

From: Hughes, Audra A - DNR
Sent: Wednesday, July 12, 2023 9:49 AM
To: Andy Skwierawski
Cc: sharon.kozicki@foth.com; pamontne@gapac.com;
william.hartman@glatfelter.com; bryan.heath@ncr.com; Beggs, Tauren R -
DNR; Olson, Beth J - DNR; Ava Grosskopf
Subject: DNR Responses to Ahlstrom & McDonald Lumber Company May 2023 Letters
Attachments: Ahlstrom Response Ltr - 7.12.23.pdf; McDonald Lumber Co Response Ltr -
7.12.23.pdf

Hi, Andy:

Attached please find: (1) a DNR response to the May 3, 2023 letter you submitted on behalf of Ahlstrom-Munksjo Nicolet LLC and Ahlstrom Munksjo NA Specialty Solutions LLC (collectively, Ahlstrom) regarding Ahlstrom's objections to the Fox River cleanup case closure request; and (2) a DNR response to the May 4, 2023 letter you submitted on behalf of McDonald Lumber Company, Inc. regarding McDonald Lumber Company's objections to the Fox River cleanup case closure request.

Please feel free to reach out with questions.

Thank you,

Audra

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Audra Felix

Attorney – Bureau of Legal Services

Wisconsin Department of Natural Resources

Phone: 608-640-6395

audra.felix@wisconsin.gov



dnr.wi.gov



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July 12, 2023

Andrew Swierawski
Halling & Cayo, S.C.
320 East Buffalo Street, Suite 700
Milwaukee, WI 53202
Via E-mail Only to mas@hallingcayo.com

Subject: Response to Case Closure Objections for Fox River NRDA/PCB Releases OU2-5,
Brown County, Wisconsin
DNR BRRTS Activity # 02-45-582407
Brown County Parcel ID No.: 20-689-C

Dear Mr. Swierawski:

The Wisconsin Department of Natural Resources (DNR) has received your letter dated May 4, 2023, submitted on behalf of McDonald Lumber Company, Inc. In your letter, you explain that McDonald Lumber Company owns property on the Fox River and Green Bay, at the mouth of the river, known as South Bay Marina.

The DNR understands that you have two objections to site closure: (1) insufficient information was provided about the residual contamination and PCB caps in the portion of the river adjacent to McDonald Lumber Company's shoreline; and (2) McDonald Lumber Company should not be responsible for any additional requirements that may apply, or costs that may be incurred, to conduct a future project in the river because of residual contamination and PCB caps. Each objection is addressed in turn below.

First, you object on the ground that not enough information was provided in the notices sent to McDonald Lumber Company about the residual contamination and PCB caps in the river. You request an updated map that includes all sampling locations and results near McDonald Lumber Company's shoreline, along with a specific description of what dredging and capping was conducted in that area and the levels of remaining contamination in sediment and beneath any PCB caps. The DNR has reached out to Foth Infrastructure & Environment, LLC (Foth), the responsible parties' environmental consultant, to provide more detailed information regarding sampling locations, sampling results, and the locations of dredged areas and PCB caps in the river near McDonald Lumber Company's shoreline. Sharon Kozicki is the Project Manager at Foth for the Fox River cleanup. She has been made aware of your inquiry and will provide the DNR with requested information, which the DNR will provide to you upon receipt. If you have additional questions on this topic, you may contact the DNR or you may contact Ms. Kozicki directly at sharon.kozicki@foth.com or at (920) 496-6737.

Second, McDonald Lumber Company objects to site closure because it "does not agree that it should...be responsible for handling and disposing of any residual contamination that might be encountered" when conducting a future project in the river. McDonald Lumber Company believes the responsible parties should be responsible for any additional requirements that may apply, and any additional costs that McDonald Lumber Company may incur, to conduct a future project in the river because of residual contamination and PCB caps.

The DNR provides the following information in response to your objection. First, the responsible parties remain responsible for PCB cap monitoring and maintenance, even after site closure. The U.S. EPA and the DNR are the oversight agencies for the Fox River cleanup project and will continue to oversee work by the responsible parties for long-term residual contamination and PCB cap monitoring and maintenance.

Second, the U.S. EPA and the DNR have established a technical review process that a party who proposes to conduct work in the river near a PCB cap must complete in advance of such work. This technical review process helps third parties avoid a situation in which a third party causes a PCB release to the environment. This benefits third parties because a party who causes a PCB release to the environment is a responsible party for that release under the Spill Law, Wis. Stat. § 292.11. Proposed future work in the river is not necessarily prohibited, but it may be restricted or modified to prevent a PCB release and to protect public health and the environment. *See* Wis. Admin. Code § NR 727.07. Accordingly, if a third party proposes to conduct a project in a PCB cap area, a technical work plan known as a Post-Closure Modification Request must be submitted to the DNR for review and approval prior to the work commencing, pursuant to Wis. Stat. § 292.12(6). You may go to the following DNR website site link to identify the Environmental Program Associate in the Remediation & Redevelopment Program to contact with questions regarding this technical review process and to whom to submit a Post-Closure Modification Request: [Remediation & Redevelopment \(RR\) Program staff contacts || Wisconsin DNR](#)

Third, the technical review process described above is not required for future work in an area of the river that contains residual contamination but that does not include a PCB cap (such as an area with a sand cover but no cap). However, third parties proposing a project in an area where there are no PCB caps may still need to apply for 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 Fox River cleanup project. If McDonald Lumber Company decides that it would like to proceed with a proposed project, please contact a DNR water management specialist (WMS) to determine if a Chapter 30 permit is required. A pre-application meeting may be required before applying for a permit. For waterway projects in Brown County, contact one of these WMS experts: Eric Stadig (eric.stadig@wisconsin.gov) or BJ Mahon (bobbiejo.mahon@wisconsin.gov).

Fourth, state rules allow for closure of a site when applicable closure requirements are met, including that remaining levels of PCBs are not likely to pose a threat to human health or 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 public health and the environment are protected. *See* Wis. Admin. Code §§ NR 726.13(1)(c), 726.15. Long-term maintenance of PCB caps is a continuing obligation that may be imposed to protect human health and the environment. McDonald Lumber Company's concerns relate to how the cleanup project may affect future work that it may propose to conduct in the river, and not to the cleanup performed or the PCB caps themselves. McDonald Lumber Company may conduct future work in the river if it complies with applicable requirements and obtains any necessary approval for the work.

Finally, to the extent you may be seeking information or legal advice on whether there is any legal remedy that may be pursued against the responsible parties for any additional requirements that may apply, and costs that McDonald Lumber Company may incur, to conduct future work in the river because of residual contamination and PCB caps, the DNR is not able to provide any substantive guidance or legal advice on that topic. Any agreement between McDonald Lumber Company and the responsible parties regarding McDonald Lumber Company's project costs would be a private agreement to which the DNR would not be a party.

July 12, 2023

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Andrew Swierawski, Halling & Cayo

Response to Case Closure Objections for Fox River NRDA/PCB Releases OU2-5, BRRTS # 02-45-582407

Brown County Parcel ID No.: 20-689-C

The DNR appreciates the opportunity to answer your questions and respond to the objections raised in your May 2023 letter. The DNR hopes that this response has adequately addressed your concerns. If you have any further questions, additional information can be provided by the DNR and/or U.S. EPA. If you have questions for the DNR, you may direct questions to me at (608) 640-6395 or at Audra.Felix@wisconsin.gov or you may contact Beth Olson at (920) 366-5219 or at Beth.Olson@wisconsin.gov.

Sincerely,



Audra Felix

Bureau of Legal Services

Wisconsin Department of Natural Resources

cc: Sharon Kozicki, Foth (sharon.kozicki@foth.com)
Paul Montney, Georgia-Pacific Consumer Operations LLC (pamontne@gapac.com)
William Hartman, Glatfelter Corporation (william.hartman@glatfelter.com)
Bryan Heath, NCR Corporation (bryan.heath@ncr.com)
Ava Grosskopf, The Boldt Company (Ava.Grosskopf@boldt.com)
Tauren Beggs, DNR (Tauren.Beggs@wisconsin.gov)
Beth Olson, DNR (Beth.Olson@wisconsin.gov)

From: Olson, Beth J - DNR
Sent: Tuesday, May 9, 2023 4:37 PM
To: pamontne@gapac.com; Hartman, William A.; Heath, Bryan; sharon.kozicki@foth.com
Cc: Beggs, Tauren R - DNR; saric.james@epa.gov; Hughes, Audra A - DNR; Ava Grosskopf
Subject: Letter (objection by McDonald Lumber) FW: 30 Day Notice for Closure Request Submittal for Fox River
Attachments: 20-689-C.pdf; 2023.05.04 - Fox River PCB Questions.pdf

Dear Project Managers,

This is the additional objection letter I noted in my prior email to you today on the same subject, except it is for a different riparian property owner.

Thank you,
Beth

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Beth J. Olson, BS, JD

Phone: cell 920-366-5219

Beth.Olson@wisconsin.gov

From: Questions <questions@foxriverpcb.com>

Sent: Friday, May 5, 2023 10:41 AM

From: Mallory Burlingame <msb@hallingcayo.com>

Sent: Thursday, May 4, 2023 3:39 PM

To: Questions <questions@foxriverpcb.com>

Cc: Ted Warpinski <taw@hallingcayo.com>; Andy Skwierawski <mas@hallingcayo.com>

Subject: 30 Day Notice for Closure Request Submittal for Fox River

Good Afternoon,

Attached please find correspondence from Attorney M. Andrew Skwierawski dated May 4, 2023, regarding the above-referenced matter.

Thank you,
Mallory



Mallory S. Burlingame

Legal Assistant

HALLING & CAYO, S.C.

320 E. Buffalo Street, Suite 700

Milwaukee, WI 53202

(414) 271-3400

(414) 271-3841 Facsimile

www.hallingcayo.com

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From: Olson, Beth J - DNR
Sent: Friday, May 5, 2023 1:04 PM
To: Hughes, Audra A - DNR; Beggs, Tauren R - DNR
Cc: Motl, Bradley J - DOJ; Ava Grosskopf; Jay Grosskopf (Jay.Grosskopf@Boldt.com); Rombach-Bartels, Jean - DNR
Subject: FYI - Letter re Closure (objection) for McDonald Lumber FW: 30 Day Notice for Closure Request Submittal for Fox River
Attachments: 20-689-C.pdf; 2023.05.04 - Fox River PCB Questions.pdf

FYI – Similar letter on behalf of a different client.

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Beth J. Olson, BS, JD

Phone: cell 920-366-5219

Beth.Olson@wisconsin.gov

From: Questions <questions@foxriverpcb.com>
Sent: Friday, May 5, 2023 10:41 AM
To: Olson, Beth J - DNR <Beth.Olson@wisconsin.gov>; Ava Grosskopf <Ava.Grosskopf@boldt.com>
Subject: FW: 30 Day Notice for Closure Request Submittal for Fox River

Good morning Beth,

We received the objection from Andy Skwierawski yesterday on behalf of McDonald Lumber Company Inc. I'll record it in the spreadsheet and files. Thanks.

-Ava

From: Mallory Burlingame <msb@hallingcayo.com>
Sent: Thursday, May 4, 2023 3:39 PM
To: Questions <questions@foxriverpcb.com>
Cc: Ted Warpinski <taw@hallingcayo.com>; Andy Skwierawski <mas@hallingcayo.com>
Subject: 30 Day Notice for Closure Request Submittal for Fox River

Good Afternoon,

Attached please find correspondence from Attorney M. Andrew Skwierawski dated May 4, 2023, regarding the above-referenced matter.

Thank you,
Mallory



Mallory S. Burlingame

Legal Assistant

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May 4, 2023

VIA EMAIL (questions@foxriverpcb.com)

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

**Re: 30 Day Notice for Closure Request Submittal for Fox River
Releases OU-2-5, Outagamie/Brown Counties, Wisconsin
WDNR BRRTS Activity#: 02-45-582407
Parcel ID No.: 20-689-C**

Dear Fox River Oversight Team:

Our firm has been engaged by and represents McDonald Lumber Company, Inc, the owner of the above-referenced Brown County parcel no. 20-689-C. My client received your March 20, 2023¹, letter on behalf of the group of corporations responsible for the Lower Fox River Cleanup (the “Responsible Parties”) providing notice that it has been identified as a party that potentially has riparian rights in the Fox River where residual sediment contamination may be encountered. My client does indeed own property with riparian rights on the Fox River and Green Bay. To be specific, as depicted on the attached map, my client’s property is located at the mouth of the river and is home to the South Bay Marina. I have reviewed the notice and have some questions and comments.

Your letter states that “[s]ome PCB contamination remains in the sediment, and a continuing obligation for properly managing sediment, if disturbed, may be imposed as a condition of closure approval.” This is too general of information to satisfy the requirements of Wis. Stat. § 292.12. Wis Stat. § 292.12 (4) states that the notice must include “a description of the type of residual contamination and the location and description of any engineering control or sediment cover on the site.” The simple statement that “residual sediment contamination may be encountered” is sufficient. While your letter later directs us to the DNR’s BRRTS site for more information, it isn’t reasonable to expect riparian property owners to sift through what appears to be decades of information to locate the information needed to assess the locations and, in particular, the levels of contamination.

¹ The March 20, 2023, letter is listed as a “DUPLICATE LETTER TO ENSURE RECEIPT BY ALL.” My client did not receive any previous letter and we are therefore using the date of 45 days from March 20, 2023 as the deadline for comments.

May 4, 2023

Page 2 of 2

I have reviewed the maps that were easily accessible on the BRRS site. The map appears to indicate that dredging was done without any capping within the area of my client's marina. Adjacent to the McDonald property to the west, along the Fox River channel, there was also some dredging, with some small areas that were capped. McDonald is requesting that the responsible parties provide, at minimum, an updated map with any and all sample locations and results near our shoreline as shown on the attachment along with specific descriptions of what dredging and capping was done and the levels of contamination in the remaining areas and beneath any of the caps.

The notice letter goes on to state that "[t]his letter describes how the closure request approval could affect any dredging or disturbance in the river adjacent to your property. If any material is excavated or removed from the waterway, that material will need to be properly managed and or disposed." We do not agree that the letter describes in sufficient detail how the approval of the closure request could affect any plans my client might have for future work in the Fox River. While McDonald certainly understands that the presence of contamination in its riparian zones needs to be considered when future planned activities take place, it does not agree that it should in anyway be responsible for handling and disposing of any residual contamination that might be encountered. This is and should remain the responsibility of the Responsible Parties.

This issue is important because McDonald is currently planning to further develop and enhance this property and the work may disturb the areas that have been capped or have residual contamination.

Based on the above, McDonald objects to the proposed closure. It should not be granted for this site until all these issues are addressed. Please ensure that this objection is placed in the file and is part of the closure review process.

Please feel free to contact me if you would like to discuss our concerns.

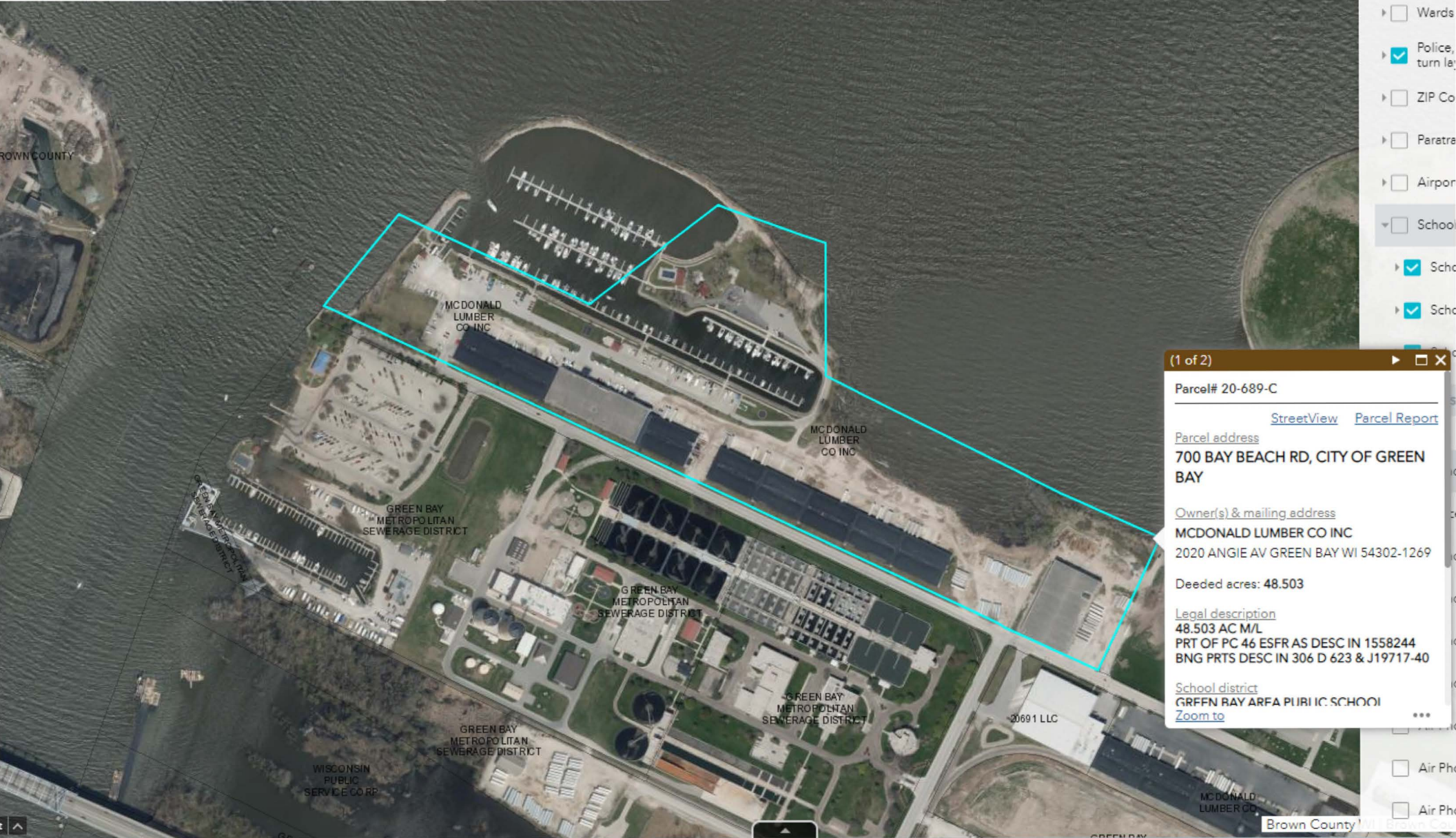
Very truly yours,

HALLING & CAYO, S.C.



M. Andrew Skwierawski

mas@hallingcayo.com



(1 of 2)

Parcel# 20-689-C

[StreetView](#) [Parcel Report](#)

Parcel address
700 BAY BEACH RD, CITY OF GREEN BAY

Owner(s) & mailing address
MCDONALD LUMBER CO INC
 2020 ANGIE AV GREEN BAY WI 54302-1269

Deeded acres: **48.503**

Legal description
48.503 AC M/L
PRT OF PC 46 ESFRAS DESC IN 1558244
BNG PRTS DESC IN 306 D 623 & J19717-40

School district
GRFFN BAY ARFA PLURI IC. SCHOOL

[Zoom to](#)

- Wards
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- Paratra
- Airpor
- School
- Scho
- Scho
- Air Ph
- Air Ph