



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



STEVEN E. CHESTER
DIRECTOR

January 11, 2005

Mr. Bharat Mathur
Deputy Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Dear Mr. Mathur:

This letter memorializes our discussions regarding the allocation of responsibility for enforcement and oversight of necessary response activities associated with cement kiln dust (CKD) waste material at the Former Penn-Dixie property in Resort Township, Emmet County, Michigan (Site). The U.S. Environmental Protection Agency (U.S. EPA), Region 5 and the Michigan Department of Environmental Quality (MDEQ) have agreed to the following approach regarding response activities involving one or more of the following parties: CMS Energy, Bay Harbor Development Corp, Boyne USA, and Holcim USA potential responsible parties (PRPs):

1. Region 5 will take responsibility to negotiate a legally enforceable agreement (or otherwise use Superfund authorities) for implementation of interim response activities and exposure controls as outlined in items one through seven of the U.S. EPA's November 8, 2004, General Notice of Potential Liability letter to address the high-pH conditions at the beach and in Lake Michigan associated with the Site, and development and implementation of a remedial investigation that assesses Site conditions in order to select an appropriate long-term response activity to meet the goals listed in Number 2 of this letter.
2. The MDEQ will have lead responsibility with Region 5 concurrence for determining, the scope and implementation schedule for long term response activities to design and implement engineering controls for the purpose of preventing unacceptable exposures and achieving applicable cleanup criteria including, but not limited to:
 - Integrating the interim responses with the long-term response activity, as appropriate;
 - Preventing unacceptable exposures to surface waters and/or sediment impacted by CKD waste material;
 - Design, construct, and operate a long-term response activity to prevent discharges of groundwater containing hazardous substances above state criteria from the Site to surface waters of the state;
 - Preventing direct contact with CKD waste material;

- Prohibiting exacerbation, preventing new releases and unacceptable exposure, and placing land use and resource use restrictions related to the CKD waste material;
- Constructing and maintaining erosion control measures for underlying CKD waste material;
- Ensuring adequate financial resources are available to the agencies, in a form and amount assessable and acceptable to the agencies, to assure the performance of the response activities necessary to protect human health or the environment in perpetuity;
- Ensuring that any other unacceptable exposures are adequately addressed and assuring the effectiveness and integrity of the long-term response activities.

These goals will be achieved through the containment and isolation (or removal) of CKD source waste or other engineering controls with equivalent or superior effectiveness, which achieve the goals listed above.

3. The agencies will cooperatively participate in technical reviews with respect to the selection and implementation of response measures associated with the Site.
4. Designated tribal representatives from The Little Traverse Band of Odawa Indians will be kept apprised of development and implementation of provisions of any agreement negotiated with the PRPs regarding the Site (including the provision of environmental data).

Within 120 days of Region 5's approval, with MDEQ's concurrence, of the remedial investigation report, the MDEQ will negotiate a legally enforceable agreement with the PRPs for the long-term response activities as specified above in Number 2 with Region 5 concurrence. As part of their concurrence, Region 5 will be provided an opportunity to review and comment on the proposed agreement and will provide comments in a timely manner. If the PRPs fail to enter such an agreement, Region 5 may take further appropriate enforcement action. It is understood that the U.S EPA has the authority under the Comprehensive Environmental Response, Compensation and Liability Act, 1980 PL 96-510, and the National Oil and Hazardous Substances Pollution Contingency Plan (40 Code of Federal Regulations Part 300) to address imminent and substantial endangerments to public health or the environment which are not being addressed in a timely and effective manner by the measures set forth herein. MDEQ also retains all its authorities under applicable law in this event.

Mr. Bharat Mathur
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We look forward to your assistance and continuing a cooperative working relationship with Region 5 in addressing this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "S.E. Chester". The signature is stylized with large, sweeping letters.

Steven E. Chester
Director
517-373-7917

cc: Mr. Richard C. Karl, U.S. EPA
Mr. Rodger C. Field, U.S. EPA
Mr. Ralph H. Dollhopf, U.S. EPA
Mr. Alan Hoffman, Michigan Department of Attorney General
Mr. Jim Sygo, Deputy Director, MDEQ
Mr. Stanley F. Pruss, Deputy Director, MDEQ
Mr. Andrew W. Hogarth, MDEQ
Mr. Timothy J. McGarry, MDEQ