From: Matt Knecht [mailto:MKnecht@hzwenv.com]
Sent: Tuesday, December 03, 2013 10:49 AM
To: Martwick, Cathleen
Cc: Dodds, Jennifer; Thomas M. Bowlus (tombowlus@bowluslaw.com)
Subject: FW: Split Soil Sample Data and Other Documentation Collected and/or Prepared on Behalf of Grist Mill Creek, LLC During AECOM's Site Investigation, Former Whirlpool Park, Sandusky County, Ohio

Cathy:

Re-sending information that bounced back yesterday. Jennifer (I believe) already has this information. Sorry for the delay…I was out in the (very cold) field this morning.

Matt

Matthew D Knecht
President
HzW Environmental Consultants, LLC
6105 Heisley Road
Mentor, Ohio 44060
Tel: 440-357-1260
Toll Free: 800-804-8484
Fax: 440-357-1510
E-Mail: mknecht@hzwenv.com

Lots of folks tell us "I didn't know HzW did that!" Among our varied services, we do wetlands, asbestos, Phase I and Phase II ESAs, regulatory compliance, VAP work…if it is "environmental", we probably do it. Please ask us…we would love to work with you!

Matt Knecht and HzW Environmental Consultants, LLC intend that this message be used exclusively by the addressee(s). This message may contain information that is privileged and confidential, and potentially exempt from disclosure under applicable law. Unauthorized disclosure or use of this information is strictly prohibited. If you receive this communication in error, please permanently dispose of the original message and notify Matt Knecht at 800-804-8484. Thank you

From: Matt Knecht
Sent: Monday, December 02, 2013 9:47 AM
To: 'dodds.jennifer@epa.gov'
Cc: 'martwick.kathleen@epa.gov'; Thomas M. Bowlus (tombowlus@bowluslaw.com); gristmillcreek@gmail.com
Subject: Split Soil Sample Data and Other Documentation Collected and/or Prepared on Behalf of Grist Mill Creek, LLC During AECOM's Site Investigation, Former Whirlpool Park, Sandusky County, Ohio

Ms. Dodds:

At the request of Tom Bowlus, counsel for Grist Mill Creek, LLC, HzW is providing you with four documents compiled during 2013. The first attachment is an Excel spreadsheet containing the split soil analytical results collected by HzW on behalf of Grist Mill Creek during AECOM's field activities.

(As an aside, Mr. Steve Wolfe was fully aware that we were collecting split samples with AECOM and, in fact, asked us in the field to not collect split samples of the same soil intervals that USEPA's contractor – Weston Solutions – was collecting split samples of; rather, if Weston Solutions collected a split of sample X, Mr. Wolfe asked us – HzW – to collect a split sample of Sample Y, so that there was not duplication between HzW split soil sampling and Weston Solutions' split soil sampling activities.) The sample designations indicated in the spreadsheet correspond to the soil boring designations assigned by AECOM. The samples indicated as "TT" correspond to soil samples collected by HzW in the area of the former grist mill during test trenching activities (hence, the designation "TT"). On the spreadsheet, HzW has highlighted values that exceed Ohio VAP generic direct contact standards (GDCS) for residential land use, bearing in mind that these comparisons to VAP standards do not necessarily have any bearing on how the USEPA (or the TSCA program) view this comparison. Finally, before leaving this first attachment, we would merely note that HzW's split soil sample data for PCBs are – in virtually every case – higher than those reported in the split samples collected by AECOM.

The second attachment is our response to the third draft of the VAP Phase I Property Assessment prepared by AECOM prior to initiation of the field work. This gives some flavor of the nature of the back and forth that occurred between Whirlpool Corporation and Grist Mill Creek in arriving at a VAP Phase I Property Assessment. I do not wish to speak for Mr. Bowlus, but it is our opinion that the final VAP Phase I Property Assessment never incorporated fully our comments or concerns outlined in this document.

The third attachment is our comments on the Phase II Work Plan developed by AECOM prior to initiation of the field work. Again, this document provides some flavor of our concerns about statements (or misstatements) included in the Phase II Work Plan.

The final attachment is our comments on the Draft Site Assessment Report (SAR). These comments were assembled rather quickly, since Grist Mill Creek was not provided a copy of the Draft SAR until comparatively late in process, although we would note that the primary issues raised in our comments had been discussed on numerous occasions with Whirlpool Corporation and AECOM prior to our actually receiving the Draft SAR.

Should you have any questions, please do not hesitate to contact me. Tom, is there any other documentation that you would like me to provide USEPA besides these documents?

Thanks,

Matt

Matthew D Knecht
President
HzW Environmental Consultants, LLC
6105 Heisley Road
Mentor, Ohio 44060
Tel: 440-357-1260
toll free: 800-804-8484
fax: 440-357-1510
E-Mail: mknecht@hzwenv.com

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HzW ENVIRONMENTAL
CONSULTANTS, LLC

March 1, 2013

Thomas M. Bowlus, Esq.
The Bowlus Law Firm, Ltd.
207 N. Park Ave
Fremont, Ohio 43420

Subject: ***Comments on Third Draft of the Voluntary Action Program (VAP) Phase I Property Assessment for the Former Whirlpool Park Property (FWP), Township Road 181, Green Creek Township, Sandusky County, Ohio***

Dear Mr. Bowlus:

HzW Environmental Consultants, LLC (HzW) has had the opportunity to review the subject document. The purpose of this letter is put forth our comments on the third draft of the VAP Phase I Property Assessment ("Draft VAP Phase I") of the former FWP. As with our comment letter on the first two draft VAP Phase I documents prepared by AECOM, HzW has attempted to touch on some of the broader elements associated with the report.

Comment 1: Section 1.1

We would reiterate our previous comment regarding the statement "[s]oil samples analyzed as part of a previous site investigation...detected PCBs...above and below the applicable VAP standards...". This statement is true, although – bearing in mind the intended unrestricted residential land use of the FWP – six (6) of the seven (7) samples collected and analyzed by the U.S. EPA exceeded the VAP single chemical generic direct contact standard for PCBs (1.2 milligrams per kilogram [mg/kg]).

Comment 2: Section 1.4

This section continues to contain the phrase that "the future use is currently intended to be residential". As indicated earlier, the use of the word "currently" implies that the future land use of the FWP somehow remains subject to future events. We would restate our previous comment that the document should reflect that, for the purposes of the VAP, the anticipated and intended future land use <u>is</u> unrestricted residential.

Comment 3: Section 2.1

Again, we are confused as to why Thornton Stokes' ownership of the FWP property between 1950 and 1953 is highlighted in this section.

Comment 4: Section 2.2.1

As stated in our previous two comment letters, we continue to disagree that the 1969 historical topographic map is "generally the same as the 1958 topographic map", with or without a modifier

MENTOR AKRON EUCLID CANTON
6105 Heisley Road, Mentor, Ohio 44060 • phone 440-357-1260 • 800-804-8484 • fax 440-357-1510
www.hzwenv.com

discussing the size of what is referred to as the East Pond. It is evident that the 1958 topographic map shows what HzW has termed the "former east ravine", while the 1969 topographic map shows this feature to have been filled at some point between 1958 and 1969.

Comment 5: Section 2.2.2

As stated in our correspondence of February 19, 2013, we believe that the narrative in this section narrows the time frame for the in-fill of the former east ravine. The narrative for the 1957 aerial photograph notes a "wooded ravine is present on the east side of the South Triangle". The 1960 aerial photograph shows that "...trees are no longer visible along the ravine in the east side of the South Triangle." Finally, the 1964 aerial photograph "shows...disturbed areas around the *former* east ravine" (emphasis added). It would seem that the historical aerial photographs lend support that the 1969 topographic map is **not** "generally the same as the 1958 topographic map".

Comment 6: Section 2.2.5

We raised the question in our February 19, 2013 correspondence as to whether the disposition of the dredged spoils removed from the East Pond and portions of the Mill Race in 1968, 1980 and 1987 is known. If not, we would suggest that this section include a statement such as, "the disposition of the dredged spoils from the East Pond and the Mill Race is unknown".

Comment 7: Section 2.3

When interviewed by the undersigned, Mr. Gary Jenne was very specific as to the year he first followed the red truck. It was 1961 (the year of his 12th birthday, when he received a 26-inch bicycle as a birthday present). Mr. Jenne also indicated that the red truck disposed of the gray material in the area of the former east ravine on the FWP property with some regularity, and "always came from the east along the Clyde-Green Springs Road, and returned the same way it came" (i.e., back towards the City of Clyde). Mr. Jenne also used the term "sludge" when describing the material pumped into the former east ravine.

Comment 8: Section 3.1

The U.S. EPA told the undersigned in the field that the reason the agency focused on the basketball court was based upon information they received via the so-called "tip line". Mr. Jenne indicated that he was person who called the tip-line and described the filling of the east ravine. We would also note – and, as we have stated in previous correspondence, believe the Phase I report should note – that the nature of fill materials encountered by the U.S. EPA's contractor in 2012 was described as a sludge-like material, similar (in color and descriptive terminology) to the material described by Mr. Jenne in Section 2.3.

Comment 9: Section 4.0

Again, it is unclear why, to the undersigned (as a VAP Certified Professional), fill placement from an off-Property source area ("origin unknown" [page 6 of the Draft VAP Phase I]) would not be considered when discussing the release history for the FWP property. Ohio Administrative Code (OAC) Chapter 3745-300-06(B)(4) is clear – when describing a property's "hazardous substance or petroleum release history" – "the objective of this portion of the phase I property

assessment is to identify all known ***or suspected*** releases...which may have occurred on...the property" (emphasis added). Unless AECOM's Certified Professional considers the information from Mr. Jenne not credible, or believes that all the fill placed into the former east ravine a) originated from an on-Property source area **and** b) that the fill from that on-Property source area was "clean", it is believed that the narrative in this section should be expanded. Re-stating information in our January 4 and February 19, 2013 letter, it is HzW's opinion that the property has two separate release histories:

1. The intentional filling of the former east ravine with a "sludge" material (according to USEPA's contractor's boring logs and Mr. Jenne's interview) which may have been contaminated with a PCB cogener (Arochlor 1254) and certain metals. Certain concentrations of PCBs detected by USEPA's contractor exceeded TSCA standards and VAP applicable standards for soil direct contact for an unrestricted residential use, as well VAP applicable standards for future construction and excavation activities. The extent of PCB-contaminated soil has not yet been determined.

2. The intentional disposal of debris in the area of the former grist mill, including concrete slabs, brush, at least one tank, and an unknown number of drums. No evaluation of soil or groundwater has been conducted in this portion of the property, although the presence of drums indicates that this area meets the VAP definition of an identified area.

Comment 10: Section 6.1

We acknowledge that the identified areas in the revised draft version of this section (and, more specifically, shown in the revised figure indicating the boundaries of identified areas) are more closely aligned with what was outlined in our previous correspondence. We remain concerned that the boundaries of Identified Area 3 should be expanded to the southeast. Further, as we discussed during our conference call, some explanation will need to be provided to the property owner if the area underneath the swimming pool is no longer an area where soil sampling is intended to be performed.

The foregoing are the substantive comments that HzW would offer following our review of the third Draft VAP Phase I report for the FWP property. Should you have any questions, please do not hesitate to contact us.

Sincerely,

HzW ENVIRONMENTAL CONSULTANTS, LLC

Matthew D. Knecht
President
Ohio EPA VAP Certified Professional, No. 0105

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HZW ENVIRONMENTAL
CONSULTANTS, LLC

April 5, 2013

Thomas M. Bowlus, Esq.
The Bowlus Law Firm, Ltd.
207 N. Park Ave
Fremont, Ohio 43420

Subject: ***Comments on Second Draft of Voluntary Action Program (VAP) Phase II Work Plan, Supplemental Work Plan, and Response to USEPA Comment Letter prepared by AECOM for the Former Whirlpool Park Property (FWP), Township Road 187, Green Creek Township, Sandusky County, Ohio***

Dear Mr. Bowlus:

HzW Environmental Consultants, LLC (HzW) has had the opportunity to review the subject documents which were received on March 29, 2013. This letter provides HzW's comments.

REVISED VAP PHASE II WORK PLAN (P2WP)

This document was revised from the original draft P2WP dated March 6, 2013, and was the subject of a March 25, 2013 conference call between Mr. Steve Wolfe of the United States Environmental Protection Agency (USEPA), Mr. Ron Roelker of AECOM, and HzW's VAP Certified Professional, Mr. Matt Knecht.

Before getting to specific comments on the P2WP, HzW wishes to be clear. As the environmental representative of the current owner of the FWP (Mr. Jonathan Abdoo), HzW is alarmed at what we perceive to be an apparent indifference and/or non-responsiveness on the part of AECOM to certain statements, comments and/or requested assessment activities from Mr. Wolfe of the USEPA. During a conference call on March 5, 2013, Mr. Wolfe expressed that he was "frustrated" with the fact that AECOM had "missed three deadlines" in providing an approvable P2WP to the agency, and reiterated his December 2012 assertion that USEPA wanted a "full and thorough investigation" of the FWP. Mr. Wolfe also shared that – in addition to his personal frustration – his supervisors at USEPA considered the assessment of the FWP a high priority. Mr. Wolfe stated that he was under "pressure" to deploy USEPA's contractor (Weston Solutions) to perform the assessment if AECOM (on behalf of the Whirlpool Corporation) did not produce an approvable P2WP "as soon as possible".

Against this backdrop, AECOM produced the initial draft of the P2WP on March 6, 2013. USEPA responded with written comments drafted (primarily) by Mr. Wolfe in a letter dated March 12, 2013. During the March 25, 2013 conference call, each of the USEPA's comments was discussed in turn. While the revised P2WP submitted by AECOM on March 29, 2013 addresses some of the issues raised by the USEPA, the document contains inconsistencies, does not address all the items discussed and/or agreed to during the conference call, and – in HzW's opinion – does not capture the means and methods stressed by Mr. Wolfe for the evaluation of the obvious materials dumped in what AECOM designated Identified Area (IA) 3.

To be candid, we are concerned that a lack of fully addressing Mr. Wolfe's desired goal for a complete assessment of the FWP has potentially serious ramifications. If, for example, the USEPA's frustration rises to the point where Weston Solutions "takes over" the assessment of the FWP, both the Whirlpool Corporation and Mr. Abdoo would lose control over the assessment process and the flow of analytical data. From HzW's perspective, this is not a desired endpoint and could put Mr. Abdoo in an awkward position as owner of the FWP, if for no other reason than public perception.

Finally, this apparent indifference extends to comments provided on previous AECOM documents by HzW on behalf of Mr. Abdoo. To this point, HzW has attempted to provide its comments and requested clarifications in what was hoped to be a "suggestive" or "advisory" tone, and were intended to complement (rather than supplant) the efforts of AECOM. Yet, most of these comments have either been ignored or otherwise not responded to (in part or in full), leaving HzW and Mr. Abdoo to conclude that our input "does not matter" to the Whirlpool Corporation and/or AECOM. This has fostered suspicion and a divisive loss of confidence (at least in speaking with Mr. Abdoo) that the Whirlpool Corporation and/or AECOM are hearing (or even desire) our input, despite the fact that Mr. Abdoo owns the FWP and has cooperated fully with the Whirlpool Corporation and AECOM to this point.

Comment 1: Section 2.2

We have made this comment at least once previously, regarding the VAP eligibility status of the FWP vis-à-vis the presence of polychlorinated biphenyls (PCBs) in soils. The language in Section 2.2 confuses the issue, and implies a VAP eligibility barrier exists merely because of the presence of PCBs in soil on the FWP. Ohio EPA (specifically, Mr. Dan Tjoelker) has made a similar comment to Mr. Roelker in the past. Simply put, we believe the language of Section 2.2 should be revised to reflect the following:

> "The Property is eligible to participate in the VAP, although any remedial obligations under the Toxic Substances Control Act (TSCA) would need to be satisfied prior to submittal of the VAP No Further Action (NFA) Letter."

Comment 2: Section 2.3, IA#1, first full sentence

As we have stated previously, there are multiple lines of evidence (the most compelling being an oblique aerial photograph taken in approximately 1959, well after the swimming pool had been completed) that the Former East Ravine was not a shallow "swale" (as indicated in this sentence), but was a distinct topographic erosional feature at least 12 feet deep and occupied by an intermittent stream. Further, as we have stated previously, multiple lines of evidence indicate that any "filling" of the Former East Ravine with spoils from the excavation of the swimming pool in 1953 and 1954 was very limited in nature.

Comment 3: Section 2.3, IA#2, second full sentence

The statement that the "stockpiles are associated with construction activity by the current property owner" is not accurate. These stockpiles were trucked to the FWP by a contractor responsible for constructing the new elementary school in Green Springs, Ohio. Thus, the

original source of these materials is known, as is the party responsible for bringing them to the FWP. No activity conducted by Mr. Abdoo contributed to these stockpiles. The inaccuracy of this statement was pointed out to Mr. Roelker by HzW on the March 6, 2013 conference call. Mr. Roelker indicated that this statement would be modified, and yet it remains in the draft P2WP.

Comment 4: Section 2.3, IA#3, first full sentence

The description of materials dumped in this area omits any reference to the obvious drums which are visible. Mr. Wolfe pointed out this omission to Mr. Roelker on the March 25, 2013 conference call; yet, the description of dumped materials in this section continues to omit any reference to the obvious drums.

Comment 5: Section 4.0, last sentence

In describing USEPA's previous sampling effort, this section includes the statement that "...two samples [exhibited] PCB concentrations above the TSCA remediation standard of 50 [milligrams per kilogram, or] mg/kg." This statement is inaccurate and misleading in several regards, and implies a very poor understanding of TSCA remedial requirements. Under TSCA, the noted value – 50 mg/kg – is both a "trigger value" and a "materials management value". A detection of PCBs in excess of 50 mg/kg in soil "triggers" certain remedial obligations. Further, materials containing greater than 50 mg/kg of PCBs are required to managed (i.e., treated and/or disposed of) in a stricter and more costly manner than materials containing less than 50 mg/kg of PCBs; thus 50/mg/kg is a "materials management value". Actual "TSCA remediation standards" are a sliding scale dependent upon whether or not the affected medium or material is considered porous or non-porous, and whether the area in question is high occupancy or low occupancy.

We concede that there is a single circumstance under TSCA where 50 mg/kg of PCBs in soil could be considered a "remediation standard". This circumstance would require a) Mr. Abdoo or any other potential residential user no longer owning the FWP and b) fencing the affected portion(s) of the property and c) putting up the TSCA-prescribed "warning signage" on the fences indicating that the site was contaminated with PCBs. This qualifies the site for TSCA defined "low occupancy".

This concession aside, Mr. Wolfe has told Mr. Roelker on at least one occasion that – given the current circumstances – the TSCA remediation standard for PCBs in soil on the FWP will be 1.0 mg/kg, since Mr. Abdoo intends to use the property for residential purposes (i.e., TSCA "high occupancy") and the affected medium (soil) is porous. ***Clearly, as HzW has stated and/or inferred on behalf of Mr. Abdoo in several previous comment letters, the site will NEVER be "TSCA low occupancy" so long as the intended land use is residential. Mr. Wolfe has echoed this same conclusion to Mr. Roelker. Therefore, the statement that only two of the samples collected by the USEPA in 2012 exceeded "the TSCA remediation standard of 50 mg/kg" is both inaccurate, and misleading.*** **We wish to be clear, and would ask the AECOM's documents would be similarly clear: in fact, six (6) of the seven (7) soil samples collected by USEPA in 2012 contained concentrations of PCBs which exceeded "the TSCA remediation standard" of 1.0 mg/kg.** While HzW acknowledges that one (1) of these six (6) samples was collected below a depth of 10 feet (the Ohio VAP point of compliance for unrestricted residential soil direct contact), Mr. Wolfe has made it clear that he does not consider Ohio VAP points of

compliance binding upon the USEPA. Viewed in light of past statements from Mr. Wolfe, HzW believes that the most basic examination of the 2012 soil analytical data would lead anyone to conclude that **all but one** of the samples collected on behalf of the USEPA contained a concentration in excess of 1.0 mg/kg, the applicable "TSCA remediation standard". Our reason for placing so much emphasis on this point is that – again and again – the AECOM reports do not accurately reflect this fact, either by a) first suggesting in initial drafts of the Phase I Property Assessment that the land use could be something other than residential, or b) now citing a "TSCA remediation standard" in the P2WP which is, in truth, nothing of the sort. These repeated attempts to downplay or otherwise shroud the significance of the USEPA's 2012 analytical findings are misleading, and demonstrate an unwillingness to confront the facts at hand. On behalf of Mr. Abdoo, HzW objects in the strongest terms to the repeated propagation of some mythical clean-up standard for PCBs in soil at the FWP **other than 1.0 mg/kg**.

Comment 6: Section 6.3, IA#1, EU#2

On the March 25, 2013 conference call, HzW pointed out that the actual sediment blanket thickness in the so-called East Pond was 6 feet, while the sampling plan only contemplated sampling this material to a depth of 2 feet. Mr. Roelker responded that the sampling in the East Pond would "extend through the entire sediment blanket and continue 5 feet into native" materials. Yet, this section of the revised P2WP continues to indicate a sampling depth of the materials in the East Pond of 2 feet.

Before moving on to the next comment, HzW again re-states a question it has raised at least twice. Previous AECOM reports have cited historic Whirlpool Corporation records indicating the previous dredging of the Mill Race. Is there any knowledge relative to the disposition of the dredge spoils? This is a straight-forward question, asked for the benefit of Mr. Abdoo, and yet it remains unanswered.

Finally, HzW has a concern that the West Pond sediment blanket thickness may be greater than 2 feet thick. We repeat a request made on the March 25, 2013 conference call that – at a minimum – sampling in the West Pond at least penetrate the entire sediment thickness.

Comment 7: Section 6.3, IA#3, EU#1

HzW does not believe that the proposed test trenching reflected in the revised P2WP in the area of obvious dumping in IA#3 is in keeping with what USEPA requested on the March 25, 2013 conference call, and is – potentially – the most flawed portion of the document. Mr. Wolfe was clear that there was to be an attempt to fully excavate the fill to determine the types of materials present. While not wishing to anticipate Mr. Wolfe's reaction, HzW believes that the concept of "staging" as discussed in this section will not be well received by USEPA, nor will the use of a "light duty rubber-tired backhoe". Mr. Wolfe was clear that a "large excavator" would be necessary to penetrate (or even move) the large concrete slabs clearly observable in this area. HzW is still uncertain as to AECOM's intended approach in IA#3, and is concerned that this portion of the revised plan will receive a similar response from USEPA as did the original plan, whereby USEPA commented:

> "As the plan is written, [USEPA is] not entirely sure what is going to occur here. When [USEPA] suggested test trenches…[the] intent was to actually dig through the material to see what may be buried here. Further explanation of what is going to occur will be required."

Simply stated, HzW's concern is that, if AECOM cannot articulate the approach in IA#3 and that this portion of the revised P2WP remains insufficient in responding to USEPA's original comment, this will add to the agency's previously stated "frustration".

Comment 8: Figure 6, Sampling in Former West Pond

The symbols in the West Pond indicate "proposed surface soil sample" locations. In the text, "surface soil samples" were described as locations where only the upper 6 inches of material were to be collected. This is in conflict with the text in Section 6.3 (IA#1, EU#2) where it was stated that sampling in the West Pond would extend to a depth of 2 feet, with the 0-1 foot and 1-2 foot intervals sampled and analyzed separately. Again, HzW would note its remarks in Comment 6, above, regarding the sediment blanket thickness in the West Pond. The desire is to sample discrete intervals – at a minimum – through the entire sediment thickness. Mr. Roelker had indicated on March 25, 2013 (at least when describing the sediment sampling in the East Pond) that sediment sampling would penetrate the entire sediment blanket thickness and continue five (5) feet into native material. As it stands, given the conflict between this figure, the text and what was communicated/represented on March 25, 2013, it is unclear to HzW what the sampling protocol is for the West Pond (and the East Pond, for that matter).

Comment 9: Table 1 (all three pages)

This table continues to reflect that "Inside Mixing Zone Criteria" will be the surface water comparable values. As was discussed on March 25, 2013, the Outside Mixing Zone Averages (OMZAs) are the applicable standards for surface water under Ohio's VAP, and are also the most conservative values (which was one of USEPA's comments on the initial work plan). This leads HzW to conclude that there will be yet another iteration of the P2WP to correct the reference to "Inside Mixing Zone Criteria".

Comment 10: Appendix A (all pages)

Until a complete assessment of the FWP has been completed, HzW believes it is premature to conclude that media have not been affected by volatile organic compounds (VOCs), and thus no vapor intrusion risk exists. In HzW's experience with the VAP, it is preferable to mark any yet to be quantified exposure pathways as "yes" for completion until such time as one has the data in hand to conclude that, in fact, the pathway is a "no" for completeness.

SUPPLEMENTAL WORK PLAN

HzW's only comment on this work plan is related to the two older steel sand filters. First, the AECOM document is unclear on how these sand filters will be sampled. Having observed these appurtenances first hand, HzW believes that there should be a greater degree of specificity as to how the samples will be collected. Second we believe that there should be more than one sampling location for each of the two filters, and that discrete samples be collected of the entire

thickness of the filter media (i.e., the sampling needs to be fully penetrating). In short, there needs to be more specificity as to the means and methods of sampling, and more discussion of how discrete vertical intervals of the media will be sampled, in that these filters are of key concern to both USEPA (according to Mr. Wolfe) and Mr. Abdoo.

RESPONSE LETTER TO USEPA COMMENT LETTER ON INITIAL P2WP

Comment 1: CP Response to USEPA Comment 5

As indicated in Comment 7 relating to the revised P2WP, HzW does not believe that the proposed test trenching reflected in the revised P2WP in the area of obvious dumping in IA#3 is in keeping with what was discussed on the March 25, 2013 conference call, and does not respond to the USEPA's comment.

Comment 2: CP Response to USEPA Comment 9

While Section 6.2 of the text may have been revised, all three pages of Table 1 continue to reflect the "Inside Mixing Zone Criteria" as the comparative values for surface water samples rather than the OMZAs, and will – in all likelihood – require another iteration of the P2WP.

Comment 3: CP Response to USEPA Comment 11

As indicated in Comment 6 relating to the revised P2WP, on the March 25, 2013 conference call HzW pointed out that the actual sediment blanket thickness in the East Pond was 6 feet. The text of the revised P2WP and this response to the USEPA comment only contemplates sampling of the sediment material in the East Pond to a depth of 2 feet. This conflicts with a statement made by Mr. Roelker during the March 25, 2013 conference call, whereby he indicated that the sampling of the materials in the East Pond would "extend through the entire sediment blanket and continue 5 feet into native" materials. This response to the USEPA's comment does not reflect the stated intent of sampling in the East Pond. Finally, HzW would reiterate that we have the same concern regarding the West Pond.

Comment 4: CP Response to USEPA Comment 13

Despite the assertion that Tables 1 and 2 of the revised P2WP have been changed, a review of the document received on March 29, 2013 indicates, in fact, that the tables have not been changed, and still reflect "Inside Mixing Zone Criteria" as the applicable comparable values for surface water samples. As stated above, this oversight will – in all likelihood – necessitate another iteration of the P2WP.

In closing, it is hoped that this document conveys some of the concerns and frustrations expressed to HzW by Mr. Abdoo, and the essence of what HzW has gleaned during conference calls with Mr. Wolfe on March 6 and 25, 2013. Should you have any questions, please do not hesitate to contact us.

Sincerely,

HzW ENVIRONMENTAL CONSULTANTS, LLC

Matthew D. Knecht
President
Ohio EPA VAP Certified Professional, No. 0105

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October 31, 2013

Thomas M. Bowlus, Esq.
The Bowlus Law Firm, Ltd.
207 N. Park Ave
Fremont, Ohio 43420

Subject: ***Comments on Draft Site Assessment Report (SAR) the Former Whirlpool Park Property (FWP), Township Road 181, Green Creek Township, Sandusky County, Ohio***

Dear Mr. Bowlus:

HzW Environmental Consultants, LLC (HzW) received the subject document for review on October 23, 2013. We understand that the United States Environmental Protection Agency (U.S. EPA) received the draft SAR at some point during either August or September, based upon a telephone call received from Mr. Steve Wolfe, who is the agency's Site Coordinator for the FWP.

The purpose of this letter is put forth HzW's comments on the draft SAR. While the timeframe allowed for review of the document was comparatively short (compared with the timeframe allotted the U.S. EPA to the review the document), our comments remain – essentially – the same as those expressed to the Whirlpool Corporation (both in the field and in multiple emails from legal counsel for the property owner) and Mr. Wolfe during a telephone conversation last week.

Comments on the Text of the Draft SAR

There are several statements in the text of the document that we believe require clarification. These are:

- In Section 1.0, there is a statement that the AECOM assessment was "conducted in general accordance with the [Ohio EPA's] Voluntary Action Program [VAP]". We understand the context of the statement, i.e., that AECOM's draft SAR is intended to address U.S. EPA requirements, and not (specifically) those of Ohio's VAP. Nevertheless, inasmuch as the property owner maintains the desire to pursue a VAP Covenant Not to Sue, it is critical that it be understood that the data compiled during the site assessment were collected in accordance with VAP rules, and is "re-usable" for the purposes of the VAP at some point in the future (i.e., post-remediation of the site).
- In Section 2.1.1, there is a statement that the "main topographic feature of the [FWP] is a relatively deep narrow valley occupied by…Flag Run Creek and [a feature referred to as the "Mill Race"]." HzW would like to clarify that the Mill Race is not situated in the valley for Flag Run Creek, but is a separate and distinct (albeit, inactive) water course across the property, with no (or only limited) interconnection with Flag Run Creek.

- The last sentence of Section 2.1.2 states that the "current owner [of FWP], a local contractor, uses the Site to store equipment". This statement is misleading, suggesting that the current owner of the FWP stores equipment used in his contracting business, which is not factual. Further, this sentence **ignores and omits** the fact that the current owner purchased the property in 2008 (prior to any hint that the property was contaminated) with the intent to use the FWP site to construct his primary residence. The current owner has invested considerable time, effort and money into the FWP property, and has obtained a residential water permit, staked the location of the primary residential structure, and taken additional steps toward converting the property for residential purposes.
- Section 4.2.2 discusses observations made during installation of test trenches in what AECOM refers to as the "Fill Area" (and what the property owner and others refer to as the "Former Grist Mill Area"). In the second paragraph of this section, AECOM indicates that the test trenches encountered a variety of anthropogenic fill materials, including "rusted metal pieces". The draft SAR omits the fact that several of these "rusted metal pieces" were obviously components of metal containers (drums or barrels) buried in the Former Grist Mill Area.
- Also in Section 4.2.2, the draft SAR includes statements *suggesting* that the depth of fill placement in the Former Grist Mill Area extended to a depth of between 11.0 and 12.5 feet below ground surface. HzW personnel do not necessarily agree with this statement. During test trench installation, significant caving of materials from side walls occurred, making any definitive statement as to the depth of fill placement and the horizon of native (i.e., pre-fill) materials difficult, if not impossible. HzW would assert that the depth of fill placement in the Former Grist Mill Area remains unknown, and, potentially, unknowable, without complete removal (or, at a minimum, a more comprehensive assessment beyond "test trenches") of all fill materials in the Former Grist Mill Area.

Specific Comment/Concern #1: Ecological Risk in the Former East Pond

The data compiled by AECOM indicates that:

1. At a boring (SB-27) installed in the location where a culvert installed in the fill of the Former East Ravine (which is now known to have been filled at least partially in the early 1960s by materials containing polychlorinated biphenyls, or PCBs) discharged to the Former East Pond, a concentration of PCBs (1.1 milligrams per kilogram, or mg/kg) was detected in the 0-1 foot depth interval.
2. This detected concentration in the 0-1 foot depth interval at SB-27 exceeds both a) the Toxic Substances Control Act (TSCA) "high occupancy" direct contact standard (1.0 mg/kg) and b) the ecological risk screening level for sediment published by U.S. EPA Region 5 (0.06 mg/kg).
3. At a second boring (SB-16), where water in the "east lobe" of the Former East Pond previously outlet to the Mill Race, PCBs were detected in the 1-2 foot depth interval at a concentration of 0.15 mg/kg.
4. This detected concentration at SB-16 also exceeds the ecological risk screening level for sediment published by U.S. EPA Region 5.

HzW believes that the materials sampled by AECOM constitute "sediment", since both samples were collected below the former high water mark of the Former East Pond (which is now largely empty of standing water due to a breach of the west wall of the pond). To HzW, the locations of SB-27 and SB-16 relative to each other, taken in combination with the configuration of the Former East Pond, the data suggest that sediments in the entire east lobe of the Former East Pond contain concentrations of PCBs in excess of ecological risk screening levels published by U.S. EPA. PCBs are "persistent, bio-accumulative and toxic" (PBT) compounds, meaning when taken up (ingested) by an organism the PCBs are retained in body tissue. Thus, PBT compounds bio-accumulate, and are passed up the food chain into progressively higher order organisms through predation.

While a formal wetland delineation study has yet to be performed and affirmed, HzW is of the opinion that even the most casual observer would agree that large portions (if not all) of the Former East Pond currently function as a "wetland", supporting a variety of sediment-dwelling wildlife (worms, voles, moles, mice, frogs and insects). These sediment dwelling organisms are prey for higher order organisms, particularly (based upon tracks observed in the Former East Pond in August 2013) the predatory and omnivorous red fox.

It is understood that PCBs are bio-accumulative toxins. It is also understood that red fox hunt in the Former East Pond. Thus, a strong argument could be made that the red fox is a higher order (and more mobile) organism with the potential for bio-accumulation of PCBs at the FWP. The red fox has an average range of 2-8 miles, and an average lifespan of 2-4 years.

Further, while AECOM has not undertaken a wetland delineation study, it is HzW's opinion that the wetland area in the Former East Pond is under the jurisdiction of the U.S. Army Corps of Engineers. Certain surface waters which accumulate in the Former East Pond drain (through the breach on the west side of this feature) to Flag Run Creek, which is – ultimately – tributary to Lake Erie, a navigable waterway.

Without wishing to belabor this point, AECOM states in the draft SAR that the assessment of the FWP was conducted in general accordance with Ohio's VAP. Wetland areas are considered "important ecologic receptors" (or IER) by the Ohio EPA, and thus no assessment of a property under the VAP is complete without a thorough consideration of potential impacts to IER. Yet, the AECOM report is ***silent*** on the assessment of potential ecological risks. HzW believes that an actual ecological risk may exist in the area of the Former East Pond based upon all the available evidence, and <u>believes that additional assessment (and potential remediation) of sediment is warranted in (at the least the east lobe of) the Former East Pond</u>.

Setting aside Ohio's VAP, HzW is also of the opinion that the U.S. EPA – both through the TSCA and other programs – must be sensitive to ecological risk. The mission of both the U.S. EPA and the Ohio EPA is to hold paramount protection of **human health <u>and</u> the environment.** The draft SAR appears to focus only on the human health aspect, and disregards (or does not consider) the "environmental" (i.e., ecological) aspect.

Specific Comment/Concern #2: Former Grist Mill Area Fill

One (1) sample collected from a depth of Test Trench 9 (TT-9) contained 1.54 mg/kg of the PCB cogener Arochlor 1254. The split sample collected by AECOM in this same location contained a detectable concentration of PCBs, but at a concentration of less than 1.0 mg/kg. (As an aside, Mr. Wolfe stated in the field in May 2013 that – in the case of varying concentrations in split samples – U.S. EPA would consider the highest detected concentration to be the "representative concentration", regardless of which party – AECOM, HzW or U.S. EPA's contractor, Weston Solutions – collected the sample.)

What both samples verify (regardless of the detected concentrations from the two laboratories) is that PCBs are present at depth in the Former Grist Mill Area. HzW and the property owner have several concerns;

1. The fill material in the Former Grist Mill Area is, from the property owner's perspective, undesirable, deleterious, and unsafe. The fill material is clearly discarded non-native materials, and includes the types of materials outlined in the draft SAR (large concrete slabs, smaller pieces of concrete and brick, metal rebar, metal fencing, drum/barrel parts, wood, plastic hosing, etc.).
2. As indicated earlier, the property owner intends to construct his primary residence on the property, and start a family. From the perspective of safety (alone), the fill materials in the Former Grist Mill Area pose clear fall (and other) hazards for children which are unrelated to any real or perceived "chemical contamination". As such, the property owner prefers strongly that the unsafe fill materials be removed since a) he did not place these materials in the Former Grist Mill Area, and b) there is no dispute (at least according to the VAP Phase I Property Assessment prepared by AECOM) that the large concrete slabs (and potentially the other discarded materials) were dumped in the Former Grist Mill Area by Whirlpool Corporation.
3. Were the obvious fill materials to be removed (by any party) from the Former Grist Mill Area, the 1.54 mg/kg of PCBs detected at a depth of 10 feet have the potential to be present at the new "ground surface". The 1.54 mg/kg of PCBs at ground surface would exceed TSCA "high occupancy" standards for soil direct contact. Further, the 1.54 mg/kg of PCBs at the new ground surface following fill removal are situated in the floodplain for Flag Run Creek and could therefore be eroded at some point in the future and translate to "sediment" in the creek.
4. The property owner and HzW are concerned with the "stratigraphy" of fill materials in the Former Grist Mill Area. As stated in documents included in the VAP Phase I Property Assessment of the FWP, sediments from the Former East Pond and Mill Race (and the Former West Pond, for that matter) were periodically dredged during the 1960s. However, no party associated with Whirlpool Corporation can indicate with any certainty where the sediment dredge spoils were placed on the FWP. It is not beyond the realm of possibility that the sediment dredge spoils from the 1960s (when it is known that the former East Ravine was filled with materials containing PCBs) were the earliest fill materials (and thus the deepest fill materials) placed in the Former Grist Mill Area. The property owner and HzW are at a loss of how else to explain ***why*** PCBs are present at depth in the Former Grist Mill Area unless this was the case ***and*** these sediments dredged during the 1960s contained PCBs associated with filling of the former East Ravine. The materials containing PCBs are

situated below fill materials (the large concrete slabs) which were allegedly placed in the area of the Former Grist Mill in the 1970s and 1980s. The materials containing PCBs are also situated below fill materials containing "pull tab" beverage cans (i.e., Pepsi® cans) which, according to historical labeling of Pepsi® cans available on the internet, date from the mid-1970s (pull tab cans were widely removed from the market by the early 1980s). Later fill materials, principally on top of the larger concrete slabs, consist of brush, dirt, brick, and metal. Thus, the stratigraphy of fill materials in the location of the Former Grist Mill Area suggest initial deposition of dredge spoils from the Mill Race and Former East Pond followed by more general debris placement. The property owner and HzW are concerned that the test trenches installed in 2013 may only "scratch the surface" of a more widespread layer of PCB-contaminated materials situated at depth that cannot be adequately assessed or characterized through the installation of (admitted) "test trenches". A thorough evaluation of this potential undiscovered concern can only be achieved through removal of all fill materials in the Former Grist Mill Area.

Specific Concern #3: Removal and Disposal of Investigation-Derived Waste

There remain from AECOM's investigation a number of drums of investigation-derived waste (IDW). In accordance with the access agreement signed between the property owner and Whirlpool Corporation, these drums of IDW were to be removed within ninety (90) days of generation. Several of these drums contain unused samples of subsurface material known to contain PCBs. From a perception standpoint, the property owner needs to have these drums of IDW removed immediately, and requests documentation of the disposition of these materials since they originated from sample collection activities undertaken on his property.

The foregoing are the comments and/or concerns that HzW would offer following our review of the draft SAR. Should you have any questions, please do not hesitate to contact us.

Sincerely,

HzW ENVIRONMENTAL CONSULTANTS, LLC

Matthew D. Knecht
President
Ohio EPA VAP Certified Professional, No. 0105

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Table
Summary of Soil Analytical Results
Whirpool Park
Clyde, Ohio
(All results presented in mg/kg)

Sample Collected By:	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**	**HzW**
Sample ID	**S-3**	**S-4**	**S-5**	**S-6**	**S-7**	**S-9**	**S-10**		**S-11**	**S-13**	**S-14**	**S-16**	**S-16**	**S-19**	**S-19**	**S-21**	**S-36**	**S-37**	**S-38**	**S-39**	**S-39**	**S-40**	**S-41**	**S-42**	**S-43**
Sample Depth (ft) unless otherwise noted	**0-2**	**0-2**	**0-1.5**	**3-4**	**3-4**	**4-5**	**0-8"**	**5-6**	**0-1**	**3-5**	**1-2**	**0-1**	**1-2**	**0-1**	**1-4**	**0-1**	**3"-9"**	**1-1.5**	**6"-1**	**6"-1**	**12-13**	**0-1'8"**	**0-1**	**0-2**	**1-2**
Metals and Mercury - EPA Methods 6010B or 7471A																									
Arsenic	**6.06**	**11.2**	**8.39**	**13.1**	**12.2**	**11.0**	**9.24**	<6.39	--	**16.0**	--	--	--	--	--	**9.91**	**7.14**	**7.44**	**8.06**	**13.1**	**9.02**	**8.92**	**6.16**	<5.42	**10.3**
Cadmium	<0.590	<0.556	<0.558	<0.588	<0.603	<0.605	<0.566	<0.639	--	<0.681	--	--	--	--	--	<0.567	<0.577	<0.543	<0.595	<0.549	<0.552	<0.665	<0.523	<0.542	<0.562
Chromium	**11.2**	**13.9**	**14.6**	**13.0**	**22.8**	**18.3**	**12.1**	**15.7**	--	**26.2**	--	--	--	--	--	**27.1**	**26.7**	**9.26**	**18.4**	**19.6**	**21.9**	**15.3**	**9.08**	**9.28**	**19.6**
Cobalt	**10.5**	**14.5**	**10.9**	**14.9**	**19.3**	**19.1**	**14.2**	**13.5**	--	**30.3**	--	--	--	--	--	**21.4**	**34.1**	**9.25**	**19.4**	**21.4**	**21.8**	**17.3**	**4.96**	**6.23**	**11.8**
Lead	**11.7**	**12.0**	**13.4**	**12.3**	**13.0**	**14.1**	**12.7**	**14.2**	--	**16.8**	--	--	--	--	--	**13.5**	**13.7**	**8.58**	**23.5**	**17.0**	**12.0**	**11.8**	**12.1**	**9.55**	**13.7**
Nickel	**13.3**	**25.8**	**15.2**	**34.1**	**34.5**	**28.2**	**18.7**	**17.4**	--	**47.0**	--	--	--	--	--	**40.4**	**45.7**	**12.3**	**29.7**	**33.5**	**33.3**	**23.1**	**13.0**	**16.4**	**30.5**
Mercury	<0.113	<0.118	<0.112	<0.111	<0.121	<0.119	<0.105	<0.130	--	<0.147	--	--	--	--	--	<0.116	<0.115	<0.105	<0.121	<0.112	<0.117	<0.125	<0.111	<0.104	<0.112
PCBs - EPA Method 8082																									
Aroclor 1254	<1.18	<1.18	<1.14	<1.18	<1.21	<1.31	<1.15	<1.36	<1.36	<1.50	<1.22	<1.97	<1.25	<1.89	<1.43	<1.20	<1.22	<1.13	**3.07**	<1.14	**1.30**	<1.33	**1.61**	**1.10**	**2.03**

Bolded values indicated laboratory detections
Value in **RED** exceeds VAP GDCS for Residential Land Use
= Assumes all chromium is hexavalent chromium
-- = Not sampled for specified parameter.

Table
Summary of Soil Analytical Results
Whirpool Park
Clyde, Ohio
(All results presented in mg/kg)

HzW	HzW	HzW	HzW	HzW	HzW	HzW	HzW	HzW	HzW	HzW	HzW		
S-44	**S-45**	**S-45**	**S-46**	**S-46**	**S-47**	**S-48**	**S-49**	**S-51**	**TT-6**	**TT-6**	**TT-09**	**Residential GDCS**	**Construction & Excavation GDCS**
1-2	**6"-1**	**10-11**	**3-4'**	**9-10**	**6"-1**	**1-2**	**6"-1**	**4"-1**	**11.7**	**Paint Chips**	**10**		
<5.50	**9.77**	**12.8**	**8.58**	**16.4**	**7.20**	**7.79**	**11.1**	**9.17**	<6.09	<6.00	**9.65**	6.7	420
<0.550	<0.571	<0.571	<0.578	<0.552	<0.518	<0.570	<0.537	<0.537	<0.609	<1.50	<0.668	72	1,600
7.57	**20.2**	**19.8**	**18.3**	**22.6**	**15.0**	**11.6**	**21.4**	**14.7**	**11.8**	**4.66**	**27.8**	230	13,000
3.49	**16.6**	**12.1**	**12.2**	**16.9**	**9.32**	**9.08**	**16.3**	**12.7**	**6.23**	<3.00	**11.4**	1,400	4,000
6.32	**12.5**	**13.1**	**11.1**	**16.5**	**11.5**	**7.82**	**16.9**	**11.5**	**12.9**	**12.9**	**119**	400	750
6.95	**42.6**	**35.3**	**34.9**	**41.3**	**27.1**	**22.9**	**40.1**	**35.3**	**16.8**	**10.1**	**30.0**	1,500	21,000
<0.110	<0.108	<0.116	<0.111	<0.110	<0.110	<0.121	<0.109	<0.114	<0.127	**7.82**	<0.134	7.6	190
<1.10	<1.14	<1.19	<1.16	<1.19	**3.87**	<1.21	**7.02**	**2.52**	<1.27	--	**1.54**	1.2	42