



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
LANSING



DANIEL EICHINGER
ACTING DIRECTOR

March 1, 2023

VIA EMAIL and U.S. MAIL

Douglas E. Ballotti, Director
Superfund & Emergency Management Division
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard (S-6J)
Chicago, Illinois 60604-3511

Dear Douglas Ballotti:

SUBJECT: Michigan Department of Environment, Great Lakes, and Energy (EGLE) Response to the United States Environmental Protection Agency (USEPA) letters, Response to State of Michigan Comment Letters; Dated September 29, 2022, and December 12, 2022, on the Operable Unit 5 (OU5) Area 4 Removal Work Plan Draft, Revision 1; Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site (Site), Dated January 10, 2023

By way of this correspondence, EGLE formally submits this cover letter and detailed comments (attached) on the subject document for inclusion in the Administrative Record for the Site.

EGLE is in receipt of the USEPA January 10, 2023, letter titled "Response to State of Michigan comment letters dated September 29, 2022, and December 12, 2022, on the OU5 Area 4 Removal Work Plan Draft, Revision 1; Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site" and the attached responses to EGLE's comments. EGLE appreciates the USEPA's continued efforts to coordinate with the State of Michigan on this important work.

EGLE writes this letter to clarify the State's understanding of the USEPA's response¹ regarding applicable or relevant and appropriate requirements (ARARs) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the National Contingency Plan (NCP). EGLE agrees with the USEPA that removal actions must attain identified ARARs "to the extent practicable considering the exigencies of the situation" 40 CFR 300.415. However, EGLE is concerned by the remainder of the language that appears, the USEPA may be suggesting they do not intend to identify and incorporate the State's ARARs into the Area 4, Time Critical Removal Action (TCRA).

The remainder of the comment states,

To date, the USEPA has not identified any State ARARs in relation to the TCRA. Pursuant to 40 CFR 300.525, States are responsible for providing potential State ARARs to the USEPA in a timely manner for all the USEPA-lead removal actions. The USEPA requested that the State identify its ARARs related to the proposed TCRA in June of 2019, and the State did not reply to the USEPA's request until May of 2020, which was after the

¹This comment is found in the comment response Excel document on row 88.

Action Memo (AM) for the TCRA was signed. The USEPA did not review the ARARs submitted by the State for purposes of inclusion in the AM, and for this reason the document was not submitted to NCR for purposes of TCRA implementation, rather the USEPA forwarded the information to NCR for purposes of transparency.

As the USEPA is aware, State and Federal ARARs and To-Be Considered (TBCs) were previously identified on a site-wide basis for the Superfund site and they were approved by the USEPA in December 2008. Additionally, the State has been in regular contact with the USEPA regarding ARARs, including prior to the formal ask in June of 2019 for ARARs for the Area 4 Removal Work Plan. In June 2019, the USEPA formal requests for the State's ARAR provided no specific date for identification of ARARs. The USEPA in emails and communications discussed when it was appropriate for the State to provide ARARs and made it clear that the State submitted ARARs in a timely manner for the Area 4 Removal Work Plan². The March 31, 2020, AM itself states that while the State had not yet formally provided its ARARs, "Any State ARARs identified in a timely manner for this [time critical removal action] will be complied with to the extent practicable." (Action Memo, p 12.) This language in the AM invites identification of ARARs in the future – and that is exactly what happened: Four days after NCR Corporation submitted its first draft of the Removal Work Plan, which included a table with State ARARs, and approximately one month after issuance of the AM, the State on May 5, 2020, formally submitted ARARs to the USEPA. All parties were operating in accordance with the statement in the AM that invited submittal of State ARARs, and all parties continued to do so. Subsequent to this formal submission, the USEPA, the State, and NCR have worked on multiple iterations of the Removal Work Plan and have had extensive discussions regarding State ARARs.

Contrary to the AM and contrary to the actions of the USEPA, the State, and NCR to date, the USEPA's comment in the January 10, 2023, letter states that the USEPA has not yet identified State ARARs for the Area 4 TCRA. EGLE believes this comment may have mistakenly suggested that the USEPA does not believe it must identify and require compliance with State ARARs to the extent practicable consistent with CERCLA and the NCP. Given that the USEPA and the State have been coordinating regarding these ARARs for the past few years prior to even the request for formal identification of ARARs, the State anticipates continuing to work with the USEPA regarding incorporation of State ARARs into the Area 4 removal action, the design for which has not yet been approved.

Specifically, consistent with CERCLA and the NCP, EGLE anticipates that the USEPA will formally document EGLE's submission of ARARs and agree the ARARs identified by the State are ARARs for this removal action. Compliance with these ARARs is not only a CERCLA requirement but is also crucial to implementing the removal action in a way that does not cause significant negative impacts to the natural resources and environment. We remain open and eager to continue discussions of how the actions can be implemented in a way to best meet the identified State ARARs.

We look forward to continuing to coordinate with the USEPA on the Area 4 Removal Work Plan and the Site as a whole.

² More details regarding these exchanges can be provided upon request, including documentary support.

If you have any questions, please contact Daniel Peabody, Environmental Quality Analyst, Remediation and Redevelopment Division at 517-285-3924; PeabodyD@Michigan.gov; or EGLE, P.O, Box 30426, Lansing, Michigan 48909-7926; or you may contact me.

Sincerely,

A handwritten signature in black ink that reads "Mike Neller". The signature is written in a cursive style with a long horizontal flourish at the end.

Mike Neller
Director
Remediation and Redevelopment Division
517-512-5859

Attachment

cc/att: Megan Miller, Michigan Department of Attorney General
Samual Borries, USEPA
Mike Ribordy, USEPA
Sarah Rolfes, USEPA
Paul Ruesch, USEPA
Jim Saric, USEPA
Joan Tanaka, USEPA
Brian Gunderman, Michigan Department of Natural Resources
Mark Mills, Michigan Department of Natural Resources
Jay Wesley, Michigan Department of Natural Resources
David Kline, EGLE
Joseph Walczak, EGLE
Mike Alexander, EGLE
Jim Ferritto, EGLE
Daniel Peabody, EGLE
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