



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
GRAND RAPIDS DISTRICT OFFICE



LIESL EICHLER CLARK
DIRECTOR

July 24, 2019

VIA EMAIL AND
CERTIFIED MAIL – 7017 2620 0000 2474 4653
RETURN RECEIPT REQUESTED

Mr. Michael Berg
Boulder Creek Development Company LLC
1703 3 Mile Road, NE
Grand Rapids, Michigan 49505

Dear Mr. Berg:

SUBJECT: Violation Notice and Demand Regarding the Releases at Northeast Gravel
Company Site (formerly known as 4300 Cannonsburg Road),
3769 Cannonsburg Road, NE, Kent County, Michigan;
Facility ID No.: 41000048

As previously communicated to Boulder Creek Development Company (BCDC) in a letter dated June 19, 2018, the Department of Environment, Great Lakes, and Energy (EGLE) demands BCDC's compliance regarding the environmental contamination present at the property at 3769 Cannonsburg Road, NE (Property) for which BCDC is liable under Michigan's environmental cleanup law, Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Part 201).

Environmental Problem and Compliance History

BCDC was informed of the requirements under Part 201 for the environmental contamination at and emanating from the Property in the letter dated June 19, 2018. The former licensed landfill that operated at the Property accepted wastes from industries known to have used Per- and Polyfluoroalkyl Substances (PFAS) in their processes. A sample of the tannery waste (TWSS-03) collected on January 17, 2019, was shown to have 42,370,000 parts per trillion (ppt) perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) combined. PFOA and PFOS have been detected in monitoring wells and irrigation wells at levels which exceed the Part 201 Cleanup Criteria for groundwater used as drinking water and the United States Environmental Protection Agency (USEPA) lifetime Health Advisory Level, both of which are established at 70 ppt. The PFAS waste has contaminated the groundwater which has then contaminated three onsite surface water ponds above the Groundwater-Surface Water Interface (GSI) Cleanup Criterion of 12 ppt for PFOS. PFOS concentrations as high as 2902.9 ppt have been detected in surface water, which has been impacted by contaminated groundwater at the Property.

PFOA and PFOS are hazardous substances under Part 201. The concentration of PFOA and PFOS measured on the Property exceed the Part 201 groundwater criteria for unrestricted residential use, and, therefore, the Property is a Facility as defined in Part 201.

Part 201 Liability

Persons who are liable for a facility pursuant to Section 20126 of Part 201 include persons who become an owner or operator of a facility after June 5, 1995, unless the owner or operator conducts and submits a Baseline Environmental Assessment (BEA). Property records indicate that Northeast Gravel Company sold the Property to BCDC and that this transaction was recorded on September 29, 1997. According to EGLE records, BCDC is the owner and operator of the Northeast Gravel Facility (Facility) and did not conduct or submit a BEA. Therefore, BCDC is liable under Section 20126(1)(c)(i).

The hazardous substances present at the Facility are waste materials contained in a waste cell dedicated to Wolverine tannery waste, according to information in the Northeast Gravel file located in EGLE's Grand Rapids District office. This cell is beneath a permeable vegetated cover system which was installed as a physical barrier. Data provided as part of the *Northeast Gravel Project Update PFAS Investigation* dated May 21, 2019, indicates that a sample of the tannery waste (TWSS-03) collected on January 17, 2019, was shown to have 42,370,000 ppt of PFOA and PFOS combined. The permeable vegetated cover system does not effectively prevent the leaching of PFAS compounds from the tannery waste cell. PFAS contaminated groundwater is leaching and migrating from this cell in the direction of the three surface water bodies/ponds and the Grand River. A smaller landfill cell containing hazardous substances originating from plating operations is covered with a clay barrier. A January 17, 2019, sample collected from the plating waste cell was shown to have 1,002,000 ppt PFOS and PFOA combined.

EGLE has identified three surface water bodies and two irrigation wells located within the PFAS contamination plume on the Facility, located south of the landfilled areas. The irrigation wells located on parcels 5607 Sheba Drive, NE and 4022 Preserve Drive, NE were sampled by EGLE and are contaminated with PFAS at levels which exceed the Part 201 Cleanup Criteria for groundwater used as drinking water. In addition, three surface water samples were collected by EGLE from three unnamed ponds located at the Property. All three surface water bodies were found to contain high levels of Total PFAS, specifically PFOS as high as 2902.9 ppt, which confirms that these surface waters have been impacted by PFAS contaminated groundwater on the Property.

BCDC was provided with the EGLE sampling results of the irrigation wells and surface water samples via email on June 28, 2018. According to information verbally provided to EGLE by BCDC during a July 24, 2018, meeting, BCDC uses this contaminated groundwater, accessed through the two irrigation wells identified above, to irrigate the landscaping and open spaces on the Property south of the landfill areas. Additionally, BCDC told EGLE that they used the surface water from the southern pond to irrigate the remaining golf course greens (south of 7 Mile). BCDC is, therefore, an owner and operator of the Facility and is responsible for an activity causing a release of hazardous substances onto the soil in these areas.

However, during our June 10, 2019, meeting, EGLE became aware that BCDC irrigates the golf course greens north of 7 Mile Road with water from the southern pond on the Property. PFOS concentrations in the southern pond have been identified at levels as high as 969.73 ppt. BCDC has been aware of the elevated PFAS concentrations in the southern pond (which has been impacted by the contaminated PFAS groundwater plume emanating from the historical landfill disposal cells) since July 2018 and has continued to use this water to irrigate in upgradient locations that were not previously impacted by PFAS. BCDC is, therefore, an owner

and operator of a Facility responsible for an activity causing a release or threat of release of hazardous substances into the environment.

As a liable party under Part 201, BCDC is responsible for: (1) addressing the contamination at the Facility as provided in Section 20114 of Part 201; (2) all costs lawfully incurred by EGLE for addressing the contamination or undertaking response activity; (3) any other costs for response activity reasonably incurred by any other person; and (4) damages for the value of injury to, destruction of, or loss of natural resources.

Request for Response Activities

BCDC has had knowledge since June 2018 of its responsibility for an affirmative obligation to comply with Section 20114 of Part 201, which lists the steps required of a liable party to address environmental contamination. EGLE acknowledges that remedial investigation activities have been conducted, but disagrees with the position set forth in a report dated May 21, 2019, submitted on behalf of "Northeast Gravel" (Northeast Gravel – Project Update PFAS Investigation), in which a description of response activities at the Property states that "the extent and fate of PFAS contamination is effectively defined." BCDC as owner and operator of the facility has had knowledge about the elevated concentrations of PFAS in the groundwater and in the southern pond and has elected to continue irrigation practices to the north and upgradient of the landfill area thereby causing a release of hazardous substances. EGLE has been provided data for nearby private drinking water wells and community public drinking water wells which have low to moderate detections of PFOA and PFOS, at levels up to 22.9 PFOA and PFOS combined. EGLE has also installed a shallow and deep monitoring well (MW-8S and MW-8D) in the neighborhood just north of 7 Mile Road, west of the golf course, which also identified detections of PFOA and PFOS in the groundwater. These detections indicate a release of PFAS to the environment north of 7 Mile Road.

Since BCDC has not complied with the provisions of Part 201, EGLE is issuing this Violation Notice and asserting its authority under Section 20114(1)(h) of Part 201, and BCDC shall:

1. Immediately stop or prevent an ongoing release at the source. In this case, the ongoing release is the act of pumping and releasing contaminated irrigation water.
2. By August 30, 2019, provide for EGLE approval, a Response Activity Plan for evaluating the extent of PFAS contamination including the area north of 7 Mile Road. The Response Activity Plan must include an implementation schedule, a schematic for the irrigation system, a description of the irrigation practices including all areas of the golf course, open areas and associated properties that are subject to irrigation, irrigation schedule and approximate volumes of irrigated water.
3. Take any other response activity determined by EGLE to be technically sound and necessary to protect the public health, safety, welfare, or the environment. **Response activities must include immediate sampling of drinking water wells vulnerable to PFAS contamination and providing an appropriate alternative water supply or filters as necessary.**
4. If BCDC as owner or operator has reason to believe that one (1) or more hazardous substances are emanating from or have emanated from and are present beyond the boundary of BCDC property at a concentration in excess of cleanup criteria for unrestricted residential use, BCDC must notify EGLE and the owners of property where

the hazardous substances are present within thirty (30) days after obtaining knowledge that the release has migrated.

The plans, including any subsequent documents, required pursuant to the Section 20114(1)(h) request above, shall be submitted to the following address:

Karen Vorce, Project Manager
Department of Environment, Great Lakes, and Energy
Remediation and Redevelopment Division
Grand Rapids District Office
350 Ottawa Avenue, NW
Unit 10
Grand Rapids, Michigan 49503-2341
Telephone: 616-439-8008
Email: VorceK@michigan.gov
Fax: 616-356-0202

Because this is a demand issued under Section 20114(1)(h) of Part 201, BCDC no longer has the option to self-implement the above requested items, and BCDC is required to perform response activities in accordance with EGLE-approved response activity plans and schedules. Response activity plans submitted to EGLE pursuant to Section 20114(1)(h) of Part 201 should NOT include a response activity plan review request form.

Please be advised that civil fines of up to \$1,000 per day may be sought for failure to comply with this request for response activities under Section 20114(1)(h) of Part 201.

Meeting Request

EGLE is expecting BCDC's full compliance with Part 201. Therefore, EGLE is requesting a meeting for BCDC and EGLE to discuss this Violation Notice and immediate remedies.

If BCDC wishes to submit any factual information regarding BCDC's liability under Part 201, or information that BCDC believes will demonstrate BCDC's compliance with Part 201, please send it at least ten (10) days prior to the meeting to the address provided above for consideration. If BCDC wishes to review the detailed documentation supporting EGLE's response activity costs or any other information used to prepare this letter, it is located at the Grand Rapids District Office.

The explanations of Part 201 in this letter should not be considered a complete listing of BCDC's legal obligations. The Part 201 statute and rules can be found in its entirety at the EGLE Web site: www.michigan.gov/egle, by clicking on 'Land', 'Remediation', then 'Site Investigation and Remediation'.

Please be advised that issuance of this Violation Notice and Demand does not preclude or limit EGLE's ability to initiate any other enforcement action under state or federal law as appropriate. If BCDC does not comply with the requirements of Part 201 and this letter, EGLE may do any or all of the following: perform additional response activities at the Facility and seek reimbursement plus interest; take an enforcement action to compel compliance with Part 201; and seek civil fines pursuant to Part 201.

The information used to prepare this letter is located at the EGLE Grand Rapids District Office at the address listed above. If BCDC wishes to review this information or if you have questions regarding this letter, please contact Karen Vorce, Project Manager, at 1-616-439-8008 or via email at VorceK@michigan.gov; or you may contact me at the telephone number listed below. EGLE looks forward to your cooperation in resolving this matter.

Sincerely,



Abigail Hendershott
District Supervisor
Grand Rapids District Office
Remediation and Redevelopment Division
616-888-0528

cc: Mr. Gary Schenk, Schenk Boncher & Rypma
Mr. Cameron Van Wyngarden, Plainfield Charter Township
Ms. Polly Synk, Department of Attorney General
Mr. Steve Sliver, MPART Executive Director, EGLE
Mr. Dan Rockafellow, EGLE
Mr. David O'Donnell, EGLE
Ms. Karen Vorce, EGLE
Ms. Vicki Katko, EGLE