



October 10, 2024

Sent via E-mail

File Ref: FID # 816009810
Douglas County

Beazer East, Inc.
c/o Three Rivers Management, Inc. (Agent for Beazer East, Inc.)
600 River Avenue, Suite 200
Pittsburgh, PA 15212
Attn: Jane Patarcity, Senior Environmental Manager

TRP Properties, LLC
12390 I Street
Omaha, NE 68137
Attn: Terry Peterson

Subject: Preliminary Determination, Renewal of Long-Term Care License #03157
Koppers Inc./Beazer East, Inc., EPA ID #WID006179463

Dear Ms. Patarcity and Mr. Peterson:

The Wisconsin Department of Natural Resources (department) has completed its review of the long-term care (LTC) license application submittals from Beazer East, Inc. (Beazer) for the site referred to as the Former Koppers Inc./Beazer East, Inc. site, located in the Town of Superior, Wisconsin. The application submittal consisted of the following: a document dated October 10, 2022, titled "Wisconsin Long-Term Care License Renewal Application," prepared by Field & Technical Services, LLC (FTS); Beazer's transmittal letter dated October 10, 2022; and Beazer's letter dated July 31, 2023, which provided additional information. The application submittal also discussed corrective action (CA) activities.

The department has preliminarily determined that the application is sufficient to issue a renewed long-term care license for a 10-year period. The preliminary determination and conditions of approval are attached to this letter.

The department will distribute and publish a public notice, and accept public comments, on the preliminary determination as described in s. NR 670.410, Wis. Adm. Code. Comments will be received for 45 days following the publication of a public notice on the department's website at: <http://dnr.wi.gov/topic/Waste/Comment.html> (under the tab titled "Hazardous Waste"). The department will distribute copies of the public notice to entities identified in s. NR 670.410(3)(a), Wis. Adm. Code. The public notice will also be published in the Wisconsin State Journal and a local newspaper. In addition, an announcement of the opportunity for public comment will be broadcast over a local radio station. You will be informed when the public notice period begins.

The public notice will announce that the administrative record, the preliminary determination, and the fact sheet are available for review. The notice will state that the department will receive comments within 45 days of issuance of the public notice and will specify this date. After the public comment period ends, the department will consider all comments received during the public comment period before issuing a final determination. Any comments received during the public comment period will also be reviewed to determine if there is significant

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public interest in this project to warrant an informational hearing under s. 289.26, Wis. Stats. or s. NR 670.412, Wis. Adm. Code.

Please note that this is a preliminary determination and is subject to change based on comments and additional information received by the department. If you have any questions regarding the attached documents, please contact Doug Coenen at douglas.coenen@wisconsin.gov or 608-843-2160.

Sincerely,



Andrea Keller, Section Manager
Hazardous Waste Prevention & Management Section
Waste and Materials Management Program



Douglas W. Coenen, Waste Management Engineer
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**PRELIMINARY DETERMINATION
LONG-TERM CARE LICENSE RENEWAL
KOPPERS INC./BEAZER EAST, INC., EPA ID #WID006179463**

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GENERAL INFORMATION

Points of Contact

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600 River Avenue, Suite 200
Pittsburgh, PA 15212
Attn: Jane Patarcity, Senior Environmental Manager

TRP Properties, LLC (TRP)
12390 I Street
Omaha, NE 68137
Attn: Terry Peterson

Licensee(s)

Beazer East, Inc. (Operator)
TRP Properties, LLC (Owner)

Site Location

The 112-acre site is located in northwestern Wisconsin, approximately five miles southeast of the City of Superior, WI. The site is located near the junction of County Roads A and Z, at 92°04'10.70"W longitude and 46°38'47.91"N latitude, in Section 12 of T48N, R14W, Town of Superior, Douglas County, WI. The physical address for the site is 3185 County Road A, Superior, Wisconsin.

Background Information

According to the application documents, the National Lumber and Creosote Company began wood treating operations at the site in 1928. Railroad cross ties, bridge timbers, switch ties, and crossing panels were pressure-treated primarily with creosote. In 1938, the Wood Preserving Corporation purchased the site and maintained similar wood treating operations. On November 1, 1944, the deed for the site property was transferred to Koppers Company, Inc. In addition to creosote, pentachlorophenol was reportedly used at the site from 1955 through 1979. In June 1988, BNS Acquisitions, Inc. (a wholly owned subsidiary of Beazer PLC) acquired 90 percent of the stock of Koppers Company, Inc. On December 28, 1988, the site was sold to Koppers Industries, Inc., and on January 26, 1989, the name Koppers Company Inc. was changed to Beazer Materials and Services, Inc. On April 16, 1990, the name Beazer Materials and Services, Inc. was changed to Beazer East, Inc. The name Koppers Industries, Inc. was changed to Koppers Inc. (Koppers) in February 2003. Koppers discontinued all wood treating operations at the site in 2006. The former process facilities were subsequently dismantled and removed from the site by Koppers.

According to the application documents, Koppers sold the property to TRP Properties, LLC in September 2012. The site is currently used as a railroad tie grinding facility with Koppers leasing portions of the property for storage and transfer of untreated railroad ties.

The site contains hazardous waste surface impoundments that received hazardous waste (including waste code K001) after July 26, 1982, and that were certified for closure (non-clean) after January 26, 1983. Therefore, the site's owner(s) and operator(s) must comply with long-term care standards in accordance with s. NR 664.0228(2),

Wis. Adm. Code, and must have a long-term care license in accordance with s. NR 670.001(3), Wis. Adm. Code. In addition, the site involves multiple on-property solid waste management units (SWMUs) and an off-property area of concern that requires corrective action under subch. F of ch. NR 664, Wis. Adm. Code.

The application documents indicate that Beazer retains certain environmental responsibilities at the site, including monitoring and maintenance associated with the closed surface impoundment units, and certain corrective action requirements. The application documents assert that Beazer does not control, and/or have responsibility for, certain on-property areas and therefore cannot address in its license application long-term care and corrective action activities associated with those parts of the site. Examples cited include a closed “90-day” drip pad last operated by a separate entity (understood by the department to be now known as Koppers, Inc.), and other portions of the site currently used by TRP or its tenant(s). As such, the owner of the site, TRP, is also being included as a licensee.

Regulatory Framework

NR 664 Long-Term Care

Section NR 664.0228(2), Wis. Adm. Code, requires if a surface impoundment is closed with waste residues or contaminated materials left in place, all long-term care requirements contained in ss. NR 664.0117 to 664.0120, Wis. Adm. Code, be met. This includes maintenance and monitoring throughout the long-term care period in accordance with a long-term care license issued under ch. NR 670, Wis. Adm. Code. Per s. NR 664.0117(1), Wis. Adm. Code, long-term care must continue for a minimum of 40 years after closure, and long-term care responsibilities continue in perpetuity. Financial assurance for long-term care must be established in accordance with subch. H of NR 664, Wis. Adm. Code.

NR 664 Corrective Action

Sections NR 664.0100 and NR 664.0101, Wis. Adm. Code, require corrective actions and financial assurance when releases of hazardous waste or hazardous waste constituents from the regulated unit(s) or Solid Waste Management Units (SWMUs) have occurred. Corrective action financial assurance requirements are typically specified in the license issued under ch. NR 670, Wis. Adm. Code.

NR 670 Licensing

Chapter NR 670, Wis. Adm. Code, establishes licensing requirements and procedures for hazardous waste facilities, including facilities in long-term care.

NR 700-Series Investigation and Remediation of Environmental Contamination

In general, the site investigation and remediation requirements under Wisconsin Administrative Code chapters NR 700 through 799 (the NR 700-series) are applied to facilities with corrective action obligations, consistent with the November 21, 2006 “One Cleanup Program Memorandum of Agreement Between the United States Environmental Protection Agency Region 5 and the Wisconsin Department of Natural Resources.” The Memorandum provides that “Wisconsin provides a single, consolidated approach to the cleanup of a wide range of types of sites through its NR 700 rules, rather than utilizing a range of separate programs with conflicting approaches and cleanup standards.” Sections IV(A)(1)b. and c. of the Memorandum further specify that “the WDNR’s RR program is responsible for implementing the state’s portion of the...RCRA Subtitle C Corrective Action Program” and “the WDNR intends to use, as appropriate, the ch. NR 700 series, Wis. Adm. Code process for implementation of requirements at sites that may also be subject to RCRA Subtitle C Corrective Action Program...”

The NR 700-series of regulations establish requirements for the notification, investigation, and remediation of hazardous substance discharges. The facility as a whole is currently the subject of two open environmental remediation cases regulated by the Remediation and Redevelopment (RR) program:

- 02-16-000484, which addresses on- and off-property corrective action work.
- 02-16-585874, which addresses the drip pad area.

Long-Term Care License Renewal

In a letter dated December 21, 1990, the department issued long-term care license number 03046 for a closed surface impoundment facility, to Koppers Industries Inc/Beazer East Inc, with an effective date of December 20, 1990, and an expiration date of September 30, 1992; this letter required a renewal application by June 30, 1992, and discussed renewal for two-year periods until the end of the 30-year long-term care period. According to available department files, a renewal application was never submitted or acted upon.

The department's file also contains a copy of long-term care license number 03157 for hazardous waste disposal issued to Koppers Industries Inc., with an effective date of December 21, 1990, and an expiration date of September 30, 2020 (a copy of which was provided by Beazer in its June 17, 2020, letter). After communications with Beazer, it was determined that license number 03157 would be the subject of the current license renewal in order to avoid having multiple license numbers.

On August 18, 2020, the department sent a letter to Beazer indicating that the applicable requirements of chs. 289 and 291, Wis. Stats., and chs. NR 600 through 673, Wis. Adm. Code, would continue to be effective after any license expiration date pending the license renewal process, per s. NR 670.051, Wis. Adm. Code.

On December 19, 2019, the department initiated a hazardous waste compliance assessment of the facility. After extensive information exchanges with Beazer, the department issued a compliance assessment conditional close-out letter dated May 5, 2021, conditioned on submittal of a long-term care license renewal application.

On November 1, 2021, Beazer submitted a long-term care license renewal application. After the department issued a notice of incompleteness to Beazer and TRP on May 10, 2021, Beazer submitted a revised long-term care license renewal application on October 10, 2022. In a letter to Beazer and TRP dated May 1, 2023, the department requested additional information, which Beazer provided on July 31, 2023.

TRP provided the department with a copy of a certification statement dated March 28, 2023, which confirmed TRP's ownership of the facility, and stated that TRP did not conduct, supervise, direct, or control the work involved in preparing Beazer's application.

This determination provides for the issuance of a long-term care license for a 10-year term.

Preparedness and Prevention Waiver Request

Section 4.2 of Beazer's October 10, 2022, application stated, "[t]here is no possibility of fire, explosion, or sudden or non-sudden release of hazardous waste or hazardous waste constituents from the closed RCRA-regulated unit that would constitute a threat to human health and the environment" and further requested a waiver from the preparedness and prevention requirements. Section NR 670.014(2)(f), Wis. Adm. Code, allows for the application to include "a justification of any request for a waiver of the preparedness and prevention requirements of subch. C of ch. NR 664." The application bases the waiver request on the following claims:

- Previous removal of wastes.

- Previous removal of visibly contaminated soils from the surface impoundments and remaining low-permeability soils in this area.
- Continued inspection, maintenance, and monitoring of the closed unit.

With this approval, the department is not granting a waiver for the facility from the preparedness and prevention requirements of subch. C of ch. NR 664, Wis. Adm. Code. These facility requirements continue to apply and must be met at least until long-term care and corrective action is no longer required, based in part because hazardous waste and hazardous waste residues remain.

Request to Cease Groundwater Monitoring

As part of the Response to Comment No. 9 in its July 31, 2023 submittal, Beazer requested that the subch. F of ch. NR 664, Wis. Adm. Code, groundwater monitoring requirements for the closed RCRA regulated unit be replaced by the department with “the alternative requirement that ceases continued groundwater monitoring.” Beazer has provided no technical support or rationale for its request. Rather, it only discussed the department’s authority to approve alternative monitoring requirements. The department does not approve Beazer’s request at this time.

The department also notes that U.S. EPA’s December 15, 2016, memorandum “Guidelines for Evaluating the Post-Closure Care Period for Hazardous Waste Disposal Facilities under Subtitle C of RCRA¹,” discusses considerations related to the duration of groundwater monitoring. For example, on page 4, EPA states that, “continued monitoring and maintenance activities may be appropriate unless or until it can be demonstrated that site-specific conditions adequately minimize the risk that contaminants will migrate from the unit (e.g., site geology/hydrogeology) or that, in the event the engineering controls fail, a release would not pose an unacceptable risk to human health and the environment”.

In addition, Beazer’s June 20, 2024, First Semi-Annual 2024 RCRA Groundwater Monitoring Results Report states that “...the groundwater standard exceedances should continue to be viewed in light of the ongoing Site-wide RCRA corrective action program and the approved natural attenuation remedy for groundwater. Therefore, in reviewing the first semi-annual 2024 data in reference to ss. NR 140.24 and NR 140.26, Wis. Adm. Code, no additional action beyond continued monitoring is necessary.” The department agrees with this conclusion that continued monitoring is necessary and requires that groundwater monitoring continue.

The Licensee(s) may seek modifications to the monitoring plan by making a license modification request that includes detailed supportive information (such as the demonstration discussed on page 4 of the cited EPA guidance).

Corrective Action Background

General

Sections NR 664.0100 and NR 662.0101, Wis. Adm. Code, require corrective actions and financial assurance when releases of hazardous waste or hazardous waste constituents from the regulated unit(s) or Solid Waste

¹ [Memorandum](https://www.epa.gov/sites/default/files/2017-01/documents/pcc_guidance_508_withdateandletterhead.pdf) can be found at: https://www.epa.gov/sites/default/files/2017-01/documents/pcc_guidance_508_withdateandletterhead.pdf.

Management Units (SWMUs) have occurred. The on-property units subject to corrective action were summarized in Beazer's long-term care license renewal application:

“During the RFA conducted in 1987/1988, the USEPA identified fourteen SWMUs at the Site. Several of the former SWMUs were grouped by the USEPA into six (6) potential source areas (Areas A through F). Two additional areas, Areas G and H, were not included in the RFA, but were later added to the USEPA's list by Koppers Company, Inc. and Beazer, respectively. The former spray irrigation field was investigated as part of the 1987/1988 RFA, however; the USEPA recommended no further action at that time. Additional investigation of soil quality within the former sprayfield was completed during the Phase III RFI and the area was later added as an area of potential concern and referred to as Area S.”

The application went on to say:

“Table 2-1 provides a summary of the former SWMUs/potential source areas at the Site managed by Beazer, and does not relate in any way to any solid waste units managed by and/or activities conducted by TRP (the current property owner) and Koppers, including, but not limited to, those activities related to the drip pad at the Site regulated under 40 CFR Subpart W. The locations of these former SWMUs/potential source areas managed by Beazer are depicted on Figure 2-2.”

The following summarizes the corrective action source area information presented in Table 2-1 of the application:

Area A: SWMU 1; Former Unlined Landfarm/Landfill
Area B: SWMUs 2, 3, 4, 5, 6 and 7; Treatment Area
Area C: SWMUs 8 and 9; Closed Surface Impoundments (Non-RCRA)
Area D: SWMW 10; Outfall No. 001
Area E: SWMU 11; Outfall No. 004
Area F: SWMUs 12, 13 and 14; Drip Track
Area G: SWMU not identified during initial RFA: Pentachlorophenol Straw Bales
Area H: SWMU not identified during initial RFA: Lead Track Landfill
Area S: SWMU not identified during initial RFA: Spray Irrigation Field

The application also considers the licensed, closed hazardous waste surface impoundments, which are SWMUs and regulated units also subject to long-term care.

In addition, there is off-property corrective action required. On-property and off-property remediation is the subject of BRRTS Activity 02-16-000484. More detailed information regarding corrective action for Area F, the Drip Track area, and the off-property area of concern is provided below.

Drip Track and Drip Pad Area

In general, the drip track area was used to allow treated wood (such as railroad ties) to drip and dry after treatment with liquid preservative. Reports (such as the June 6, 1991, Phase II RCRA Facility Investigations Report of Findings) indicate that the types of materials stored, disposed, or spilled in Area F were creosote, pentachlorophenol, and number 6 fuel oil.

After RCRA Subpart W regulations took effect in or around 1990, the facility continued to operate a RCRA-regulated drip pad within a portion of the Area F drip track area. The term “drip pad” as used below refers only to this smaller, RCRA-regulated area. Records indicate that the drip pad operated as a “90-day generator unit” not subject to facility licensing requirements, though subject to the requirements of Subpart W of ch. 665, Wis. Adm. Code (see, for example, the department's letter to Koppers, Inc. dated June 28, 2007, and e-mail dated Jan. 24,

2019, from KU Resources to the department). The drip pad is no longer in operation; drip pad decommissioning occurred in 2006 (see January 2019 report from KU Resources, titled “RCRA Subpart W Drip Pad Closure Demonstration Report”).

As a former 90-day generator unit, the drip pad must be closed in accordance with ss. NR 662.017(1)(h) and NR 665.0445, Wis. Adm. Code, and if contamination remains, is subject to long-term care in accordance with the requirements that apply to landfills.

Beazer is responsible for long-term care requirements stemming from its operation of licensed hazardous waste surface impoundments, and has managed both on-property and off-property corrective action work. However, Beazer has stated that it has not had responsibility for activities associated with the “Subpart W drip pad” after it sold the property in 1988. In comments to the department dated February 15, 2024, Beazer asserted, “The Subpart W drip pad was installed after 1988, the year Beazer stopped operating at the property and sold the property to Koppers.” In comments dated June 28, 2024, Beazer expressed concern about draft license conditions that assigned requirements related to the drip pad unit that Beazer never owned or operated. In response to this concern, specific references to the drip pad have been removed from the approval conditions.

The facility owner, TRP Properties, LLC, is also named as a Licensee to address regulatory obligations in areas of the facility for which Beazer may not have direct contractual responsibility or authority.

Off-Property Corrective Action

Previous investigations since 1996 have indicated the presence of wood-treating-related compounds within and adjacent to a downgradient ditch/tributary and creek on nearby properties.

A focused feasibility report dated September, 2022 by CH2MHill, Anchor QEA, and Arcadis discussed a conceptual site model for off-property contamination, including a summary for each of the Sub-Areas 1-4 within the channel and floodplain areas of the tributary downstream of the facility to Crawford Creek, and Crawford Creek. Contamination in some or all of these sub-areas was reported to include polycyclic aromatic hydrocarbons (PAHs), dioxins/furans, nonaqueous phase liquid (NAPL) indicators, black-stained layering with elevated constituent of concern (COC) concentrations, and surface water sheens/blebs. The total size of these combined sub-areas was reported to be approximately 45 acres along 9,500 lineal feet of tributary/creek flow path.

Beazer has requested funding assistance for continuing investigative and remedial studies from USEPA’s Great Lakes National Program Office (GLNPO).

FINDINGS OF FACT

The department finds that:

1. TRP Properties, LLC, currently owns the facility located in Sections 12 and 13 of T48N, R14W, Town of Superior, Douglas County, WI, with the physical address for the site at 3185 County Road A, Superior, Wisconsin. The site has been used for the generation, handling, storage, and disposal of hazardous wastes associated with wood treatment operations.
2. Other entities that have owned and/or operated the facility include Koppers, Inc. and Beazer East, Inc., and/or their corporate predecessors.

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3. On August 18, 1980, the facility submitted to the Environmental Protection Agency (EPA) a Resource Conservation and Recovery Act (RCRA) notification form informing EPA of hazardous waste activities at the facility.
4. November 18, 1980, the owner submitted a RCRA Part A application to obtain interim status to handle hazardous waste in their surface impoundments and container storage area.
5. On April 1, 1985, the department granted the owner an interim license under ch. NR 181, Wis. Adm. Code, (which was later renumbered to the NR-600 series) for two surface impoundments and a container storage unit.
6. On September 5, 1986, the owner withdrew the feasibility report for the surface impoundments and on September 23, 1986, notified the department of their intent to close the surface impoundments.
7. On October 1, 1987, the department issued an approval of the facility's closure and long-term care plan regarding the licensed surface impoundments. The department's files indicate that the department issued approvals for modifications to the approved plan on at least the following dates: July 19, 1988; September 28, 1993; May 16, 1995; September 20, 1995; October 24, 1996; and July 29, 2002.
8. On September 27, 1988, the department issued hazardous waste container storage license number 03157 to Koppers Co, Inc. for a one-year period. This license was renewed with an effective date of October 1, 1989 for two-year period.
9. On September 30, 1988, EPA issued a RCRA Corrective Action permit to the facility.
10. In a letter dated December 21, 1990, the department issued long-term care license number 03046 for a closed surface impoundment facility to Koppers Industries Inc/Beazer East Inc, with an effective date of December 20, 1990, and an expiration date of September 30, 1992; this letter required a renewal application by June 30, 1992, and discussed renewal for two-year periods until the end of the 30-year long-term care period. The department's file also contains a copy of long-term care license number 03157 issued to Koppers Industries Inc. with an effective date of December 21, 1990, and an expiration date of September 30, 2020 (a copy of which was provided by Beazer in its June 17, 2020, letter).
11. On August 3, 1990, the department conditionally approved the closure of the surface impoundments and the storage unit with a finding that, "[h]azardous waste and/or hazardous waste residue are being left in place at the Surface Impoundment closure area. Waste left in place constitutes closure of a hazardous waste landfill. This necessitates the need for long term care, groundwater monitoring and continued financial responsibility."
12. Since 1981, various reports and correspondence were developed by the facility that identified releases from multiple solid waste management units at the facility, with resultant on-site and off-site property contamination. These releases triggered corrective action obligations under state and federal hazardous waste regulations. Site investigation and remediation activities required under ch. 292, Wis. Stats., and the NR 700-series regulations are documented in these reports and correspondence. During this period, the department's RR Program also issued letters regarding these subjects. Many of the key documents regarding corrective action are located on the department's Bureau for Remediation and Redevelopment Tracking System (BRRTS) database. Public access to the BRRTS database is available through the internet by navigating to <https://apps.dnr.wi.gov/botw/> and entering the BRRTS activity numbers 02-16-000484 and 02-16-585874.
13. On September 20, 1995, the department issued a conditional modification approval regarding the closure and long-term care plan that also established conditions regarding corrective action.

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14. On October 24, 1996, the department issued a conditional modification approval regarding the closure and long-term care plan that also established conditions regarding corrective action.
15. On July 29, 2002, the department issued a conditional modification approval regarding the groundwater monitoring sampling and analysis activities.
16. On October 18, 2017, the facility submitted a RCRA Subtitle C Site Identification Form (EPA Form 8700-12) indicating that TRP Properties, LLC became the facility owner on September 7, 2012.
17. On November 18, 2014, the department's RR program approved a natural attenuation remedy for on-property groundwater remediation, and affirmed the need for continued groundwater monitoring under hazardous waste requirements.
18. On August 18, 2020, the department informed Beazer of its licensee responsibilities.
19. On September 17, 2020, the department informed TRP of its licensee responsibilities.
20. On May 5, 2021, the department issued a conditional close-out letter regarding a compliance assessment, which was conditioned on Beazer submitting a long-term care license renewal application.
21. On November 11, 2021, Beazer submitted a long-term care license application.
22. On May 10, 2022, the department issued a notice of incompleteness to Beazer and TRP regarding the November 11, 2021, long-term care license application.
23. On October 10, 2022, Beazer submitted a modified long-term care license application.
24. On March 28, 2023, TRP developed a certification statement acknowledging its ownership of the facility and indicating no involvement in the development of Beazer's long-term care license application.
25. On May 5, 2023, the department requested additional information from Beazer and TRP regarding the October 10, 2022, long-term care license application.
26. On July 31, 2023, Beazer submitted a response to department's May 5, 2023, request for additional information, including revisions to its long-term care license application.
27. On December 15, 2023, the department provided a draft conditional approval letter to TRP and Beazer for review and comment.
 - a. Beazer provided comments to the department on February 15, 2024. The department responded to Beazer's comments on April 12, 2024.
 - b. Beazer provided further comments on June 28, 2024. The department addressed Beazer's June 28th, 2024, comments in a memo to file dated October 9, 2024.
 - c. TRP provided no comments.
 - d. All of Beazer's comments were considered in developing this preliminary determination.
30. The department intends to distribute and publish a public notice for this preliminary determination in the manner required by s. NR 670.410(3), Wis. Adm. Code.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the department concludes that:

1. The department promulgated chs. NR 660 through 679, Wis. Adm. Code, establishing minimum requirements for hazardous waste management under the authority of chs. 289 and 291, Wis. Stats.
2. Pursuant to ss. 289.31 and 291.25, Wis. Stats., no person may operate a hazardous waste facility unless the person obtains an operating license from the department.
3. The department has the authority pursuant to s. 670.032(2)(b), Wis. Adm. Code, to establish license conditions as the department determines necessary to protect human health and the environment.
4. The conditions of approval set forth below are necessary to ensure compliance with chs. NR 660 through 679, Wis. Adm. Code, and to protect human health and the environment.
5. Section 291.37, Wis. Stats., and ch. NR 664, Subch. F, Wis. Adm. Code, authorize the department to require corrective action when a release has occurred from a solid waste management unit at a facility.
6. Section 664.0101(3), Wis. Adm. Code, requires that Licensee(s) implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment.
7. Chapter 292, Wis. Stats., and chs. NR 700 – 799, Wis. Adm. Code, establish requirements for the notification, investigation, and remediation of hazardous substance discharges.
8. The requirements in ch. 292, Wis. Stats., and chs. NR 700- 799, Wis. Adm. Code, apply to facilities with corrective action obligations, consistent with the November 21, 2006 “One Cleanup Program Memorandum of Agreement Between the United States Environmental Protection Agency Region 5 and the Wisconsin Department of Natural Resources.”
9. A separate environmental analysis is not needed, as this Approval is an integrated analysis action, pursuant to s. NR 150.20(2)(a)7s., Wis. Adm. Code.

PRELIMINARY DETERMINATION

Based on these Findings of Fact and Conclusions of Law, the department hereby conditionally *proposes to* approve the document titled “WISCONSIN LONG-TERM CARE LICENSE RENEWAL APPLICATION,” dated October 10, 2022, prepared by Field and Technical Services, LLC, and submitted with a transmittal letter from Beazer East, Inc. dated October 10, 2022, and as amended by Appendix G’s cover sheets and the cost estimate table in Appendix H in Attachment 1, in Beazer’s submittal dated July 31, 2023, (“Application”), subject to the following conditions:

General Conditions

1. The facility shall comply with the terms of the Application, the requirements of chs. 289 and 291, Wis. Stats., chs. NR 660 to 679, Wis. Adm. Code (unless an alternative to a specific requirement is identified in this Approval), and the conditions of this Approval. The Application and these conditions are made a part of the

long-term care license issued for the facility. The Approval conditions, Wisconsin Statutes and the Wisconsin Administrative Code shall take precedence over any less stringent provisions contained within the Application. "Approval" means this *final* determination for the renewal of Long-Term Care License #03157 dated *[Insert Date of final determination]*, and any modifications approved by the department.

2. Nothing in this conditional Approval shall relieve Licensee(s) of the legal obligation to comply with applicable federal, state, and local regulatory requirements.
3. Licensee(s) shall promptly inform the department if Licensee(s) becomes aware of any incorrect information in the license application or error during the license issuance process to disclose fully all relevant facts, or a misrepresentation of any relevant facts at any time.
4. Licensee(s) shall comply with the requirements of all previous approval requirements, unless explicitly established otherwise in these conditions or unless otherwise approved through a license modification under Subch. D. of ch. NR 670, Wis. Adm. Code.
5. The conditions applicable to all operating licenses set out in s. NR 670.030, Wis. Adm. Code, are hereby incorporated by reference and made a part of this Approval and of any operating licenses and other approvals which may be issued for the facility. The following additional conditions augment the referenced conditions in s. NR 670.030, Wis. Adm. Code, and also apply and are made part of this Approval.
 - a. Regarding, and in addition to the requirements in s. NR 670.030(5), Wis. Adm. Code: Proper operation and maintenance shall also include effective and accurate inspections, timely and effective actions to correct deficiencies, effective training, and supervision of all personnel that direct or support operational workers, effective contingency planning, and effective emergency response.
 - b. Regarding, and in addition to the requirements in s. NR 670.030(11), Wis. Adm. Code: All reports submitted by Licensee(s) pursuant to chs. NR 664 or NR 670, Wis. Adm. Code, or this Approval and its conditions shall be certified in the manner described in s. NR 670.011, Wis. Adm. Code. All submittals containing technical data, such as engineering computations, analyses and studies, design drawings, and design specifications, and similar documents involving the technical application of engineering knowledge or principals shall be certified by a qualified professional engineer.
 - c. Regarding, and in addition to the requirements in s. NR 670.030(12)(j), Wis. Adm. Code: Licensee(s) shall report all instances of noncompliance with the requirements of chs. NR 600 - 679, Wis. Adm. Code and this Approval not otherwise reported under ss. NR 670.030(12)(d), (e) and (f), Wis. Adm. Code. The report shall be provided in writing or via e-mail to the department's designated inspector and the department's designated hazardous waste plan review staff person no later than 15 days after Licensee(s) becomes aware of the noncompliance.
 - d. Regarding, and in addition to the requirements in s. NR 670.030(12)(k), Wis. Adm. Code: If a Licensee becomes aware that there was a failure to disclose relevant facts in any reports, plans, or other documents submitted, or that incorrect information was submitted to the department, Licensee(s) shall promptly notify the department of such facts and/or correct information and of its plans to cease or modify its operations or activities as may be appropriate. If the facts or information affect the Application or this Approval, Licensee(s) shall promptly submit a license modification request under s. NR 670.042, Wis. Adm. Code, but no later than 30 days after becoming aware of the issue.
6. If any provision in the Application is inconsistent with another provision in the Application, Licensee(s) shall conform to each provision or obtain approval of a license modification to clarify the provision(s). If the provisions are contradictory, Licensee(s) shall conform to the more stringent provision, as judged by the department.

7. Licensee(s) shall operate the facility in a manner that prevents discharges or emissions from the facility from negatively impacting the safety of the facility, the health and safety of personnel at or near the facility, and the environment.
8. Use of the facility's property shall be restricted to prevent disturbance of the integrity of cover systems, engineering controls, and monitoring equipment/systems.

Licensing Conditions

9. Concurrent with this Approval, the department is issuing a long-term care license with a term of (10) years. Licensee(s) shall submit a complete application to renew the long-term care license no later than eighteen (18) months before the expiration date. At a minimum, the application shall contain all of the information related to long-term care and corrective action identified in ch. NR 670, Wis. Adm. Code. Unless otherwise approved by the department, the application shall contain all of the same types of information as is presented in the Application. If the license expires, its terms and conditions continue to be effective until a new license is issued or renewed.
10. In the event Licensee(s) plans to implement changes or activities that are not consistent with the Application or this Approval, Licensee(s) shall acquire a license modification in accordance with s. NR 670.042, Wis. Adm. Code, prior to implementing the change.
11. All records, documents, and submittals identified in the Application (e.g. completed inspection log sheets, annual photographic record, and training records), required by this Approval, or required for the Operating Record (as identified in, for example, s. NR 664.0073, Wis. Adm. Code) shall be made available to the department immediately upon request.

Inspection Conditions

12. All observations, inspections, and monitoring required by chs. NR 664 and NR 670, Wis. Adm. Code, the Application, and the conditions of this Approval shall be documented. This documentation shall also include the results of these observations, inspections, and monitoring activities, and documentation of all corrective actions taken to remedy any condition identified as deficient. Documentation shall be maintained in the Operating Record for at least 3 years. Inspection forms used for this purpose shall be modified as required to be consistent with any changes that occur at the facility, in the Application, and/or in the Approval conditions.
13. All deficiencies identified during these required observations, inspections, or monitoring activities shall be clearly identified and documented in the Operating Record. For any deficiency identified, the completion date and description of remedial or corrective action(s) (such as repairs or replacement) shall also be documented in the Operating Record in a manner that such action(s) can be readily referenced to the noted deficiency.
14. Personnel performing inspections and corrective/remedial actions shall be properly qualified and trained in accordance with the Application and the conditions of this Approval.

Training Conditions

15. All personnel shall successfully complete a training program that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of ch. NR 664, Wis. Adm. Code, the Application, and the conditions of this Approval, and to operate or maintain the facility in a safe manner. This includes all facility employees and any others (such as contractors, vendors, and temporary workers) that have duties relating to hazardous waste acceptance, storage, treatment, handling, or recordkeeping, or that execute,

monitor, or supervise activities described in the Application. Records documenting these qualifications and this training shall be maintained as part of the Operating Record for at least 3 years. "All personnel," as the term is used herein, is intended to include only those personnel that have duties relating to hazardous waste acceptance, storage, treatment, handling, or recordkeeping, or that execute, monitor, or supervise activities related to this License or the requirements of ch. NR 664, Wis. Adm. Code.

16. All personnel, regardless of their position or employer, must be trained so they are familiar with the facility's contingency plan in order to properly act in response to an emergency. This includes all facility employees and any others (such as visitors, contractors, vendors, and temporary workers) at or near the hazardous waste-activities subject to the requirements of ch. NR 664, Wis. Adm. Code, including but not limited to, areas subject to or used for long-term care and corrective action. Records documenting this training shall be maintained as part of the Operating Record for at least 3 years.

Submittal Conditions

17. All submittals required by this Approval shall:
 - a. Unless otherwise specified, be submitted to the department's designated inspector and the department's designated hazardous waste plan review staff person. For the purposes of this Approval, the "department's designated inspector" means the person assigned to perform hazardous waste inspections at the facility, and "the department's designated hazardous waste plan review staff person" means the person assigned to review hazardous waste license modifications for the facility. Licensee(s) should contact the Chief of the department's Hazardous Waste Prevention & Management Section if there are questions about these assignments;
 - b. Include a transmittal letter that explains the purpose of the submittal and, if related to a condition of this Approval, refers to the condition number and approval date; and
 - c. Be submitted electronically via email in lieu of submitting a paper version, or if submitted via another method (such as file sharing website), an email notification of the submittal shall be simultaneously provided. Licensee(s) shall bear responsibility for confirming that emails and emailed reports were received by the department.
18. Information provided to the department to comply with this Approval, or otherwise meet the requirements of chs. NR 664 or NR 670, Wis. Adm. Code, shall:
 - a. Be signed and certified in accordance with s. NR 670.011, Wis. Adm. Code.
 - b. Be submitted to the department's designated inspector and the department's designated hazardous waste plan review staff person.
19. Submittals provided to meet the requirements of ch. 292, Wis. Stats., and chs. NR 700-799, Wis. Adm. Code, shall be prepared and certified in accordance with the applicable requirements of ss. NR 712.07 and NR 712.09, Wis. Adm. Code. In addition to submittal to the department's Remediation and Redevelopment (RR) program, copies of these submittals shall be provided to the department's designated hazardous waste inspector and the department's designated hazardous waste plan review staff person.
20. Unless otherwise approved by the department, all submittals required by this Approval shall be developed and submitted as follows:
 - a. A single portable digital file (PDF) of the entire submittal shall be provided, including a signed and dated transmittal letter and all attachments and appendices.
 - b. The single PDF shall be built as a searchable/readable PDF, [e.g., ran through an optical character recognition (OCR) software (such as Enhance Scans in Adobe Pro), to make the document a searchable/readable PDF].
 - c. The single PDF shall not be copy protected.

- d. As applicable, all parts (e.g., chapters, sections, subsections) and attachments (e.g., appendices, figures, tables) of a document shall be designated bookmarks in the PDF, and the name of the bookmark shall reflect the name of the part/section/subsection or attachment.
 - e. For documents with attachments (e.g., appendices, figures, tables), all cross-references to attachments shall be internally hyperlinked to the appropriate attachment (e.g., all references to Appendix A within the document would provide a hyperlink to Appendix A).
 - f. If requested by the department, separate digital files of select PDF pages (or sections) shall be provided in the requested digital format (e.g., in Word or in Excel, as applicable).
 - g. All digital files submitted to the department shall be submitted as an email attachment or via a file sharing website acceptable to the department.
 - h. If requested by the department, printed pages of some or all of the submittals shall be provided. This shall include full-sized prints of maps, drawings, or figures.
 - i. For an application, and for other reports as appropriate, a Table of Contents shall be included.
 - j. For an application, and for other reports as appropriate, all pages shall contain a header that identifies the facility name, and a footer that identifies the date and the page number.
21. For any license modification request under s. NR 670.042, Wis. Adm. Code that requests a modification to the Application, Licensee(s) shall include, for all Application pages proposed to be modified:
- a. The modified pages bearing new dates;
 - b. An updated revision log that identifies the type, description, and date of the revision; and
 - c. A separate digital file clearly depicting the proposed modifications (e.g., using a track changes tool).
22. Regarding the submittal of environmental monitoring results:
- a. Licensee(s) shall submit results of all environmental monitoring in the electronic format specified by the department. The current electronic format specified by the department is the department's Groundwater and Environmental Monitoring System (GEMS).
 - b. Licensee(s) shall notify the department of values which have attained or exceeded groundwater standards established under ch. NR 140, Wis. Adm. Code, within 60 days of the end of the sampling period. In addition to the department's designated hazardous waste inspector and the department's designated hazardous waste plan review staff person, this notification shall be provided to the department's NR 700-series project manager assigned to the facility.
 - c. This condition does not supersede any requirements established pursuant to chs. NR 700-799, Wis. Adm. Code.

Groundwater Monitoring

23. Licensee(s) shall perform groundwater monitoring in accordance with the department's conditional Long-Term Care Plan Approval Modification, dated October 29, 2002.

Corrective Action Requirements

24. Licensee(s) are required to meet the corrective action requirements of ch. 291, Wis. Stats., and ch. NR 664, Wis. Adm. Code, including s. NR 664.0101, Wis. Adm. Code. In order to meet these corrective action requirements, Licensee(s) must comply with the relevant requirements of ch. 292, Wis. Adm. Code, and chs. NR 700-799, Wis. Adm. Code, including the closure requirements in chs. NR 725 through NR 727, Wis. Adm. Code.
25. Pursuant to s. NR 664.0101(2), Wis. Adm. Code, corrective actions shall be completed no later than ten years from the date of this Approval, unless otherwise approved by the department. Licensee(s) may submit a written request to extend this deadline for up to one year, which would be approved if Licensee(s) clearly

demonstrates that such further time is justified because despite Licensee(s)' best efforts to timely comply, efforts were unsuccessful due to circumstances beyond the control of the Licensee(s). Any additional one-year extensions would require separate requests. "Circumstances beyond the control of the Licensee(s)" do not include those involving Beazer's voluntary efforts to obtain funding assistance through EPA's Great Lakes National Program Office (GLNPO), lack of an approved GLNPO project agreement, or failure to submit a remedial design report that meets the applicable chs. NR 722 and 724, Wis. Adm. Code, requirements.

26. As required by s. NR 664.0100(7), Wis. Adm. Code, Licensee(s) shall submit a report on the effectiveness of the corrective actions associated with BRRTS case 02-16-000484. Licensee(s) shall submit these reports annually by March 30 of each year. In addition to submittal to the department's designated inspector and the department's designated hazardous waste plan review staff person, copies of this submittal shall also be submitted to the department's RR Program project manager(s). The report shall reference this condition, and include:
- a. A summary of the findings of facility inspections during the previous calendar year.
 - b. A summary of any significant maintenance and repairs during the previous calendar year.
 - c. The results of groundwater monitoring from the previous calendar year, and how it demonstrates the success of on-property corrective actions and progress towards closure under ch. NR 726, Wis. Adm. Code.
 - d. A description of corrective work performed during the previous calendar year and its effectiveness, for both on-property and off-property corrective action.
 - e. A description of and schedule for corrective action-related efforts and activities planned to be undertaken over the ensuing 30-year period.
 - f. The current cost estimate for all long-term care and corrective action work for the ensuing 30 years.

Financial Assurance Conditions

27. Beginning 30 days from the date of this Approval, Licensee(s) shall establish and maintain proof of financial assurance for long-term care and corrective action in the amount of at least \$5,890,700, as had been estimated in 2022 dollars and described in Beazer's letter to the department dated July 31, 2023, in the section titled "Response to Comment 12." This amount shall be adjusted for inflation as appropriate from 2022 dollars to current-year dollars.
28. Licensee(s) shall maintain, in the Operating Record, current cost estimates for long-term care and corrective action. The current cost estimate shall address all work needed to meet the long-term care requirements in the Application and subch. G of ch. NR 664, Wis. Adm. Code, and all corrective action work.
29. Financial Assurance for long-term care and corrective action shall be maintained in the amount of the current cost estimate for all work for the following 30 years (i.e. a rolling 30-year window), unless the department approves a shorter period based on Licensee(s)' demonstration that long-term care and corrective action work for less than 30 years will be necessary.
30. Cost estimate changes:
- a. Annual Inflationary Adjustments. Long-term care and corrective action cost estimates shall include applicable inflation adjustments as described in s. NR 664.0144(2), Wis. Adm. Code. Proof of financial responsibility reflecting the inflation-adjusted cost estimate shall be submitted to the department's owner financial responsibility staff person within 60 days prior to the anniversary date of the establishment of the financial instrument.
 - b. Within 30 days of any time when Licensee(s) becomes aware of a change in the required work or associated costs (other than inflationary increases) that increases the long-term care and corrective action cost estimate by more than 5%, the cost estimate shall be updated and submitted to the department's owner financial

- responsibility staff person. The submittal shall include a reference to this condition. Proof of financial responsibility reflecting the new cost estimate shall be established within 1 month of such an increase in the cost estimate.
- c. Within 60 days of the date when a remedy is selected, the cost estimate shall be updated and presented to the department as a license modification request under s. NR 670.042, Wis. Adm. Code. Proof of financial responsibility reflecting the new cost estimate shall be included with the license modification request.
31. Regarding any future application of assumptions used in Beazer's July 31, 2023, cost estimate (Table 1) for off-property corrective actions:
- a. If a commitment for off-property corrective action funding from U.S. EPA's Great Lakes National Program Office (GLNPO) is not received within 2 years of the date of this Approval, then the cost estimate shall be adjusted to remove consideration of any such funding from the cost estimate, and presented to the department as a license modification request under s. NR 670.042, Wis. Adm. Code.
 - b. If this commitment is determined to be, or is likely to be, different than 50% of non-operation and maintenance costs, the cost estimate shall be adjusted accordingly.
 - c. If ongoing efforts to comply with the requirements of chs. NR 700-799, Wis. Adm. Code, indicate that the scope of work of Alternatives A-2, B-1, and C-2 from the 2014 Focused Corrective Measures Study (FCMS) is no longer adequate to complete corrective action work, the scope of work of the off-site corrective actions, and associated cost estimate, shall be updated in accordance with the conditions of this Approval.
32. All cost estimates shall:
- a. be based on utilizing a third party (or third parties) to properly execute all activities;
 - b. include third party costs to manage and administer the work (e.g. project management, procurement, contract administration, invoice review and payment, etc.);
 - c. not consider cost efficiencies or special pricing for work that might otherwise be performed or facilitated by Licensee(s);
 - d. include a minimum 10% contingency for unanticipated or unforeseen work;
 - e. be broken out by discrete tasks and sub-tasks and include unit costs, quantities, and extended costs for each task and subtask;
 - f. for long-term care, be organized such that the tasks and subtasks for long-term care work are easily identified within the approved Application;
 - g. for corrective action work, be organized such that the tasks and subtasks include references to applicable requirements in chs. NR 700-799, Wis. Adm. Code, and are easily identified within the plans, reports, and correspondence so that it may be determined whether applicable requirements in chs. NR 700-799, Wis. Adm. Code are met;
 - h. describe the basis for or source of the number of units and unit costs used in the cost estimate;
 - i. utilize current-year unit costs, and clearly indicate the year for which each unit cost is based such that inflationary adjustments can be accurately applied as may be needed;
 - j. include a cost summary in tabular format that:
 - (i) contains separate rows for each separate cost item, or task (and subtask as appropriate). Each task/subtask name and scope of work shall be as identified and described, respectively, in the closure plan;
 - (ii) contains separate columns that identify the task name; the estimated costs for that task including units, number of units, unit costs, and extended subtotals;
 - (iii) is also provided electronically in a spreadsheet format that is unprotected;
 - (iv) as applicable, incorporates separate tables for each year, and a summary table for all years;
 - (v) clearly accounts for and presents inflationary adjustments;
 - (vi) identifies the date of the cost estimate.
 - k. contain an estimated date (or dates for certain tasks) when long-term care and corrective action work for on-property corrective actions will no longer be required, and all estimated costs until that date (or those dates);

- l. contain an estimated date (or dates for certain tasks) when off-property corrective action work will no longer be required, and all estimated costs until that date (or those dates);
 - m. be certified by a qualified Professional Engineer or Professional Geologist registered in the State of Wisconsin. The certification shall be stamped and dated, and shall contain the following, or substantially similar, certification language: “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”
33. The total dollar amount used for the proof of financial assurance for long-term care and corrective action shall not be reduced until a license modification in accordance with s. NR 670.042, Wis. Adm. Code, is approved. The form and wording of the instrument used to comply with financial assurance requirements shall be acceptable to the department.

License Review Conditions

34. Within 4 years of the date of this Approval, and every 5 years thereafter, Licensee(s) shall perform an evaluation of the facility and submit a report describing the evaluation and its results, for the purposes of the review addressed in ss. NR 670.050(4) and NR 670.041(1)(e) (“5-year Review”). This evaluation shall review, at a minimum, information obtained and developments that occurred since the Application (or preceding 5-year Review) was written, the results of inspections and monitoring undertaken by Licensee(s) or the department, corrective actions (on-property and off-property), and long-term care and corrective action scope of work and cost estimates. This report shall describe the evaluation and its conclusions, and include, as a license modification request under s. NR 670.042, Wis. Adm. Code, any recommended changes to the Application’s long-term care and corrective action program deemed to be appropriate by the results of the evaluation. The evaluation and report shall, at a minimum, specifically consider, address, and incorporate the following:
- a. A summary of the corrective actions, and the success or failure of corrective actions including actions necessary to restore the protectiveness of the remedy implemented and mitigate risk to human health and the environment.
 - b. The need for any modifications to the groundwater monitoring program or corrective actions, considering groundwater monitoring results and the effectiveness of corrective actions to date.
 - c. The need for any modifications to the facility’s inspection plan, training plan, or contingency plan.
 - d. The current cost estimate for long-term care and corrective action, and any modifications warranted by the evaluation.
 - e. Certification by a qualified Professional Engineer or Professional Geologist registered in the State of Wisconsin. The certification shall be stamped and dated, and contain the certification language contained in s. NR 670.011(4)(a), Wis. Adm. Code, or substantially similar certification language.

This Approval is based on the information available to the department as of the date of approval. If additional information, project changes or other circumstances indicate a possible need to modify this Approval, the department may ask or require Licensee(s) to provide further information.

Dated: October 10, 2024

WISCONSIN DEPARTMENT OF NATURAL RESOURCES
For the Secretary



Andrea Keller, Section Manager
Hazardous Waste Prevention & Management Section
Bureau of Waste and Materials Management



Douglas W. Coenen, Waste Management Engineer
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