

CITY OF MADISON
CITY ATTORNEY'S OFFICE
Room 401, CCB
266-4511

MEMORANDUM

TO: WDNR, Remediation and Redevelopment Program

FROM: Doran Viste, Assistant City Attorney

DATE: October 17, 2019

RE: Dane County Airport Burn Pits and Starkweather Creek

On October 7, 2019, the City of Madison was named as a responsible party, along with Dane County and the Wisconsin Air National Guard (ANG), for the PFAS contamination of Starkweather Creek (BRRTS Activity # 02-13-584369). The City appears to have been named as a responsible party due to an asserted involvement with historic burn pits on the Dane County Regional Airport's property (the Darwin and Dane County Burn Pits). The City was named as a potential responsible party for the burn pits in letters sent in June 2018, but, as the ANG had indicated that it would proceed with the site investigation, the City never had the opportunity to contest its involvement with those sites.

Based upon information gathered by the City, the City does not believe that it should be named as a responsible party for the two burn pits, and therefore for the Starkweather Creek contamination. In addition, the City questions whether, in light of the testing results provided to the Department on October 7 showing high levels of PFAS at the Airport's outfalls, whether the burn pits are even the main problem here and if instead the entire Airport and the Truax Air Base should be the focus of the Starkweather investigation.

Darwin Burn Pit

According to Madison Fire Department Chief Steven Davis, the City did not use the Darwin Burn Pit.

As far as the City knows, the City's involvement at the Darwin Burn Pit is attributable solely to this language in the 1989 Army Corps of Engineers report on contamination at Truax Field:

According to Mr. William Skinner, Air National Guard Fire Chief, the area was used for fire-fighter training during the period 1953-1987. It may have been used prior to 1953. It is believed to have been constructed by the DOD. Training exercises were conducted by U.S. Air Force personnel during the 1950's and 1960's, by the Air National Guard, and later by the City of Madison, Dane County, and volunteer fire departments. Mr. William Skinner estimated that fire training took place ten to fifteen times per year. Flammable liquids such as JP-4 jet fuel, kerosene, gasoline, diesel fuel, waste oil, and probably solvents and hydraulic oil were burned. Paints may have also been burned here by the City of Madison. On each day that training occurred, 500 to 1000 gallons or more of liquid were used. It was spilled onto the

ground, ignited, and then extinguished. Several fires were started and extinguished each day. The fuel remaining after training exercises soaked into the ground, evaporated or was carried away by surface run-off. It appears possible that some may have entered the creek 400 feet to the east. The practice was terminated in December 1987.

In response to this statement, in a series of e-mails Chief Davis stated:

I have contacted several "retired" MFD members that would have been on the department and active in training during that timeframe (1953-1987). They do not have recollection of ever burning in the [Darwin Burn Pit] location. Denise went through our training record archives, and have found nothing related to burning on this site....

I contacted a retired MFD District Chief that began with the department in the 1950's. He went out yesterday, and looked at the area in question and was confident the City of Madison did not burn in that area as long as he had been on the job.

The gentleman I spoke with... served the city from 1958 until 1991. He was assigned to the training division in the late 1970's through the mid 80's.

Based upon this information, the City does not believe that there is any basis to hold the City responsible as a user of the Darwin Burn Pit. Mr. Skinner's 1988 statement does not provide any specific details about the City's alleged use of the Darwin Burn Pit for firefighter training, particularly after 1970 (when AFFF was first being used by the Air Force). He says that training exercises were conducted in the 50's and 60's by the Air Force, the ANG, and "later" by the City of Madison, Dane County and volunteer fire departments. Our records and existing witnesses would contest that the City used this site for training exercises, certainly after PFAS containing foam was in use. Hence, the City does not believe that there is any evidence that it contributed to any PFAS contamination at this site and therefore should not be listed as a responsible party for this location.

It is true that the City owned the Airport lands, including the site of the Darwin Burn Pit, from 1948 until selling the Airport to Dane County on December 17, 1974. Should there be any liability for the ANG's PFAS contamination of the burn pit arising during the City's ownership of the Darwin Burn Pit lands from the period of 1970-1974, that could be addressed separately between the City and the County (and ANG). We don't know, for example, when the ANG began using AFFF for training exercises at the burn pit or how often such discharges occurred prior to the sale of the property. Those issues can be better addressed between the parties at a later date, separate from the Department's investigation of the site.

Dane County Burn Pit

According to Chief Davis, the City rarely used the Dane County Burn Pit during its period of operation (from 1988 to roughly the early 2000's). This site included a training facility

built by ANG that was lined and self-contained to recover and treat any materials used. The City's fire training activities during this time primarily occurred elsewhere. Any City use of this burn pit was during training exercises run by Mr. Skinner and the ANG—who controlled and ran the site. In addition, it is believed that other fire companies may have also participated in such trainings.

Of note, this site was the subject of an earlier clean up order in which Dane County, the owner of the lands, was listed as the only responsible party (BRRTS Activity # 02-13-231618). The City was not named a responsible party in that matter. It is unknown, and unexplained, why the City has been named as a responsible party for this site today when its involvement with the site was minimal at best and it was not named as a responsible party in the original site investigation. It is also not known what, if any, investigation the Department conducted to support this determination. If the City is being held responsible for discharges here based upon its limited use of the site, what about other fire companies that participated in training exercises with ANG at the site? It is apparent that the operator of the site was ANG, and Dane County is the owner of the site. Should the City, or other fire companies, have any liability for this site, that can be addressed separately outside of the Starkweather investigation.

Summary

For the reasons noted above, the City does not believe that there is evidence supporting its inclusion as a responsible party for the Starkweather Creek PFAS contamination due to it being named as a potential responsible party for the Darwin and Dane County Burn Pits. The two parties with open site investigations, Dane County and the Wisconsin Air National Guard, are the appropriately named parties—Dane County being the present owner and the ANG being the one who caused the discharges. Indeed, it warrants pointing out that the City has no control over these lands or ability to investigate or remediate the sites. The City is not in a position to follow through on the orders issued.

The City certainly believes that investigating and remediating the sources of the Starkweather Creek PFAS contamination is an important issue. While the City contests its inclusion as a responsible party, the City does believe that it can work with WDNR to try and locate the sources of both surface and ground water contamination in Madison.

Please let me know if there is any additional information that you need from the City.



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cc: Christie Baumel, Rob Phillips, Brynn Bemis, Steven Davis