



Caterpillar Inc.

100 NE Adams St.
Peoria, IL 61629-3350

June 9, 2014

RECEIVED

JUN 10 2014

DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
OFFICE OF LAND QUALITY

MC 66-30 (1370)
Indiana Department of Environmental Management
Office of Land Quality
State Cleanup Section; Attn: Nicolette Hartman
100 N. Senate Ave., IGCN, Room 1101
Indianapolis, IN 46204-2251

**RE: IDEM Site Review of 3500 South Cowan
Road Muncie, Delaware County**

Dear Ms. Hartman,

By way of follow up to the discussions at our recent meeting with representatives of both the Indiana Department of Environmental Management ("IDEM") and the Indiana Brownfields Program Office ("IBP"), this letter will serve as the formal response on behalf of Progress Rail Manufacturing Corporation ("Progress Rail") to IDEM's March 6, 2014, letter requesting submittal of a Soil Management and Disposal ("SMD") Plan for the 3500 South Cowan Road facility in Muncie, Indiana (the "Muncie facility"). In addition to this letter, attached is a technical memorandum from LP Environmental in support of this response.

IDEM's March 6th correspondence specifically requests Progress Rail to prepare and submit a SMD Plan to manage and dispose of certain stockpiles of soils excavated during Progress Rail's construction of a railroad test track in the "Rear Parcel" at the Muncie facility. As discussed at length at our meeting, however, Progress Rail bears no legal responsibility for the site conditions sought to be addressed through IDEM's requested SMD Plan. Progress Rail, however, will continue to cooperate with IDEM and the identified responsible parties to provide access to the Muncie facility and fully satisfy its ongoing due care obligations to ensure the continued protection of human health and the environment during the implementation of remedial measures by such responsible parties.

Indiana has long been a leader in developing and promoting policies and initiatives aimed at encouraging the redevelopment and reuse of industrial properties complicated by the presence of hazardous substances. To this end, the State has established and aggressively markets to site developer's protections from liability for parties willing to take on these redevelopment challenges. Specifically, the Indiana Brownfields Program seeks to expressly eliminate cleanup liability concerns for brownfields redevelopers where a statutory exemption from liability or an enforcement discretion policy applies. See IDEM, Nonrule Policy, "Brownfields Program Comfort and Site Status Letters Policy" (W-0051) (Apr. 18, 2003). In these situations, IDEM has used the vehicle of a Comfort Letter to acknowledge applicable liability exemptions for eligible parties and prohibit IDEM from pursuing enforcement against stakeholders for site cleanup in light of the applicable exemption. *Id.*, at 2.

From the inception of its interest in the pursuit of the Muncie facility development opportunity, and with specific reference to these Indiana policy initiatives and the availability of liability protections under state and federal law, Progress Rail sought assurances from the State that it would be protected from cleanup liability for historic contamination at the Muncie facility should it proceed with its redevelopment and reuse plan pursuant to the statutory exemption for bona fide prospective purchasers ("BFPP"). The availability of

BFPP protections were requested and confirmed by the State notwithstanding the fact that Progress Rail intended to lease rather than purchase the Site.¹

With these assurances provided to Progress Rail, the Company proceeded with its redevelopment of the Muncie facility in strict compliance with the dictates of the BFPP liability exemption. As explained in detail during our meeting and as documented again in the attached technical summary, Progress Rail carefully and methodically pursued the steps necessary to satisfy the BFPP exemption's all appropriate inquiries ("AAI") obligations through the completion of a comprehensive environmental investigation of site conditions in advance of execution of its lease for the Muncie facility. This work included the completion of a Phase I Environmental Site Assessment ("ESA") in accordance with the established ASTM standard and the applicable AAI regulations. Out of an abundance of caution, Progress Rail's pre-lease environmental assessment activities also included multiple rounds of Phase II sampling and assessment activities to confirm the nature and character of soil and groundwater conditions in the Rear Parcel of the Muncie facility. The first round of sampling sought to provide an overall assessment of Rear Parcel site conditions through property boundary sampling and multiple test pit excavations across this expansive parcel. A second round of targeted Phase II sampling was subsequently conducted to assess potential impacts from identified Recognized Environmental Conditions in the Phase I ESA report - specifically, the potential for contamination associated with stormwater run-off into drainage ditches in the immediate vicinity of the Muncie facility's active manufacturing operations.

Based on the results of Progress Rail's AAI investigation, which uncovered representations from prior owners stating that no landfilling activities had occurred in the Rear Parcel (such statements being consistent with the results of Progress Rail's test pit work) and documented the absence of PCB impacts in soils and groundwater through its extensive Phase II sampling, Progress Rail executed the lease and initiated redevelopment work, including implementation of the Rear Parcel test track project.

IDEM's pending request for submittal of the SMD Plan obviously has arisen in response to the post-construction discovery of the historic Archery Range Landfill located in the Rear Parcel at the Muncie facility. As explained, this condition was not identified during Progress Rail's comprehensive AAI review. Since discovery, Progress Rail has exercised exemplary due care, initiating, at its own cost, additional assessment work to understand the extent of this historical activity, reporting this discovery to IDEM, the National Response Center and the responsible parties, and ensuring that no additional soils are disturbed. In light of all of the foregoing, Progress Rail enjoys federal and state statutory exemptions to liability for Rear Parcel site conditions, including relief from any obligation to take actions with respect to the stockpiled soils from the test track excavation work. Both IDEM and IBP confirmed the validity of this conclusion in March of 2012 when Special Notice letters were issued to the responsible parties and not Progress Rail to compel action to address the assessment and remediation of impacts associated with the Archery Range Landfill. Importantly, no actions have been taken by Progress Rail since discovery of this issue and issuance of the Special Notice letters that alters in any way its entitlement to liability relief for this matter.

Further, while Progress Rail has no federal or state statutory liability for the management and disposal of soils at the Muncie facility's Rear Parcel, it is worthy to note that documented sampling data does not support the presumption that soils in excess of 50 ppm of PCBs are present in stockpiled soils, or otherwise suggest that these soils require special handling outside of the responsible parties' ongoing remediation plan. As documented in the attached technical report, extensive sampling has now been completed on Rear Parcel site soils. None of the sample results from within the test track excavation area have identified PCB concentrations above 0.5 ppm, orders of magnitude below the TSCA action level. Additionally, the overwhelming majority of soil samples collected at the Rear Parcel are well below the 50 ppm standard, with the data confirming concentrations of PCBs above 50 ppm to be isolated, limited and sporadically dispersed, with highly variable concentrations being found from one discrete sample point to the next.

¹ In the interim, EPA has also issued comprehensive enforcement guidance addressing the eligibility of tenants for the BFPP exemption. See US EPA, Revised Enforcement Guidance Regarding Treatment of Tenants Under BFPP Provision (Dec. 5, 2012).

Finally, as confirmed at our recent meeting, while Progress Rail is not responsible for the management of soils at the Rear Parcel, the Company continues to acknowledge its due care obligations with respect to facilitating the responsible parties' remedial efforts. As discussed, Progress Rail is willing to implement additional due care measures should IDEM deem additional actions necessary, at its own expense, to ensure the ongoing protection of human health and the environment, including the installation of fencing controls around the two piles of excavated soil with evidence of possible fill material located near the northeast corner of the test track. These fencing controls would be in addition to those already in place at the perimeter of the property. Progress Rail is happy to discuss additional due care measures with IDEM as appropriate.

Progress Rail is available to discuss any questions that IDEM or IBP might have with respect to this matter and otherwise prepared to engage on additional issues associated with Progress Rail's due care proposals as the Department deems useful. We appreciate your attention to this matter and look forward to confirmation from IDEM with respect to the resolution of the issues addressed in the Department's March 6th correspondence consistent with the positions articulated by Progress Rail in this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jaron Bromm', with a long horizontal flourish extending to the right.

Jaron Bromm, Corporate Counsel
Enterprise Environmental Law
Legal Services Division | Law and Public Policy
Office: (309) 675-1668
Fax: (309) 675-4199
Cell: (402) 660-5981
bromm_jaron_j@cat.com

cc: Meredith Gramelspacher, Indiana Finance Authority
Dottie Alke, CBS Corporation



ENVIRONMENTAL

Engineering and Environmental Consulting

TECHNICAL MEMORANDUM

DATE: June 4, 2014
FROM: Luke G. Patterson, P.E.
TO: Jaron Bromm, Caterpillar
CC: Scott Jagger and Tyson Long, Progress Rail Services

At the direction of Progress Rail Manufacturing Corporation ("Progress Rail"), this technical memorandum will follow up on requests for information from the meeting held on May 13, 2014 between representatives of Progress Rail and the Indiana Department of Environmental Management ("IDEM") and the Indiana Brownfields Program Office ("IBP") to discuss remedial issues at Progress Rail's facility located at 3500 South Cowan Road, Muncie, Indiana ("Subject Property"). This letter will also provide a technical response on IDEM's letter of March 6, 2014 requesting the submittal of a Soil Management and Disposal Plan for the Subject Property.

May 13th Meeting - Follow up Request for Information

As noted, a meeting was held at IDEM's office on May 13, 2014 ("Meeting"). The Meeting included the following attendees:

- Nicolette Hartman and George Ritchotte of the IDEM State Cleanup Section, Office of Land Quality
- Lynette Schrowe and Meredith Gramelspacher of the Indiana Brownfields Program Office
- Jaron Bromm, Beth Smith, and Scott Jagger of Progress Rail
- Luke Patterson of LP Environmental, environmental consultant to Progress Rail for the Subject Property
- Curt DeVoe, Legal counsel to Arizona Maricopa Associates, LLC ("AMA"), the owner of the Subject Property

At the Meeting and documented below at the request of IDEM, Progress Rail provided a summary of the All Appropriate Inquiries assessment and subsequent property development work conducted on the "Rear Parcel" at the Subject Property prior to the procurement of information in mid-November 2011 by Progress Rail indicating the apparent existence of the historical Archery Range Landfill.

September 2011 – Phase I ESA site inspection

- Landfilling was not identified as a Recognized Environmental Condition ("REC")
- Available historical documents (hundreds of environmental documents reviewed) did not reference landfilling at the Subject Property

- Historical document review included the 2002 *Environmental Disclosure Document for Transfer of Real Property* containing an affirmative reference to the absence of landfill activities at the Subject Property
 - Prepared by ABB, Inc. in August 2002 during sale of property
 - Attached to Deed for Subject Property
 - Section III, Part A, Number 4:
“Are there any of the following specific units (operating or closed) at the property that are used or were used by the transferor to manage hazardous wastes, hazardous substances, or petroleum?”

Landfill – No
Land Application – No”

- Section III, Part B, Number 2:
“If the transferor has knowledge, indicate whether the following existed under prior ownerships, leaseholds granted by the transferor, or other contracts for management or use of the property:

Landfill – No
Land Application – No
Waste Pile – No
Other Land Disposal Area – No”

September 2011 – Phase II ESA field work (Mobilization 1)

- Initiated to investigate overall condition of Rear Parcel
- Assess general site conditions (property boundary soil and groundwater sampling and installation of multiple test pits)

October 2011 – Phase II ESA field work (Mobilization 2)

- Initiated to investigate identified Phase I ESA RECs (ditch sampling to assess run-off from adjacent manufacturing area and possible PCB impacts discovered in historical documents)

October 17-18, 2011 – Phase II ESA results received/general conclusions:

- Absence of PCB impacts in Rear Parcel property boundary soils, boundary groundwater, ditch network, and all test pits
- No evidence of subsurface impacts, fill, or landfilling activities in all test pits

October 24, 2011 – Phase I ESA Report finalized (Phase II ESA draft started)

October 31, 2011 – Progress Rail and Landlord amend Lease to include Subject Property

Week of October 26, 2011 – Rough grade completed on Subject Property test track

Week of November 2, 2011 – Finish grade completed on Subject Property test track

- No notable conditions encountered during test track grading work

November 11, 2011 – Information first obtained by Progress Rail on apparent existence of historical Archery Range Landfill when LP Environmental was provided with copies of excerpts from the following documents:

- PSARA Technologies, Inc. Phase II Subsurface Investigation. Prepared for ABB Power T&D Company, Muncie, Indiana. November 1991
- PSARA Technologies, Inc. Archery Range Landfill Soil Investigation. Prepared for ABB Power T&D Company, Muncie, Indiana. January 1992

November 2011 - March 2012 – Subsequent Phase II assessments (Mobilizations 3-5) by Progress Rail

- Notice to National Response Center, IDEM and Responsible Parties

Responses to Comments in the IDEM March 6, 2014 Letter

The following comments document the technical response of Progress Rail to the matters addressed in IDEM's March 6, 2014 letter. The IDEM comment is stated first along with the Progress Rail response provided below in italics:

PZ-17 Sample Grid

1. Approximately forty-three soil samples from this area at depths ranging from 0-6 ft. bgs were analyzed for PCBs. Concentrations of PCBs above the RCG CDCSL remain at depths of 0-2 ft. bgs. The highest level of PCBs (>340 ppm) was detected in sample B-2/SB-16 at 0-1 ft. bgs. The soil sample results are summarized on Table 2 and depicted on Figure 11 of the document.

Extensive soil and groundwater sampling and other assessment work (test pits) has been completed on the Rear Parcel, including the sampling identified above. The overwhelming majority of the data collected in this area indicates PCB concentrations in soils well below the 50 ppm TSCA standard, with the data confirming concentrations of PCBs above 50 ppm to be isolated, limited and sporadically dispersed, with highly variable concentrations being found from one(1) discrete sample point to the next. Specifically, we noted in the Meeting that moving five (5) feet from a sample location can have a drastic effect on the concentration (e.g., going from several ppm to non-detect or from non-detect to several ppm). The nearest adjacent sampling locations to the 340 ppm result at B-2/SB-16, show PCB concentrations at the same sample interval (first 12 inches of soil) of:

- 4.2 ppm C2/SB14
- 45 ppm A2/SS13
- 0.38 ppm B3/SB17

This effect is also seen vertically when moving 12 and 24 inches deeper at a single location.

These highly variable concentrations found in the sample results do not support a conclusion that any of the excavation material actually contained PCB concentrations of greater than 50 ppm. Additionally, the numerous rounds of soil samples collected across the Rear Parcel indicate that PCB impacts are generally at concentrations below 50 ppm, with limited, highly localized exceptions.

2. Analytical information from B2/SB16 indicates the presence of PCBs at concentrations of >340 ppm at 0-1 ft. bgs. and at concentrations of 66 ppm at 1-2 ft. bgs. in soils adjacent to soils that were removed during the installation of the rail test track. These excess soils were then placed in the soil stockpile area. Current aerial photos and IDEM site visits show the soil stockpile area to be located almost directly east of the main Site building. No information has been provided to IDEM indicating that sampling was conducted, prior to excavation, to demonstrate that either the soils were non-PCB impacted, or contained concentrations below 50 ppm PCBs. Therefore, pursuant to Indiana Regulations of Waste Containing PCBs found at 329 IAC 4.1, IDEM will require that all soils excavated from that location, **AND** all soils that have been mixed with these excavated soils, to be disposed in a landfill permitted to accept >50 ppm PCB impacted waste. Please note that the reason for this disposal requirement can be found at 329 IAC 4.1-1-5. This regulation states: "No person may avoid any provision of this article specifying a PCB concentration by diluting the PCB's unless otherwise specifically provided." Please also note that since a remediation and disposal plan has not been approved pursuant to 329 IAC 4.1-4-1, which incorporates language found in the Federal PCB regulations found at 40 CFR 761.61, at this point in time, disposal may not occur at the Heritage Environmental Services Subtitle C landfill.

As discussed during the Meeting, the aerial photograph that is referenced shows other piles from a previous (Front Property) construction effort. The test track excavation material from the Subject Property (Rear Property) was placed adjacent the test track in four (4) piles. These piles were not mixed with any other materials, but placed directly onto the ground adjacent to the test track. Two (2) of the piles, located near the northeast corner of the test track, contain evidence of apparent fill material from the (now known) westernmost apparent edge of the Archery Range Landfill area.