsible Parties* for long-term monitoring and PCB Cap maintenance for years to come. Third parties who propose work in a PCB Cap area must ensure continued protectiveness of the PCB Cap. To that end, the *Oversight Agencies* established a technical review process that must be completed in advance of such work. The proposed work is not necessarily prohibited, but it may be restricted or modified to ensure conditions remain protective both during and after the work. For example, construction work by the Wisconsin Department of Transportation (DOT) was done in PCB Cap areas for bridge projects after its work plans were reviewed in advance by the *Oversight Agencies*, including the DOT's work plans for subsequent PCB Cap repair.

To clarify misunderstandings stated in your letter, the closure notice letter you received does not "... attempt to pass the liability buck from the Responsible Parties to innocent parties like the Port." Moreover, state closure approval is not a process that "forces the caps and associated liability onto the Port." The *Responsible Parties* remain liable for PCB Cap monitoring and maintenance. If work by a third party compromises the protectiveness of a PCB Cap, that third party is responsible for any damage it causes. Another clarification relates to the Port's concern that the Pulliam site redevelopment is "put at risk given the current proposed closure." Approval of state closure for OUs 4 and 5 does not preclude the Port from redeveloping its property. Since 2019, a DNR team of program experts led by the DNR Secretary's Director, Jean Romback Bartels, has been working with the Port on its redevelopment plans. Experts from the *Oversight Agencies* also serve on that DNR-led team for efficiency and collaboration between DNR, the Port, and EPA. Last year, two engineers from the *Oversight Agencies* gave the Port substantial feedback on its ideas for the Port's proposed development work in the PCB Cap areas. This DNR team looks forward to continuing the collaborative effort with the Port on this important project.

With respect to your future dredging concerns, disturbance of riverbed without PCB Caps is not restricted by Cleanup Project standards. However, projects in navigable waterways may require a DNR permit under Chapter 30 of the Wisconsin Statutes. State permitting requirements have long been in place and did not change due to the Cleanup Project or state closure. Fortunately for all, 6.5 million cubic yards of PCB contaminated sediment were removed throughout 39 river miles of the river by the Cleanup Project. Protection of PCB Caps serves the public interest and benefits everyone, and it does not prevent the Port's proposed development as long as that work is protective of human health and the environment.

DNR trusts that this response has addressed the concerns and objections stated in your 2023 letter. If you have any further questions, additional information can be provided by DNR and EPA.

Sincerely,



Beth J. Olson, BS, JD
Project Manager

Attachment: OU4-OU5 Completed Remedial Action, dated August 10, 2020

cc: U.S. Senator Tammy Baldwin, c/o sydney_scott@baldwin.senate.gov
U.S. Senator Ron Johnson, c/o sean_riley@ronjohnson.senate.gov,
courtney_rutland@ronjohnson.senate.gov
U.S. Representative Mike Gallagher, c/o Dan.Butler@mail.house.gov
WI Sen. Andre Jacque, District 1 (Sen.Jacque@legis.wisconsin.gov)
WI Sen. Robert Cowles, District 2 (Sen.Cowles@legis.wisconsin.gov)
WI Sen. Eric Wimberger, District 30 (Sen.Wimberger@legis.wisconsin.gov)
WI Rep. David Steffen, District 4 (Rep.Steffen@legis.wisconsin.gov)
WI Rep. John Macco, District 88 (Rep.Macco@legis.wisconsin.gov)
WI Rep. Kristina Shelton, District 90 (Rep.Shelton@legis.wisconsin.gov)

From: Beggs, Tauren R - DNR
Sent: Monday, April 10, 2023 10:35 AM
To: Dean.Haen@browncountywi.gov
Cc: sydney_scott@baldwin.senate.gov; sean_riley@ronjohnson.senate.gov; courtney_rutland@ronjohnson.senate.gov; Dan.Butler@mail.house.gov; Sen.Jacque - LEGIS; Sen.Cowles - LEGIS; Sen.Wimberger - LEGIS; Rep.Steffen - LEGIS; Rep.Macco - LEGIS; Rep.Shelton - LEGIS; Olson, Beth J - DNR; Romback-Bartels, Jean - DNR; Ava Grosskopf
Subject: RE: Action Closure comment - FW: Port of Green Bay Comments on PCB Closure
Attachments: 20230410_Response_Ltr_Port_Authority.pdf

Good morning Mr. Haen,

Attached is the DNR's response letter to your letter dated February 13, 2023, regarding the Brown County Harbor Commission and Port & Resource Recovery Department's objections to closure of the Fox River NRDA/PCB Releases OU2-5 case. I am sending this letter on behalf of Beth Olson, so I have copied her on this email.

If you have any questions in regard to the letter, please contact Beth at Beth.Olson@wisconsin.gov or at (920) 366-5219.

Regards,

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Tauren R. Beggs

Phone: (920) 510-3472

Tauren.Beggs@wisconsin.gov (preferred contact method during work at home)

From: Haen, Dean R. <Dean.Haen@browncountywi.gov>
Sent: Monday, February 13, 2023 3:08 PM
To: Questions <questions@foxriverpcb.com>
Subject: Port of Green Bay Comments on PCB Closure

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PORT & RESOURCE RECOVERY DEPARTMENT

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DEAN R. HAEN
DIRECTOR

February 13, 2023

Fox River Oversight Team
Fox River PCB Questions
c/o The Boldt Company
P.O. Box 419
Appleton, WI 54912-0419

RE: 30 Day Notice of Closure Request – Fox River OUs2-5; WDNR BRRTS #02-45-582407

To Whom It May Concern,

On behalf of the Brown County Harbor Commission and Port & Resource Recovery Department (collectively, the “Port”), the Port objects to the closure of OU4 and OU5 of the above-captioned project with continuing obligations as expressed in the joint Georgia-Pacific and Glatfelter letter dated January 12, 2023 (attached as Exhibit A). As predicted in the Port’s January 21, 2015 correspondence objecting to capping remedies in the navigational channel which conflict with the Port’s development plans, that very scenario is now upon us. As currently drafted, the letter would attempt to place generator responsibility on anyone who disturbs a cap within the relevant OUs, despite these previously identified navigational and Port maintenance/development concerns. The Port objects to this concept because it has as its charge the obligation to maintain the navigational channel and develop the Port of Green Bay.

The Port’s position is not new. The Port first raised its concerns about the effects of capping on the Port’s future maintenance and development in July 2009. The Port then lodged its concerns in writing in October 2009. The Port then issued a January 21, 2015 letter to the Wisconsin Department of Natural Resources (“WDNR”) and the United States Environmental Protection Agency (“EPA”) reiterating these concerns. As noted in that letter, the Port fully expects Congressional authorization to deepen the full navigational channel in the Lower Fox River. Future port businesses will then necessarily deepen their shorelines and waterways, to facilitate connection to the federal navigation channel. The capped areas will produce a negative economic impact on the region because they will drastically reduce the Port’s ability to deepen its shipping channel.

As noted above, the Port received a January 12, 2023, letter from Georgia-Pacific Consumer Operations LLC and Glatfelter Corporation (collectively, the “Responsible Parties”) (See Ex. A). That letter provides notice to the Port that the dredging of sediment in affected parts of the Fox River will be prohibited without prior approval from WDNR, and that if sediment is excavated in the future, the entity excavating the sediment becomes a generator that must sample for and adhere to the Toxic Substances Control Act (“TSCA”). That portion of the letter reads:

“Sediment contamination remains in the Fox River. If sediment is excavated in the future, the generator at the time of the excavation must sample and analyze the excavated sediment to determine if

contamination remains. If sampling confirms that contamination is present, the generator will need to determine whether the material is considered solid waste or [TSCA] waste and ensure that any storage, treatment or disposal is in compliance with applicable standards and rules” (emphasis added).

This letter essentially attempts to pass the liability buck from the Responsible Parties onto innocent parties like the Port. This is inappropriate because (1) this risk of liability, even if it can be addressed via subsequent litigation, creates a “chilling effect” that can severely impede redevelopment projects , and (2) the requested closure essentially forces the caps and associated liability onto the Port, which cannot redevelop the area without dredging. For those reasons, the Port objects.

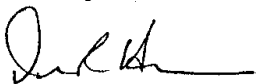
With regard to ongoing redevelopment plans and as an update to the Department, the Port is in the process of planning a large project that will be affected by caps placed in OUs 4 and 5. The Pulliam Site, located at 1530 Bylsby Avenue, operated as a coal-fired power plant since 1927 and was acquired by Brown County in 2021 to facilitate port growth. The Port has already secured more than \$30 million in funding for this project, including funds from the State of Wisconsin and the United States Department of Transportation. The improvements required to complete the development of the Pulliam Site include a dock wall, dredging, rail infrastructure, stormwater management infrastructure, remediation, and filling the old slip and land behind the bulkhead.

The Port recognizes that the Fox River Cleanup has been one of the most time-intensive and expensive cleanups in the country’s history. But closing the site with caps and imposing responsibility on future developers does not appear to be good policy. As noted, the Port has present redevelopment plans, funded by tax-payers, that are put at risk given the current proposed closure. Accordingly, as an affected property owner, the Port requests that WDNR and EPA consider these comments in its review of the Closure Request and reject it until these issues can be resolved.

Lastly, we request a meeting be held with representatives of the Department, the Responsible Parties and the Port to discuss this matter and attempt to arrive at a mechanism to resolve this objection.

Thank you for your consideration of these comments.

Sincerely,



Dean Haen
Director, Brown County Port & Resource Recovery Department

CC: U.S. Senator Tammy Baldwin
U.S. Senator Ron Johnson
U.S. Representative Mike Gallagher
WI Sen. Andre Jacques, District 1
WI Sen. Robert Cowles, District 2
WI Sen. Eric Wimberger, District 30
WI Rep. David Steffen, District 4
WI Rep. John Macco, District 88
WI Rep. Kristina Shelton, District 90

(Enclosed)