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**VIA ELECTRONIC MAIL**

**February 7, 2024**

Paul Ruesch, On-Scene Coordinator  
U.S. EPA Region 5, Superfund Division  
77 W. Jackson Blvd. (SE-5J)  
Chicago, IL 60604-3590

Re: Allied Paper, Inc. / Portage Creek / Kalamazoo River Superfund Site – OU 5 Area 4 Time-Critical Removal Action

Dear Mr. Ruesch,

I am writing to update EPA on several issues that have the potential to delay the Area 4 time-critical removal action (“TCRA”).

As you know, on August 4, 2023, you sent us a letter that said that “action must be taken *immediately*” (emphasis in original) to address the potential risk of failure of the Trowbridge Dam and mobilization of PCB-containing sediment downstream if the dam were to fail. Your letter directed us to prepare a work plan for what since has become known as “Part 1” of the TCRA and to begin work no later than February 1, 2024.

In response, NCR Voyix submitted the requested work plan, and EPA gave it conditional approval on November 1, 2023. The conditional approval letter requested revisions to the work plan text and submission of construction drawings; NCR Voyix submitted these on November 16, 2023. On December 21, 2023, you sent another letter requesting changes to the drawings, additional changes to the work plan text, and discussions on certain issues. Your letter requested the changes by January 31, 2024. NCR Voyix responded on January 5, 2024, asking for a meeting to discuss several issues on which it needs clarification.

## **Outstanding Issues**

Since EPA has not been available for a meeting since January 5, we describe the status of these and certain other issues here. You and I have discussed some of this status in one-on-one discussions, but I have included the information here for completeness.

**1. Construction start by February 1.** As we discussed in late January, NCR Voyix was prepared to begin construction on February 1 by building necessary access roads; however, the roads are located on land owned by the State of Michigan, which requires a land use permit for access. The State did not issue the land use permit by February 1, and rains in late January made the area unsuitable for construction work. You advised us that EPA did not expect the work to begin until the permit was received and conditions improved to allow work in the area. We ultimately received the permit on February 3, and weather conditions have improved. As a result, we will begin work in the field this week.

**2. Resubmission of drawings and work plan text by February 1.** We exchanged emails on January 26, 2024, and you indicated that EPA was no longer asking for this resubmission by January 31 but instead will convene a meeting to discuss our requested clarifications and then set a date for resubmission afterwards. Your email indicated that EPA would issue a letter confirming this during the week of January 29, but we have not received any further communication. The key issues that need resolution with respect to the work plan drawings and text are:

**a. EPA's direction with respect to comments the State made on the work plan and drawings.** The January 5 letter asked us to "address" the State's comments and "incorporate into" the work plan resubmission; however, we do not know whether EPA wants us to incorporate the comments as if they were EPA's own or, alternatively, evaluate the comments and propose an appropriate resolution to EPA.

**b. Alleged "errors and inconsistencies" in drawings.** The January 5 letter said there were "errors and inconsistencies" in the drawings, but we do not have any list of those alleged errors and inconsistencies.

**c. Beaver Island sediments.** EPA said it does not agree with our conclusion that the sediments in front of Trowbridge Dam and the proposed water control structure ("WCS"), also known as the "Beaver Island sediments," do not warrant removal and can be relocated on site. However, EPA has not directed any action, saying only that NCR Voyix's analysis "needs to be discussed" further. Following the letter, you said you would schedule this discussion, but the meeting has not yet occurred.

**3. Implications (if any) from recent biotoxicity testing.** EPA recently shared with us results from biotoxicity testing that it conducted on sediment in Area 4 that is "non-target" sediment, i.e., sediment with PCB concentrations below the remedial action level of 1 mg/kg. The January 5 letter says that, depending on the test results, EPA may decide to require

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stabilization of these non-target sediments as an additional task in the TCRA. We also understand that the biotoxicity testing may affect EPA's decision on the Beaver Island sediments (Issue 2.c, above). We are waiting for further discussion of this issue with EPA and, ultimately, an EPA decision.

### **Schedule Implications**

We understand that EPA is working to set up meetings and consult internally and with the State regarding these issues, and we appreciate your effort to do that. We also appreciate the direction that the resubmission of the Part 1 work plan and drawings should wait until after we meet to discuss the issues above.

Resolution of these issues remains urgent, however. As you know, we currently are engaged in a procurement process to hire the subcontractor that will conduct the dredging required by the TCRA and build the water control structure. We have issued a request for proposals, and bids are due on February 28, 2024. As we have told you previously, we need to award the contract by late March to stay on schedule.

We need to resolve any issues that have significant potential effects on the scope of work before we award this dredging subcontract to avoid change orders and potential disputes with the new subcontractor. These issues include the fate of the Beaver Island sediments and any changes in the work that may result from the biotoxicity test results. Some of the State's comments would also lead to significant changes to the scope of work, if EPA were to adopt those comments as its own.

As a result, we ask that EPA commit to resolving all these issues by the end of February. If some or all the issues remain outstanding past the end of February, it could delay the award of the subcontract and the continuation of the TCRA construction work.

We remain available to meet to discuss these issues. Please coordinate with me to schedule a meeting, and please feel free to contact me with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bryan Heath", with a long horizontal flourish extending to the right.

Bryan Heath

Cc: John Jolly – GEI Consultants