



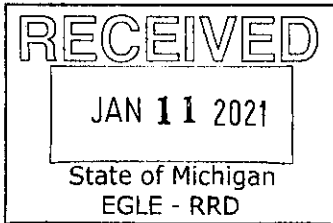
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ATTORNEYS & COUNSELORS

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January 6, 2021

Abigail Hendershott, District Supervisor
Department of Environment, Great Lakes & Energy,
Remediation and Development Division
Grand Rapids District Office
350 Ottawa Avenue, NW, Unit 10
Grand Rapids, MI 49503-2341
HendershootA@Michigan.gov

Re: Violation Notice and Section 20114(1)(h) Demand Regarding the Releases at Northeast Gravel Company Site (formerly known as 4300 Cannonsburg Road) 3769 Cannonsburg Road, NE, Kent County, Michigan; and

Facility I.D. #41000048 – Boulder Creek Development Company, LLC
Response

Dear Supervisor Hendershott:

The purpose of this letter is to provide a response to the Department of Environment, Great Lakes & Energy (“EGLE”) Notice of Violation and Demands set forth in your letter of December 17, 2020. Your letter appears to us to be stringent and unnecessarily strong in light of the fact that from the outset of this matter, Boulder Creek, LLC, and its principals have worked hand-in-hand with EGLE to attempt to achieve a resolution of this matter which accomplished the primary goal of protecting the public and protecting the environment. In fact, at the time of our last conference, it was agreed that Boulder Creek had cutoff virtually all human exposure pathways to any level of contamination that exceeded maximum contaminant levels. It was also pointed out and agreed to that Boulder Creek had spent considerable sums to comply with all of the demands imposed by EGLE with regard to the PFAS contamination and the waste at the Northeast Gravel site.

Additionally, Boulder Creek installed point-of-use filters to several properties adjacent to the golf course in an attempt to comply with EGLE’s demands during this process despite the fact that Boulder Creek has disputed and continues to dispute that its actions are responsible for the PFAS contamination at those properties. In addition, in consultation with EGLE, Boulder Creek acted promptly and at great cost to re-engineer and re-configure its irrigation activities at the golf course to comply with PFAS regulations.

Nonetheless, Boulder Creek continues to dispute that it should be liable under Part 201 for the PFAS contamination at the site. Boulder Creek acknowledges that it is the property owner, and further understands that Part 201 works through the property owner. However, we believe that the pending legal actions against Wolverine Worldwide will result in the assignment of liability to Wolverine Worldwide. This pending legal action against Wolverine Worldwide effectively represents much of the remaining Response Activity for the site and Boulder Creek believes that EGLE should acknowledge its' timely efforts towards this end, which will likely represent the only effective solution at the site (cap and cover the Wolverine Worldwide Tannery Waste Landfill).

The site was previously closed to MDEQ's satisfaction, and the only reason that PFAS was not remediated in the 1990s was because of Wolverine's deceptive actions. Boulder Creek's position in this matter was described in great detail in its August 12, 2019 letter to you in which it has set forth the law and several valid defenses to liability. Again, despite those defenses Boulder Creek has continued to cooperate with EGLE and through a process of negotiation has continued to make great advancements in overcoming any problems at the Northeast Gravel site.

Despite the foregoing, and despite Boulder Creek's willing cooperation, rather than sitting down to negotiate on these matters to determine whether there are alternate possibilities of resolution, we have instead received your Demands which we believe are neither warranted nor justified by the facts on the ground. Moreover, the cost of compliance with your Demands far exceeds the ability of Boulder Creek Development Company to pay for those costs and would result in the financial devastation and ruin of the Company.

Finally, as a consequence of our cooperation with EGLE, although we have accomplished much more in terms of responding to your Demands, we note that we have always carried out the following:

1. Made our consultant available to produce documents and answer questions regarding the closure.
2. Carried out the testing requested by EGLE and provided filters to homes as requested.
3. Changed our water source for the irrigation of all golf holes to assure that they are being irrigated by clean water.
4. Did borings through the waste and installed monitoring wells.
5. Have monitored and continue to monitor and test water sources.

Irrespective of our cooperation and attempts to be responsive, we are now, once again, faced with your threats and Demands that we believe are not sufficiently justified by the exigent

circumstances and facts. Accordingly, we will deal with each of those Demands in this response as they are set forth in your letter.

1. **Request for Response Activity and Boulder Creek Response.** Request for a permanent alternate water supply at each of the properties identified in EGLE's October 1, 2020 letter.

RESPONSE: Boulder Creek has carried out response activities as discussed during our many meetings.

- While Boulder Creek is the property owner, it does not believe that it is the liable party.
- Boulder Creek has filed suit against Wolverine, the liable party.
- Boulder Creek has placed filters in the Bittersweet neighborhood houses that have allowed it to do so.
- Boulder Creek has placed filters out of good faith, cooperation and to prevent potential exposures.

Boulder Creek has carried out these activities despite the fact that no evidence of contamination exceeding Part 201 criteria exists for any sample collected in the Bittersweet neighborhood and analyzed under proper chain of custody and sampled by trained professionals. If this is not true, the data and documentation has not been provided to Boulder Creek.

Additionally, the MW 7 Well Cluster (located in the southwest corner of the Bittersweet neighborhood) has been sampled shallow and deep seven (7) times and no samples have exceeded Part 201 criteria. The sampling of the MW-7 Well Cluster is understood to have been conducted by trained and experienced PFAS sampling professionals. MW 8 has demonstrated that upgradient from Thimbleweed, EGLE has discovered PFAS detections which obviously do not emanate from Boulder Creek (which is downgradient). The simple fact of the matter is that we have no exceedances in Thimbleweed and homes that front the golf course nor any exceedances in those homes which front and otherwise face the golf course. Likewise, MW 8 (located in a gravel pit south of the Rockford High School) both shallow and deep have never exceeded any Part 201 criterion. Previous work conducted by EGLE has identified a former gravel pit west of the MW 8 gravel pit that has never been investigated to determine if it may be a previously unidentified PFAS source.

Nevertheless, despite the fact that EGLE has failed to identify any Part 201 exceedances, it is demanding the placement of a permanent water supply by Boulder Creek with the only evidence of the source of contamination being upgradient from the wells which would not be attributable to Boulder Creek, or from private party samples that do not appear to have been collected by trained professionals under chain-of-custody). Under these circumstances, the Demand for the provision of permanent alternate water supplies is outrageous and unwarranted. With appropriate discussion, Boulder Creek might be willing to negotiate a plan to maintain filters and to sample those houses for a limited period of time despite the fact that it believes it has not

caused any exceedances in the drinking water in that area. We would point out that Boulder Creek offered filters to the Church and the Hoekstra houses and was declined.

2. **Demand for Sampling of Drinking Water Wells.**

RESPONSE: Again, we point to the test results from MW 7 and MW 8 and the fact that there are no test results which indicate exceedances in virtually all of the properties where sampling is requested. North of 7 Mile Road, the only source of potential contamination was the irrigation water. That source has been fully eliminated. The Hole 2 Pond was the only location where an exceedance of drinking water criteria or groundwater-surface water interface (GSI) criteria have been detected. The Hole 2 Pond is not used and does not flow off of the property and does not flow into the Bittersweet neighborhood. Again, the only source of contamination identified has been upgradient from Thimbleweed and more likely appears to indicate sources related to Wolverine Worldwide.

No evidence of contamination exceeding current Part 201 criteria exists for any sample collected in the Bittersweet neighborhood and analyzed under proper chain of custody and sampled by trained professionals. So, in addition to the request for sampling for the Thimbleweed area, our question is with respect to Bittersweet - why is this Demand being made? The only apparent answer is that EGLE "feels" like its Boulder Creek's fault and because EGLE is the government, it can make this Demand, and we should comply to keep EGLE happy.

3. **Demand for Notices of Migration to All Property Owners Impacted by PFAS Associated with the Property or Boulder Creek's Previous Irrigation Activities North of 7 Mile Road.**

RESPONSE:

- Boulder Creek acknowledges that as the owner of a "facility" it has due care obligations under Section 20107a that are not related to the causation standard and that this obligation includes notifying EGLE and adjacent property owners of off-site migration. All of the meetings with EGLE and working with the neighbors (including various meetings) effectively constituted "Notice of Migration" even though the EGLE form letter was not used.
- With respect to the Bittersweet neighborhood, no data exists to provide reason to believe that PFAS impact above applicable Part 201 criteria has migrated off of the Boulder Creek property to the Bittersweet neighborhood.
- All sampling conducted to date for the Thimbleweed neighborhood, the 7 Mile Road neighborhood, and the Secluded Lake neighborhood are clear and have not shown any exceedances of the Part 201 criteria.

- Notices of Migration will be provided to property owners in the golf course neighborhood North of 7 Mile where each and every house has already been provided with municipal drinking water supply.
- Notice will not be provided to the cemetery, as no evidence of Part 201 exceedance exists.
- The only Part 201 exceedance that is known to exist to date is at the Hole 2 Pond on the golf course property. The Hole 2 Pond is aligned to direct surface water run-off and storm water to the area South of 7 Mile Road that is impacted by the Wolverine Tannery Waste Landfill and that water does not flow into any of the adjoining neighborhoods.
- Accordingly, this requirement appears to be punitive/vindictive and counter-productive to progress at this time.

4. **Demand for Response Activity Plan and Implementation Schedule to Define the Nature and Extent of PFAS Groundwater Contamination Associated with the Property and Boulder Creek's Former Irrigation Activities North of 7 Mile.**

RESPONSE:

- As discussed during previous meetings, this requirement has effectively been met through work conducted to date. Everything that needs to be done to protect human health and the environment north of 7 Mile Road has been done.
- The source area has been fully eliminated through the change in irrigation source water.
- EGLE has indicated many times that large diffuse PFAS plumes cannot be remediated (there simply is not enough money) and only source control is practical. Source control has been fully achieved North of 7 Mile Road through the quick and effective action of Boulder Creek.
- All human and ecological exposure routes have been identified, evaluated and controlled that property owners have participated and to the extent necessary.
- Do not eat the fish signs have been posted.
- PFAS filters have been installed in houses that were considered to have the possibility to contain PFAS that might exceed Part 201 limits (none are known to exceed any limits).

5. *Demand for a Response Activity Plan and Remedial Action Plan to Achieve Clean-up Criteria Established under Part 201*

RESPONSE:

- EGLE has repeatedly pointed out that no response activity can achieve all the clean-up criteria established under Part 201.
- Boulder Creek has already reduced irrigation of the Wolverine Land Fill area (driving range) to reduce infiltration of water from above.
- Boulder Creek has already changed the source of irrigation water to prevent application of PFAS containing water to the area North and South of 7 Mile Road.
- At the MAXIMUM, source control measures can be implemented to attempt to control any ongoing release.
- The source control measures can practically only consist of capping/covering the Wolverine Land Fill area which our consultant believes would result in the complete source control of the water contained on site at Boulder Creek.
- Through deception and withholding of necessary information regarding PFAS, Wolverine is the responsible party for this action and the information that was withheld from Boulder Creek was similarly withheld from the DEQ at the time of the clean-up and closure of the Northeast Gravel Land Fill site.
- Boulder Creek has already filed suit against Wolverine to hold it responsible for its deception against Boulder Creek and EGLE.
- Boulder Creek will work with Wolverine to support response activities (site access, etc.) in the future to allow their remedial obligation to proceed.

CONCLUSION

To date, there is no data or evidence showing Boulder Creek is responsible for any contamination in the Bittersweet or Thimbleweed neighborhoods and data demonstrates that the 7 Mile, Secluded Lake and Thimbleweed neighborhoods are all clean. EGLE has sampled new residential wells in Bittersweet and apparently, its work at MW 7 and MW 8 shallow and deep has demonstrated no connection to the Boulder Creek site. It has, however, demonstrated that there are other sources upstream with potential to contaminate those neighborhoods.

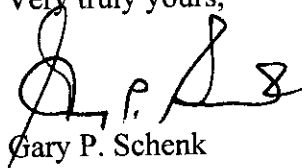
The request for permanent water supplies to all houses in Bittersweet and elsewhere where there have been no demonstrated exceedances under the new MCL; the request for continuing work North of 7 Mile where the only source of irrigation contamination has been eliminated, and the request to sample Bittersweet because someone “feels like” its Boulder Creek’s fault are simply not sufficient to warrant the activities requested.

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Abigail Hendershott
January 6, 2021

Boulder Creek is doing everything in its power to attempt to recover from the responsible parties in order to provide a cap for the Wolverine waste site. This legal action effectively represents Boulder Creek's Response Activity. The schedule for this task is determined by the Court, but the work has already begun and is being actively pursued.

Despite the foregoing, Boulder Creek remains ready and willing to sit down with a representative of EGLE and the attorney general's office to negotiate a resolution which will assure the survival of Boulder Creek and the completion of everyone's objectives of this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "G. P. Schenk". The signature is stylized with a large initial "G" and a long horizontal stroke.

Gary P. Schenk

cc James Dykema
Michael Berg
James A. Dykema
Dan G. Greene
Tyler E. Osburn