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December 1, 2014

VIA E-MAIL AND U.S. MAIL

Ms. Tina LePage
Manager
Remedial Projects Section
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix AZ 85007

**RE: West Van Buren Working Group/Response to "Administrative
Completeness" Review of draft Feasibility Study Report**

Dear Ms. LePage:

I am writing on behalf of the West Van Buren (WVB Working Group) in response to your October 24, 2014 letter regarding the Arizona Department of Environmental Quality's (ADEQ's) "Administrative Completeness" review of the WVB Working Group's draft Feasibility Study Report (FS Report). ADEQ has determined that certain specific information is required for ADEQ to accept the FS Report as administratively complete. Each category of information identified by ADEQ and the WVB Working Group's response is set forth below.

Required Information

1. *In accordance with Arizona Administrative Code (A.A.C.) R18-16-407(H), a FS Report shall include an evaluation of several topics regarding each alternative remedy. ADEQ was unable to locate the evaluation of:*
 - a. *A.A.C. R18-16-407(H)(3)(b)(ii): Current and future land and resource use;*
 - i. *There are at least three members of the working group that have not determined if they are, or were, a source of contamination to the groundwater within the WVB WQARF site. Without this information, ADEQ believes that an evaluation of risk addressing current and future land and resource use cannot be completed.*

RESPONSE

The WVB Working Group does not understand the basis for this belief and respectfully notes that the FS Report provides ample information to allow for an evaluation of risk addressing current and future land resource use.

The FS Report thoroughly discusses the comparative analysis of the reference remedy and the more and less aggressive alternative remedies performed in order to select the preferred remedial alternative according to the prescribed comparison criteria in Arizona Administrative Code (A.A.C) R18-16-407(H) (FS Report, Section 7, pgs. 58-71). That comparative analysis includes an evaluation of risk under reasonably foreseeable use scenarios, specifically including current and future land and resource use. The comparative evaluation of risk associated with current and future land and resource use was based on the information obtained by ADEQ and described in the 2012 Land And Water Use Report that was the basis for the West Van Buren Study Area (WVBA) Remedial Objectives (RO's) established by ADEQ in 2012 and also on data developed during the field investigation described in ADEQ's August 2012 Remedial Investigation (RI) Report. In that regard, A.A.C. R18-16-406(E) specifically provides for a site-specific risk evaluation to be conducted to characterize the current risks to public health and the environment from contaminants of concern "using the data developed during the field investigation and information concerning use of land and waters of the state." That evaluation is what the WVB Working Group completed as described in detail in the FS Report.

With ADEQ approval, the FS Report assumes that facility-specific source work, to the extent any is necessary, will be completed under ADEQ guidance separate from the FS and ADEQ has confirmed its intention to continue to work to address any facility sources in the WVBA. In addition to the sources or potential sources identified in the RI Report, the WVB Working Group submitted to ADEQ on August 15, 2014, an extensive database of information for evaluation and investigation by ADEQ regarding other potential sources in the WVBA and surrounding areas. At ADEQ's request, the WVB Working Group has included that information in the FS Report as Appendix F.

To the extent ADEQ believes additional information on Holsum Bakery, Inc., ITT Corporation, Laundry and Cleaners Supply, Inc., or Milum Textile Service Co. is necessary to complete the comparative evaluation of risk, the WVB Working Group disagrees. The absence of facility-specific source information in the FS Report for these four entities does not affect the evaluation of risk associated with current and future land and resource use for the purpose of conducting a comparative evaluation of the reference remedy and the alternative remedies as required by A.A.C. R18-16-407(H). If there is some fact that ADEQ is focused upon that we have not accounted for in this response, please share it with us and we will respond accordingly. Otherwise, the WVB Working Group requests that the ADEQ, in light of the explanation above, accept as complete the evaluation of risk associated with current and future land and resource use as presented in the FS Report.

- b. *A.A.C. R18-16-407(H)(3)(b)(v): Residual risk in the aquifer at the end of remediation; and*

RESPONSE

While it is not required under the Water Quality Assurance Revolving Fund (WQARF), a Human Health Risk Assessment, provided as Appendix D to the FS Report, was conducted for the WVBA on behalf of the WVB Working Group following United States Environmental Protection Agency and ADEQ risk assessment guidance. Under agency guidance documents, the assumptions used in the Human Health Risk Assessment are required to be conservative; in other words, they result in an overestimation of potential health risks.

Because the Human Health Risk Assessment concluded that there are no current health risks to receptors, the reference remedy and alternative remedies were determined to be comparable with respect to addressing current risk. Future risk is a function of either future groundwater use in the WVBA or cessation of aquifer hydraulic control currently created by Roosevelt Irrigation District's (RID's) irrigation pumping within the WVBA. Accordingly, each of the remedial alternatives assumes that RID ceases pumping by 2026. Each remedial alternative includes remedial measures and contingencies to mitigate or eliminate risks associated with future potable water end use.

Declines in the contaminants of concern observed within the regional WVBA plume will continue under current regional pumping conditions based on past trends. Assuming that ongoing source mitigation under ADEQ direction continues, it would expedite these declining contaminant concentration trends.

For these reasons, the WVB Working Group's comparative evaluation of risk associated with the reference remedy and the alternative remedies properly considered any residual risk in the aquifer at the end of remediation (FS Report, Section 7, pgs. 58-59, 61-62, 64-65, and 67). With these explanations, we request that ADEQ accept the FS Report's comparative evaluation of risk as complete. If there is something in ADEQ's analysis that the WVB Working Group has not grasped, please let us know and it will be considered.

- c. *A.A.C. 418-16-407(H)(3)(c): "...Transactional costs necessary to implement the remedial alternative, including the transactional costs of establishing long-term financial mechanisms, such as trust funds, for funding an alternative remedy..."*

RESPONSE

The WVB Working Group has revised the FS Report cost summary (Table 10) to include the following assumptions and transactional costs:

- A Trust will be utilized to manage financial expenditures for remedy construction and operation.
 - The Trust agreement used will be derived from existing model Trust agreements used elsewhere for similar purpose.
 - Adjustments required to model Trust agreement will be limited.
 - \$100,000 will be carried as a one-time "capital" cost in year one for legal expenses for model Trust agreement drafting, modifications, execution, and filing.
 - Money deposited into the Trust account(s) will be invested with a government-insured institution.
 - Compensation to the entity performing investment on behalf of the Trust will be accounted for in the investment return rate in the net present value (NPV) calculations, meaning the 9% investment return (assumed) will be after payment of investment management fees. When investment returns are "corrected" for inflation (3% inflation rate assumed), a net discount rate of 6% annually will be utilized in the NPV calculations.
2. *ADEQ was unable to clearly determine which statutory mechanism the WVBWG's FS Report was submitted under. If the FS Report was submitted for approval pursuant to A.A.C. R18-16-413, the elements of A.A.C. R18-16-413(A) need to be clearly presented in one document. If the FS Report was submitted with a different intent, provide a written explanation as to what are WVBWG's expectations.*

RESPONSE

The WVB Working Group is requesting approval of its FS Report under A.A.C. 418-16-413. The information required to be provided by R18-16-413(A) is as follows:

1. *The name and address of the person submitting the request and nature of the relationship of the person to the site, if any.*

RESPONSE: The names and addresses of the persons who comprise the WVB Working Group are attached as Exhibit A. All such persons either had or have operating facilities located within the WVBA or are key regional stakeholders. In addition, to those persons on Exhibit A, Penn Racquet Sports (HTM Sport GmbH/HEAD Penn USA/HEAD Racquet Sports) also participated in the early stages of the Working Group's effort.

2. *The location and boundaries of the site or portion of the site addressed by the remedial action.*

RESPONSE: The WVBA is located in the western portion of the City of Phoenix, approximately bounded by West McDowell Road to the North, 7th Avenue to the East, West Buckeye Road to the South, and 75th Avenue to the West.

3. *The nature, degree, and extent of the hazardous substance contamination, if known.*

RESPONSE: The nature, degree and extent of the hazardous substance contamination in the WVBA is described in the RI Report and in the Site Conceptual Model prepared using data and information from the RI Report and provided in Appendix A to the FS Report.

4. *A description of any remedial action performed before the request is submitted.*

RESPONSE: A description of the remedial actions performed prior to this request is contained in the RI Report. Additionally, the WVB Working Group is informed that the RID allegedly has conducted or allegedly is conducting what RID believes is an "early response action" within the WVBA. Further, ADEQ is continuing to work with specific facilities in the WVBA with regard to remedial actions to address site-specific source control.

5. *A work plan for any remedial action to be performed after the request is submitted.*

RESPONSE: The requested approval is for the FS Report. There is no work plan for any remedial action to be performed and none is required pending the issuance of the Proposed Remedial Action Plan Report by ADEQ.

6. *A demonstration of how the remedial action complied, or will comply, with this Article.*

RESPONSE: The FS Report describes in detail how it complied with the requirements of A.A.C. R18-16, Article 4.

7. *A proposal for public notice and an opportunity for public comment on the application for approval under this Section. The proposal shall include a list of the names and*

addresses of persons whom the applicant believes to be responsible parties under A.R.S. § 49-283 and a summary of the basis for that belief.

RESPONSE: A copy of the public notice drafted and agreed to by ADEQ and the WVB Working Group to be issued at the commencement of the public comment period is attached as Exhibit B. The WVB Working Group has formed no independent belief as to the identity of responsible parties in the WVBA under A.R.S. § 49-283. The names and addresses of currently known persons who may be responsible parties are described in the RI Report and are further discussed in Section 2 of the FS Report. Additionally, the WVB Working Group submitted an extensive database to ADEQ on August 15, 2014 (now included with the revised FS Report as Appendix F) with information on potential sources in or near the WVBA. The WVB Working Group reserves the right to identify additional persons who may be responsible parties in the future.

8. *An agreement in which the person requesting the approval agrees:*
 - a. *To grant access to the Department as necessary to evaluate the request for approval.*
 - b. *To reimburse the Department for the Department's costs under subsection (G).*

RESPONSE: The WVB Working Group and ADEQ entered into a Working Agreement effective January 15, 2013.

9. *An original seal imprint and signature of a registered professional if required by the Arizona Board of Technical Registrations under A.R.S. Title 32, Chapter 1 and the rules under that Chapter.*

RESPONSE: The FS Report is signed and sealed by an Arizona registered professional.

Recommendations

The suggestion below is not required by State law and there are no legal consequences should the WVBWG choose to disregard it; however, ADEQ asks the WVBWG to consider the following:

1. *Although the United States Environmental Protection Agency has employed an informal policy of capping Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) remedial action costs at 30 or 50 years, ADEQ strongly recommends that the WVBWG perform a cost evaluation that is based on the amount of time needed to reach numeric water quality standards as opposed to the subjective 30 or 50 years timeframe.*

Ms. Tina LePage
December 1, 2014
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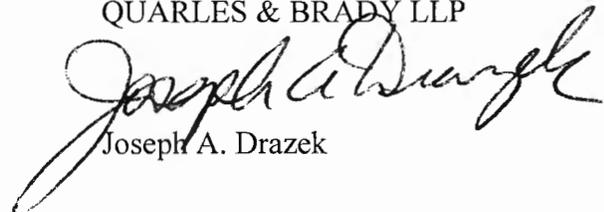
RESPONSE

To the extent that ADEQ is suggesting that WQARF requires all remedies to achieve restoration of all points within the aquifer itself to drinking water standards, that suggestion is incorrect. Aquifer restoration was a presumption contained in the original CERCLA National Contingency Plan that has proven to be infeasible or cost-ineffective in practice. WQARF was reformed in part to ensure that WQARF remedies did not repeat the errors of CERCLA. Arizona Revised Statute § 49-282.06(D), for instance, specifically provides that all WQARF remedies need not require restoration of all aquifers to drinking water standards, without regard to actual and foreseeable uses of the impacted aquifer. Accordingly, the WVB Working Group is not addressing this recommendation.

As requested by ADEQ, the WVB Working Group is providing a revised FS Report that addresses, where necessary, the issues discussed in this letter.

Sincerely,

QUARLES & BRADY LLP



Joseph A. Drazek

cc: Ms. Danielle Taber (via email and U.S. Mail, w/attachments)
Mr. Henry R. Darwin (via email, w/attachments)
Mr. Laura Malone (via email, w/attachments)
Mr. Anthony Young (via email, w/attachments)
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PUBLIC NOTICE

**NOTICE OF AVAILABILITY AND 30 DAY COMMENT PERIOD
WEST VAN BUREN
WATER QUALITY ASSURANCE REVOLVING FUND (WQARF) SITE
FEASIBILITY STUDY (FS)**

The Arizona Department of Environmental Quality (ADEQ) has received from the West Van Buren Working Group a feasibility study (FS) report for the West Van Buren Water Quality Assurance Revolving Fund (WQARF) site in Phoenix, Arizona. An FS is conducted to identify a reference remedy and alternative remedies that appear to be capable of achieving established remedial objectives and to evaluate them based on the comparison criteria to select a remedy.

The West Van Buren WQARF site consists of a plume located in Phoenix. The plume is bounded approximately by West McDowell Road to the north, West Lower buckeye Road to the south, 7th Avenue to the east, and 75th Avenue to the west. In addition, a separate, a finger shaped plume exists from approximately West Buckeye Road and South 41st Avenue to West Watkins Street and South 11th Avenue. Contaminants of concern at the site are tetrachloroethene (PCE), trichloroethene (TCE), 1,1,1-trichloroethane (1,1,1-TCA), 1,1-dichloroethane (1,1-DCA), *cis*-1,2-dichloroethene (*cis*-1,2-DCE), 1,1-dichloroethene (1,1-DCE), and chromium.

The FS report is available online at:

- 1) http://www.azdeq.gov/environ/waste/sps/West_Van_Buren.html

The link to the WVB Regional Remedy Evaluation is located on the top left, the reports are located towards the bottom of the page titled Draft Feasibility Study (July 2014).

Copies are also available at the ADEQ Records Center, 1110 W. Washington St., Phoenix, (602) 771-4380, or (800) 234-5677, ext. 6022345677; please call for hours of operation and to schedule an appointment.

PARTIES WISHING TO SUBMIT WRITTEN COMMENTS regarding the FS report for the West Van Buren site may do so to ADEQ, Attention: Danielle Taber, Waste Programs Division, 1110 W. Washington St., Phoenix, AZ 85007 or taber.danielle@azdeq.gov and reference this listing. **Comments must be postmarked or received by ADEQ no later than 5 p.m. on Wednesday, December 31, 2014.**

Persons with disabilities may request a reasonable accommodation by calling (602) 771-4189, or (800) 234-5677, ext. 6027714189.

Dated this 2 day of December, 2014
Danielle Taber, ADEQ Project Manager

Si desea esta información en Español, por favor llame al (602) 771-4189 ó sin tarifa al (800) 234-5677 y marque el número 2 para Español.