

From: Hughes, Audra A - DNR
Sent: Wednesday, July 12, 2023 9:49 AM
To: Andy Skwierawski
Cc: sharon.kozicki@foth.com; pamontne@gapac.com; william.hartman@glatfelter.com; bryan.heath@ncr.com; Beggs, Tauren R - DNR; Olson, Beth J - DNR; Ava Grosskopf
Subject: DNR Responses to Ahlstrom & McDonald Lumber Company May 2023 Letters
Attachments: Ahlstrom Response Ltr - 7.12.23.pdf; McDonald Lumber Co Response Ltr - 7.12.23.pdf

Hi, Andy:

Attached please find: (1) a DNR response to the May 3, 2023 letter you submitted on behalf of Ahlstrom-Munksjo Nicolet LLC and Ahlstrom Munksjo NA Specialty Solutions LLC (collectively, Ahlstrom) regarding Ahlstrom's objections to the Fox River cleanup case closure request; and (2) a DNR response to the May 4, 2023 letter you submitted on behalf of McDonald Lumber Company, Inc. regarding McDonald Lumber Company's objections to the Fox River cleanup case closure request.

Please feel free to reach out with questions.

Thank you,

Audra

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Audra Felix

Attorney – Bureau of Legal Services

Wisconsin Department of Natural Resources

Phone: 608-640-6395

audra.felix@wisconsin.gov



dnr.wi.gov



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July 12, 2023

Andrew Swierawski
Halling & Cayo, S.C.
320 East Buffalo Street, Suite 700
Milwaukee, WI 53202
Via E-mail Only to mas@hallingcayo.com

Subject: Response to Case Closure Objections for Fox River NRDA/PCB Releases OU2-5,
Outagamie/Brown Counties, Wisconsin
DNR BRRTS Activity # 02-45-582407
Brown County Parcel ID Nos.: WD-365; ED-715-1
Outagamie County Parcel ID Nos: 322086502; 322086501; 322086500; 322064201; 322072800

Dear Mr. Swierawski:

The Wisconsin Department of Natural Resources (DNR) has received your letter dated May 3, 2023, submitted on behalf of Ahlstrom-Munksjo Nicolet LLC and Ahlstrom Munksjo NA Specialty Solutions LLC (collectively, Ahlstrom). Ahlstrom explains that one of the parcels listed above, ED-715-1, includes the DePere dam, which is operated and maintained by the U.S. Army Corps of Engineers. The letter indicates that further clarification will be provided on whether Ahlstrom owns this parcel.

The DNR understands that Ahlstrom has two objections to site closure: (1) insufficient information was provided about the residual contamination and PCB caps in the portion of the river adjacent to Ahlstrom's properties; and (2) Ahlstrom should not be responsible for any additional requirements that may apply, or costs that may be incurred, to conduct a future project in the river because of residual contamination and PCB caps in the river. Each objection is addressed in turn below.

First, Ahlstrom objects on the ground that not enough information was provided in the notices sent to Ahlstrom about the residual contamination and PCB caps in the river. You request an updated map that includes all sampling locations and results near Ahlstrom's shoreline, along with a specific description of what dredging and capping was conducted in that area and the levels of remaining contamination in sediment and beneath any PCB caps. The DNR has reached out to Foth Infrastructure & Environment, LLC (Foth), the responsible parties' environmental consultant, to provide more detailed information regarding sampling locations, sampling results, and the locations of dredged areas and PCB caps in the river near Ahlstrom's shoreline. Sharon Kozicki is the Project Manager at Foth for the Fox River cleanup. She has been made aware of your inquiry and will provide the DNR with requested information, which the DNR will provide to you upon receipt. If you have additional questions on this topic, you may contact the DNR or you may contact Ms. Kozicki directly at sharon.kozicki@foth.com or at (920) 496-6737.

Second, Ahlstrom objects on the ground that the responsible parties should be required to "pay for any increase in costs Ahlstrom incurs on any of its future projects because of the presence of PCBs in the river." You explain in your letter that Ahlstrom plans to further develop and enhance several of its properties and that this future planned development may disturb areas of the river that contain residual contamination and PCB caps. You further explain that a shoreline erosion project that included riprap placement was recently completed along the shore of one of

Andrew Swierawksi, Halling & Cayo
Response to Case Closure Objections for Fox River NRDA/PCB Releases OU2-5, BRRTS # 02-45-582407
Brown County Parcel ID Nos.: WD-365; ED-715-1
Outagamie County Parcel ID Nos: 322086502; 322086501; 322086500; 322064201; 322072800

the identified parcels and that additional work may be needed in the future related to that project. You express concern that this future work may require Ahlstrom to disturb a PCB cap and/or contaminated sediment.

The DNR provides the following information in response to your objection. First, the responsible parties remain responsible for PCB cap monitoring and maintenance, even after site closure. The U.S. EPA and the DNR are the oversight agencies for the Fox River cleanup project and will continue to oversee work by the responsible parties for long-term residual contamination and PCB cap monitoring and maintenance.

Second, the U.S. EPA and the DNR have established a technical review process that a party who proposes to conduct work in the river near a PCB cap must complete in advance of such work. This technical review process helps third parties avoid a situation in which a third party causes a PCB release to the environment. This benefits third parties because a party who causes a PCB release to the environment is a responsible party for that release under the Spill Law, Wis. Stat. § 292.11. Proposed future work in the river is not necessarily prohibited, but it may be restricted or modified to prevent a PCB release and to protect public health and the environment. *See* Wis. Admin. Code § NR 727.07. Accordingly, if a third party proposes to conduct a project in a PCB cap area, a technical work plan known as a Post-Closure Modification Request must be submitted to the DNR for review and approval prior to the work commencing, pursuant to Wis. Stat. § 292.12(6). You may go to the following DNR website site link to identify the Environmental Program Associate in the Remediation & Redevelopment Program to contact with questions regarding this technical review process and to whom to submit a Post-Closure Modification Request: [Remediation & Redevelopment \(RR\) Program staff contacts || Wisconsin DNR](#)

Third, the technical review process described above is not required for future work in an area of the river that contains residual contamination but that does not include a PCB cap (such as an area with a sand cover but no cap). However, third parties proposing a project in an area where there are no PCB caps may still need to apply for a DNR permit under Chapter 30 of the Wisconsin Statutes. State permitting requirements have long been in place and did not change due to the Fox River cleanup project. If Ahlstrom decides that it would like to proceed with a proposed project, please contact a DNR water management specialist (WMS) to determine if a Chapter 30 permit is required. A pre-application meeting may be required before applying for a permit. For waterway projects in Brown or Outagamie Counties, contact one of these WMS experts: Eric Stadig (eric.stadig@wisconsin.gov) or BJ Mahon (bobbiejo.mahon@wisconsin.gov).

Fourth, state rules allow for closure of a site when applicable closure requirements are met, including that remaining levels of PCBs are not likely to pose a threat to human health or the environment or cause a violation of an applicable environmental law. *See* Wis. Admin. Code § NR 726.13(1)(b). State rules also allow DNR to impose continuing obligations to ensure public health and the environment are protected. *See* Wis. Admin. Code §§ NR 726.13(1)(c), 726.15. Long-term maintenance of PCB caps is a continuing obligation that may be imposed to protect human health and the environment. Ahlstrom's concerns relate to how the cleanup project may affect future work that it may propose to conduct in the river, and not to the cleanup performed or the PCB caps themselves. Ahlstrom may conduct future work in the river if it complies with applicable requirements and obtains any necessary approval for the work.

Finally, to the extent you may be seeking information or legal advice on whether there is any legal remedy that may be pursued against the responsible parties for any additional requirements that may apply, and costs that Ahlstrom may incur, to conduct future work in the river because of residual contamination and PCB caps, the DNR is not able to provide any substantive guidance or legal advice on that topic. Any agreement between Ahlstrom and the responsible parties regarding Ahlstrom's project costs would be a private agreement to which DNR would not be a party.

July 12, 2023

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Andrew Swierawski, Halling & Cayo

Response to Case Closure Objections for Fox River NRDA/PCB Releases OU2-5, BRRTS # 02-45-582407

Brown County Parcel ID Nos.: WD-365; ED-715-1

Outagamie County Parcel ID Nos: 322086502; 322086501; 322086500; 322064201; 322072800

The DNR appreciates the opportunity to answer your questions and respond to the objections raised in your May 2023 letter. The DNR hopes that this response has adequately addressed your concerns. If you have any further questions, additional information can be provided by the DNR and/or U.S. EPA. If you have questions for the DNR, you may direct questions to me at (608) 640-6395 or at Audra.Felix@wisconsin.gov and you may contact Beth Olson at (920) 366-5219 or at Beth.Olson@wisconsin.gov.

Sincerely,



Audra Felix

Bureau of Legal Services

Wisconsin Department of Natural Resources

cc: Sharon Kozicki, Foth (sharon.kozicki@foth.com)
Paul Montney, Georgia-Pacific Consumer Operations LLC (pamontne@gapac.com)
William Hartman, Glatfelter Corporation (william.hartman@glatfelter.com)
Bryan Heath, NCR Corporation (bryan.heath@ncr.com)
Ava Grosskopf, The Boldt Company (Ava.Grosskopf@boldt.com)
Tauren Beggs, DNR (Tauren.Beggs@wisconsin.gov)
Beth Olson, DNR (Beth.Olson@wisconsin.gov)

From: Olson, Beth J - DNR
Sent: Tuesday, May 9, 2023 4:33 PM
To: pamontne@gapac.com; Hartman, William A.; Heath, Bryan; sharon.kozicki@foth.com
Cc: Beggs, Tauren R - DNR; saric.james@epa.gov; Hughes, Audra A - DNR; Ava Grosskopf
Subject: Letter (objection by Ahlstrom) FW: 30 Day Notice for Closure Request Submittal for Fox River
Attachments: 2023.05.03 - MAS to Fox River Closure (Objecting) FINAL.pdf

Dear Project Managers for Responsible Parties and Sharon K,

Please see attached letter. We received a similar letter from the same attorney for another client, which I will forward to you today.

The data requested in each letter is a matter that is best handled by the Responsible Parties (or Foth) who generated data for each riparian location that received the closure request notice letters from GP and Glatfelter.

Thank you,
Beth

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Beth J. Olson, BS, JD
Phone: cell 920-366-5219
Beth.Olson@wisconsin.gov

-----FWD-----

From: Questions <questions@foxriverpcb.com>
Sent: Thursday, May 4, 2023 9:16 AM

From: Mallory Burlingame <msb@hallingcayo.com>
Sent: Wednesday, May 3, 2023 3:29 PM
To: Questions <questions@foxriverpcb.com>
Cc: Ted Warpinski <taw@hallingcayo.com>; Andy Skwierawski <mas@hallingcayo.com>
Subject: 30 Day Notice for Closure Request Submittal for Fox River

Good Afternoon,

Attached please find correspondence from Attorney Andrew Skwierawski dated May 3, 2023, regarding the above-referenced matter.

Thank you,
Mallory



Mallory S. Burlingame

Legal Assistant

HALLING & CAYO, S.C.

320 E. Buffalo Street, Suite 700

Milwaukee, WI 53202

(414) 271-3400

(414) 271-3841 Facsimile

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From: Olson, Beth J - DNR
Sent: Thursday, May 4, 2023 10:53 AM
To: Beggs, Tauren R - DNR; Hughes, Audra A - DNR
Cc: Motl, Bradley J - DOJ; Rich Murawski (murawski.richard@epa.gov); saric.james@epa.gov; Ava Grosskopf; Jay Grosskopf (Jay.Grosskopf@Boldt.com); Rombach-Bartels, Jean - DNR; Killian, James - DNR
Subject: FW: Action Fox River Closure objection by Ahlstrom FW: 30 Day Notice for Closure Request Submittal for Fox River
Attachments: 2023.05.03 - MAS to Fox River Closure (Objecting) FINAL.pdf

Hi Audra and Tauren,

Please see the attached objection letter on behalf of Ahlstrom-Munksjo Nicolet LLC and Ahlstrom Munksjo NA Specialty Solutions LLC (collectively "Ahlstrom") from their attorney, Andrew Skwierawski. He is the attorney that called me directly a few weeks ago. I'll set up a time with both of you to discuss next steps.

I copied Brad Motl along with the Fox River teams at USEPA and Boldt for awareness.

Thank you,
Beth

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Beth J. Olson, BS, JD
Phone: cell 920-366-5219
Beth.Olson@wisconsin.gov

From: Questions <questions@foxriverpcb.com>
Sent: Thursday, May 4, 2023 9:16 AM
To: Olson, Beth J - DNR <Beth.Olson@wisconsin.gov>; Ava Grosskopf <Ava.Grosskopf@boldt.com>
Subject: Action Closure Comment FW: 30 Day Notice for Closure Request Submittal for Fox River

Good morning Beth,

We received the objection from Andy Skwierawski yesterday on behalf of Ahlstrom. I'll record it in the spreadsheet and files. Thanks.

-Ava

From: Mallory Burlingame <msb@hallingcayo.com>
Sent: Wednesday, May 3, 2023 3:29 PM
To: Questions <questions@foxriverpcb.com>

Cc: Ted Warpinski <taw@hallingcayo.com>; Andy Skwierawski <mas@hallingcayo.com>
Subject: 30 Day Notice for Closure Request Submittal for Fox River

Good Afternoon,

Attached please find correspondence from Attorney Andrew Skwierawski dated May 3, 2023, regarding the above-referenced matter.

Thank you,
Mallory



Mallory S. Burlingame
Legal Assistant

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May 3, 2023

VIA EMAIL (questions@foxriverpcb.com)

Fox River PCB Questions
c/o The Boldt Company
P.O. Box 419
Appleton WI 54912-0419

**Re: 30 Day Notice for Closure Request Submittal for Fox River
Releases OU-2-5, Outagamie/Brown Counties, Wisconsin
WDNR BRRTS Activity#: 02-45-582407
Brown County Parcel ID Nos.: WD-365; ED-715-1
Outagamie County Parcel ID Nos: 322086502; 322086501; 322086500;
322064201; 322072800**

Dear Fox River Oversight Team:

Our firm has been engaged by Ahlstrom-Munksjo Nicolet LLC and Ahlstrom Munksjo NA Specialty Solutions LLC (collectively "Ahlstrom") with respect to the above-referenced Notice Letters related to the PCB cleanup of the Fox River. Ahlstrom has received 7 letters, one for each of the above referenced properties, all dated March 20, 2023¹, sent on behalf of the group of corporations responsible for the Lower Fox River Cleanup (the "Responsible Parties"). The letters provide notice that Ahlstrom has been identified as having riparian rights in the Fox River where residual sediment contamination may be encountered. We reviewed the notices and have some questions and comments.

Before addressing the substance of the letters, one of the parcels identified, ED-715-1, is the parcel containing the DePere dam, which is operated and maintained by the US Army Corps of Engineers, though we do see that the Brown County GIS still lists Ahlstrom as the owner of the parcel. Ahlstrom is looking into this, and we will let you know as soon as it has been cleared up.

In general, Ahlstrom objects to the lack of information in the notice letters. Wis. Stats. § 292.12(4) requires that notice of continuing obligations include "at a minimum, a description of the type of residual contamination and the location and description of any engineering control or sediment cover on the site." Here, the notice letters only provide that "[s]ome PCB contamination remains in the sediment, and a continuing obligation for properly managing sediment, if disturbed, may be

¹ Each of the March 20, 2023 letters are listed as a "DUPLICATE LETTER TO ENSURE RECEIPT BY ALL." My client has not received any previous letters and we are therefore using the date of 45 days from March 20, 2023 as the deadline for comments.

imposed as a condition of closure approval.” This is too general of information to satisfy the requirements of Wis. Stat. § 292.12. While the letters later direct the recipient to the DNR’s BRRTS site for more information, it isn’t reasonable to force riparian property owners to sift through multiple websites with decades of reports to determine basic information such as the locations and levels of contamination that may be encountered. Therefore, Ahlstrom requests that the responsible parties be required to provide, at a minimum, updated maps with all sample locations and results near Ahlstrom’s shorelines, along with specific descriptions of what activities were done in those areas, preferably with the capping information that is presented in the currently available maps.

The notice letters go on to state that “[t]his letter describes how the closure request approval could affect any dredging or disturbance in the river adjacent to your property. If any material is excavated or removed from the waterway, that material will need to be properly managed and or disposed.” We do not agree that the letter describes in sufficient detail how the approval of the closure request could affect Ahlstrom’s work in the river. While Ahlstrom certainly understands that the presence of contamination in its riparian zones needs to be considered when future planned activities take place, Ahlstrom does not agree that it should in anyway be responsible for handling and disposing of any residual contamination that might be encountered. This is and should remain the responsibility of the Responsible Parties.

This issue is particularly important because Ahlstrom plans to further develop and enhance several of its properties, and that may disturb the areas that have been capped or have residual contamination. For example, parcel number WD-365 has had a recent shoreline erosion project, including rip-rap installation, and it is likely additional efforts will be needed in the future. There may also be repairs required for structures in the water that support the buildings on Ahlstrom’s properties. Those efforts are likely to disturb the cap that appears to be immediately adjacent to the property’s ordinary high-water mark at the DePere property and could encounter PCB contaminated sediments remaining in the river adjacent to the Kaukauna property.

As part of the DNR’s imposition of closure obligations, it should be made clear that the Responsible Parties must pay for any increase in costs Ahlstrom incurs on any of its future projects because of the presence of PCBs in the river. These increased costs should not be the responsibility of Ahlstrom.

Based on the above, Ahlstrom objects to the proposed closure. It should not be granted for this site until all these issues are addressed. Please ensure that this objection is placed in the file and is part of the closure review process.

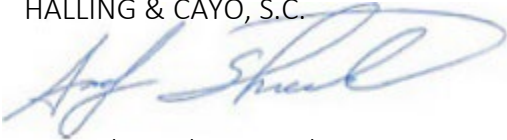
May 3, 2023

Page 3 of 3

Please feel free to contact me if you would like to discuss our concerns.

Very truly yours,

HALLING & CAYO, S.C.

A handwritten signature in blue ink, appearing to read "M. Andrew Skwierawski". The signature is fluid and cursive, with a large, sweeping loop at the end.

M. Andrew Skwierawski

mas@hallingcayo.com