



State of Ohio Environmental Protection Agency

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September 25, 2009

Mr. Dave Regalbutto, CP
Golder Associates, Inc.
15851 South US27, Suite 50
Lansing, Mi 48906

Mr. John McCall
IRG Lorain LLC
1224 Lakewood Blvd
Downey, CA 90242

RE: Ohio EPA's Review of the IRG Lorain Ford Assembly – Parcel B No Further Action (NFA) Letter, (09NFA362) Notice of Deficiencies and Conditional Recommendation to Deny Request for Covenant Not to Sue (CNS).

Dear Mr. Regalbutto and Mr. McCall:

On April 15, 2009, the Ohio Environmental Protection Agency (Ohio EPA) received the No Further Action (NFA) Letter for the IRG Lorain Ford Assembly- Parcel B Property (IRG Lorain Parcel B). The NFA was submitted on behalf of the current owner, IRG Lorain, LLC (the "Volunteer"), with an accompanying request for a covenant not to sue (CNS) under the Voluntary Action Program (VAP), Ohio Revised Code (ORC) 3746 and Ohio Administrative Code (OAC) 3745-300. The IRG Lorain Parcel B property is located at 5401 Baumhart Road in Lorain, on the site of the former Ford Lorain Assembly Plant (LAP) auto manufacturing site.

Ohio EPA reviewed the NFA Letter and identified several significant deficiencies. Ohio EPA issued a **NOTICE OF DEFICIENCIES AND REVIEWER COMMENTS** on July 21, 2009 with a 60 day response period. The NFA addendum in response to Ohio EPA comments was due September 19, 2009. Ohio EPA was notified by the CP on September 2, 2009 that the addendum would not be submitted within the required response time. On September 17, 2009, the volunteer provided an electronic message requesting an extension of time noting the addendum would not be submitted by the due date. As a result, Ohio EPA is issuing this notice of deficiency and conditional recommendation to deny the request for a CNS. An approvable addendum, addressing all the noted deficiencies, should be submitted to Ohio EPA by November 30, 2009, or Ohio EPA will proceed with the recommendation for denial.

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

As an alternative, the volunteer may choose to submit a request to withdraw the pending NFA Letter and request for a CNS on or before the November 30, 2009 deadline. If, after the withdrawal, the volunteer wishes to continue under the VAP to seek a CNS, a new NFA Letter and request for a CNS can be submitted, either under the traditional NFA Letter review track (along with the appropriate fee) or under the pay as-you-go option (PAYGO), which is billed directly as technical assistance.

The following issues remain unresolved:

Issue A: OAC 3745-300-02- Eligibility

Comment 1- Per OAC 3745-300-02 (C) (6), BUSTR regulated underground storage tanks are an eligibility issue if they were “subject to site assessment, removal, or remediation, pursuant to sections 3737.88, 3737.882, and 3737.89 of the Revised Code and the Administrative Code rules adopted thereunder regarding underground storage tank systems, including any underground storage tank systems which contain or had previously contained Petroleum.” Section 5.3.1 does not indicate if the three previous USTs at the property were subject to BUSTR, only that there is no closure documentation. However, in Section 1.4.4 of the Phase II document, the text notes the USTs were closed prior to BUSTR regulations and would not be subject to closure. The executive summary states: “There are current open UST’s or LUST’s on-site that are regulated by BUSTR.” The descriptions of the USTs and the status of the USTs are very confusing. If there are outstanding issues with BUSTR, these tanks may still be considered an eligibility issue and additional documentation on the date of removal and confirmation by BUSTR needs to be included in the NFA. Any property where there are outstanding BUSTR obligations is not eligible for the VAP. **Ohio EPA has not been able to determine if the property meets eligibility requirements**

Comment 2- Per OAC 3745-300-02 (C)(5); The text mentioned that the plant is a RCRA large quantity generator. It is understood that Parcel B contains a facility that was never put into operation, but the RCRA permit would apply to both parcels A and B. Therefore, the NFA should include a discussion on how corrective action requirements will be handled under the VAP for this property and any supporting information with regard to the RCRA issues for the entire property (i.e., closure obligations). Please note that any property where there is outstanding RCRA closure or corrective action obligations is not eligible for the VAP. **Ohio EPA has not been able to determine if the property meets eligibility requirements.**

Issue B: OAC 3745-300-06– Phase I Assessment:

Comment 1 – OAC 3745-300-06(D)(2)(c) and (d) – Environmental Record Reviews: Section 4.1 and 4.2 discuss the environmental records searched for the project, however, no files were reviewed for this property. It has been Ohio

EPA's experience that files kept by State and Local governmental offices usually provide more and correct information as opposed to the databases. Therefore, Ohio EPA- VAP has required CPs to review files kept by regulatory agencies such as BUSTR, Ohio EPA, and local health departments to ensure that identified areas are not missed during the development of Phase I Assessment. This review was not completed by the CP. Golder did request information from the local agencies, but there is no follow up to this request documented in the Phase I Assessment. **Therefore, Ohio EPA is unable to determine if all appropriate Identified Areas have been determined under the Phase I Assessment.**

Issue C: Legal Description and Survey map of property boundary, portions subject to remedial activities; OAC 3745-300-13(E)(1) and (2):

Comment 1- The legal description of the NFA letter property is not consistent with OAC 3745-300-13(E)(1). There is a legal description attached to the deed for the transfer of the property to IRG from Ford, however, Ohio EPA was unable to reconcile this legal description with the survey of the property provided in the NFA. The legal description lists 43.9354 acres, while the survey lists 58.9282 acres. A legal description can be prepared from the survey. The survey appears to have been done by a professional surveyor, as required. It is stamped, but not signed. It needs to be signed, and must be provided on 8.5 by 11 inches paper, so it can easily be attached to the CNS. Therefore, Ohio EPA cannot determine if a proper legal description for the property has been completed and cannot determine the boundaries of the property as required under OAC 3745-300-13 (E) (1).

Comment 2 - The NFA letter contains survey plat map which is to show the property's boundary based on the survey. OAC 3745-300-13(E)(2) also requires the boundaries of the voluntary action property to be determined by an Ohio-licensed surveyor and letter-size map(s) that show the property's boundaries. However, this map is unclear as to the property boundaries and does not appear to match the boundary maps of the other NFA figures. The NFA letter should therefore be amended to include a survey plat map with the surveyor's certification which clearly shows the boundary of the NFA letter property in accordance with OAC 3745-300-13(E)(2). Therefore, Ohio EPA cannot determine the appropriate boundaries of the property as required under OAC 3745-300-13 (E) (2)(ii).

Issue E: OAC 3745-300-15(D) and 3745-300-13(E)(13)- Activity and Use Limitations and Proposed Environmental Covenant

The NFA letter relies on a commercial/industrial use restriction that is contained in the deed that transferred the property from Ford to IRG. Pursuant to ORC 3746.10(C)(3)(b), an environmental covenant that meets the requirements

established in section 5301.80-92 of the Revised Code is needed. Ohio EPA's Legal Office is available to answer any questions about preparing an environmental covenant.

Issue F: Executive Summary, OAC 3745-300-13(J)

The executive summary should be revised to reflect any substantive revisions to the NFA letter in response Ohio EPA reviewer comments. The revised executive summary should be issued under a CP affidavit with the addendum to the NFA Letter, consistent with OAC 3745-300-13(J).

CONCLUSIONS AND RECOMMENDATIONS

NFA Letter does not demonstrate to Ohio EPA that the Property meets applicable standards; therefore, VAP is unable to recommend that the Director issue a CNS based on the NFA Letter for the Property. However, to afford an opportunity to address these deficiencies, the VAP will delay making a recommendation for denial of the request for a CNS.

The identified issues stated above must be addressed to the satisfaction of Ohio EPA by November 30, 2009, before Ohio EPA can issue a CNS for the property. If you have not addressed or corrected the deficiencies in the existing NFA Letter and submitted to Ohio EPA an acceptable addendum on or before November 30, 2009, Ohio EPA intends to recommend that the Director issue a denial of the pending request for a CNS.

The NFA Letter addendum will need to be prepared so that the NFA Letter, as amended, meets the criteria of OAC 3745-300-13. Further, the addendum needs to be submitted under the CP affidavit provision of OAC 3745-300-13(P), and include any other affidavits (such as volunteer or certified laboratory affidavits). Please submit two copies of the addendum (two hard copies or one hard copy and one indexed electronic copy on a compact disc) to the attention of Nancy Zikmanis at the following address on or before November 30, 2009:

Nancy Zikmanis
Ohio EPA/DERR
Northeast District Office
2110 E. Aurora Road
Twinsburg, OH 44087

Please send the original addendum and an indexed electronic copy of the addendum on a compact disc to the attention of Debi Tavizon, Records Management Officer, DERR, Ohio EPA, Central Office, on or before November 30, 2009.

Again, as an alternative to denial, the volunteer may choose to submit a request to withdraw the pending NFA Letter and request for a CNS on or before the November 30, 2009, deadline.

If you have any questions related to this review or would like to schedule a meeting or conference call, please feel free to contact me at (614) 644-2924 or Nancy Zikmanis at (330) 963-1160.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Kavalec', is positioned below the word 'Sincerely,'.

Tiffani Kavalec, Manager
Assessment, Cleanup & ReUse Section
Division of Emergency and Remedial Response

NCZ/fr

cc: Debi Tavizon, Records management Officer, Ohio EPA, DERR, CO
Catherine Stroup, Ohio EPA, Legal, CO
Nancy Zikmanis, DERR, NEDO

ec: Steve Love, Supervisor, DERR, NEDO
Rod Beals, Manager, DERR, NEDO
Frank Robertson, Supervisor, ACRE, CO
Eric Sainey, ACRE, CO
Don Vogel, SABRE, CO