UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
C-14J

July 2, 2019

BY ELECTRONIC MAIL
Scott M. Watson, Esq.
John V. Byl, Esq.
Warner, Norcross & Judd LLP
900 Fifth Third Center
111 Lyon Street NW
Grand Rapids, Michigan 49503

Re: Wolverine Worldwide Tannery and House Street Disposal Site
Continuation of Time-Critical Removal Activities

Dear Counsel:

Accompanying this letter is a proposed Administrative Order on Consent under CERCLA Section 106, to address conditions at the above-referenced site. I request that you review it and kindly let me know by July 19, 2019 whether it is acceptable. Please note that the substantive terms are standard language based on the statute and agency policy, but Mr. Jeffrey (please note correct spelling) Kimble and I are willing in principle to discuss the wording of the factual findings and deliverables. Additionally, note that it is subject to final managerial review and approval by EPA's officials having the delegated authority to approve such agreements.

I also write in reply to your letter to me dated June 3, 2019 reciting your several concerns with Mr. Kimble's letter of April 29, 2019, which you have styled as a "demand."

As a preliminary observation, I was surprised to see that you continue to characterize information Mr. Kimble presented to GZA on May 20th as "new EPA data." The data in question was not new, but rather, was data Wolverine had gathered but had been categorized differently in the GZA and EPA databases. I had thought Messrs. Westra and Kimble had discussed this and that conversation had dispelled any confusion. If that is not the case, please let me know.

Similarly, I understand that Item 3 on page 3 of your letter was also a topic of discussion between Mr. Kimble and Mr. Westra, and Mr. Kimble had clarified that, with respect to Item 5 in his letter, they have agreed that "waste materials" in this context refers to the rubber and leather scrap materials at the location under discussion, these materials having previously been shown to be contaminated with CERCLA hazardous substances. Additionally, in Item 7 in his April 29th letter, Mr. Kimble expressly states that sediments at the Tannery are to be removed "as directed

by the OSC and as determined by visual evidence of Wolverine waste materials' presence *and supported by the sampling data*" (emphasis added). Far from being "egregiously untethered from data and objectivity" then, Mr. Kimble has either specified, or clarified in conversation with your client's consultant, that the work is to be based on visual observation and data.

In any event, EPA regards the stated concerns as a challenge to the On-Scene Coordinator's authority to make timely site-specific judgments. As you know, under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, the On-Scene Coordinator is vested with critical decision-making authority, and this includes the authority to direct that work be performed under deadlines appropriate to the circumstances. While the OSC's judgment and authority to direct work are not unlimited, we read the NCP as affording significant latitude consistent with CERCLA's purposes. We view the judgments described in Mr. Kimble's letter as wholly consistent with the NCP.

Additionally, we disagree with the conclusion, in Item 1 of your letter, that the work we would direct, or undertake ourselves, at House Street is "unnecessary and unreasonable." To the contrary, sampling information to date shows that metals displaying the toxicity characteristic are in the soils to a 25-foot depth, and perched water samples show CERCLA hazardous substances have leached from waste tannery sludge. Last year's sampling exercise was not designed fully to delineate migration pathways but, rather, to identify and define concentrated waste zones on site. There were no samples from the zone between 25 feet below ground surface and the deep groundwater aquifer. Also, sampling stopped at the property's western edge. Consequently, while the deep aquifer may not yet be impacted by site contamination, it has yet to be fully determined whether hazardous substances are migrating slowly downward or migrating laterally. To require that action be taken under CERCLA does not require that EPA determine such migration is occurring, but merely that there is a threat of such a release, to require that action be taken.

We also take exception to the suggestion that EPA's response action selection is necessarily limited by MCL 324.20121, as you interpret it. Under the NCP, the lead agency is required, in the context of a CERCLA removal, to comply with ARARs to the extent practicable. The decision to determine whether a standard, requirement, criterion or limitation, is applicable or relevant and appropriate is committed to the EPA on a site-by-site basis and, in particular, the "appropriateness" of a proposed state standard, requirement, etc. is determined by the OSC or remedial project manager in the exercise of his or her technical judgment. Under CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. § 9621(d)(2)(A)(ii), the proposed standard, requirement, etc., must be more stringent than a federal counterpart; a proposed state ARAR does not compel EPA to select a final remedy that it might otherwise consider unprotective.

Finally, while your letter characterizes the thirty-day period Mr. Kimble gave for workplan submittal as "extremely short," we have received the requested material and, accordingly, find no need to respond to this contention. We thank you for the submittal, and your consultants will have received Mr. Kimble's June 27th response.

If you have questions about the proposed agreement or any of the foregoing, you are welcome to contact me at (312) 886-0814 or at williams.tom@epa.gov.

Sincerely,

Thomas Williams
Associate Regional Counsel

cc: J. Kimble
J. Clark
G. Asque