



December 7, 2022

Sent via certified mail and email

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington DC 20460
Regan.Michael@epa.gov

Merrick Garland
U.S. Attorney General
U.S. Department of Justice
10th and Constitution Ave., NW
Washington DC 20530

Indiana Department of Environmental Management
c/o George Ritchotte
100 N. Senate Ave.
Indianapolis IN 46204
gritchot@idem.IN.gov

Todd J. Janzen

Brianna J. Schroeder

Janzen Schroeder Agricultural Law LLC
8425 Keystone Crossing, Suite 111
Indianapolis, Indiana 46240
schroeder@aglaw.us
317.855.9920

RE: Notice of Intent to Sue Under the Toxic Substances Control Act for Failure to Grant "No Further Action" to Keep America Beautiful, LLC Site

Dear Administrator Regan:

Keep America Beautiful, LLC ("KAB") provides you with this notice of its intent to sue you and the U.S. Environmental Protection Agency ("EPA") under the Toxic Substances Control Act ("TSCA") and other statutes and common law for EPA's failure to grant "No Further Action" status to the KAB remediation site. The KAB site is located at 1814 West Defenbaugh Street in Kokomo, Indiana (the "Site"). Section 20(a)(2) of TSCA provides that any citizen may commence a civil suit where EPA has failed to perform any non-discretionary act or duty. 15 U.S.C. § 2619(a)(2). See also 40 CFR § 702 subpart C.

KAB conducted a self-implementing on-site cleanup and disposal of PCB remediation waste at the Site in accordance with 40 CFR §761.61(a). The §761.61(a) cleanup of PCB in soil was documented in a report submitted to EPA dated April 29, 2017. Following EPA's notification that EPA believed the cleanup objectives had not been achieved, KAB undertook additional removal and provided a report on February 21, 2018. Groundwater sampling conducted as part of characterizing contamination detected PCB at concentrations greater than the EPA's Maximum Contaminant Level ("MCL"). Because the self-implementing provisions of 40 CFR §761.61(a) do not apply to groundwater contamination, KAB was required to submit a cleanup

proposal pursuant to the risk-based provisions of 40 CFR §761.61(c). KAB submitted a risk-based cleanup request for PCB in groundwater by letter dated April 17, 2019 and provided results from six rounds of groundwater sampling to EPA.

The most recent sampling event on December 6, 2021 further demonstrates that closure is appropriate now. Sampling of groundwater wells MW-7, MW-8, and MW-9 returned results that were below the drinking water standard of 0.5 µg/L for each well. The correspondence dated June 15, 2022 from Mundell & Associates (KAB's environmental consultant) is attached as Exhibit 1 and details the steps taken and reasons for closure.

Issues raised by the EPA included the impact of turbidity in groundwater on the analytical results for PCBs. Mundell noted that turbidity is an important factor with regards to obtaining accurate PCB concentrations in water samples due to the strong tendency of PCBs to adsorb onto soil particles. Mundell determined that the removal of as much groundwater from well MW-7 could address the turbidity levels that the EPA had pointed out. The groundwater extraction event resulted in acceptable turbidity levels in well MW-7 and concomitant reduction in PCB concentrations below the 0.5 µg/l drinking water screening level. Nonetheless, EPA now suggests that KAB rehabilitate MW-8 and then conduct four quarterly samples from MW-7, MW-8, and MW-9. This would add yet *another* year to the over decade-long remediation conducted by KAB—an innocent party who acquired the property out of foreclosure and voluntarily undertook cleanup.

Concentrations of PCBs are already below the MCL of 0.5 µg/l in MW-7, MW-8, and MW-9. EPA concedes this fact, but now wants to apply the risk-based level of 0.240 µg/l for protection of commercial workers via ambient air and dermal exposure pathways. This position is not grounded in law or fact, as there is no known or documented PCB contamination under the only building on site. Monitoring wells MW-7, MW-8, and MW-9 are not located within the building. These wells are outside the building footprint and represent an isolated area of groundwater impacts. Thus, there are no ambient air or dermal exposure pathways that would merit the application of the commercial worker standard. KAB has indicated its willingness to record an environmental restrictive covenant ("ERC") to restrict future use of groundwater at the Site. The ERC will include a requirement that the owner of this site maintain and implement a risk mitigation plan to protect workers from exposure to PCB in groundwater.

The analytical results indicate that all three on-site monitoring wells were below the 0.5 µg/L drinking water screening level for PCBs. These results confirmed that the conditions at the site remain stable and will be protective of human health and the environment. Mundell provided a draft ERC containing restrictions regarding use of site groundwater and requirements for any future excavations per an EPA request, but without the burden of ongoing long-term groundwater monitoring.

These results, along with the entire existing data set, support the earlier conclusion that the PCB plume is stable. Additional monitoring of the well network at the Site will not likely significantly increase statistical confidence in the conclusion that the PCB plume is stable and does not pose a significant risk to human health. Theoretical statistical data analysis provides further assurance that the plume is stable and does not pose a risk. In addition, as we have indicated several times to the EPA, the downgradient well has demonstrated no detectable impacts and is further proof of a stable plume.

KAB is an innocent landowner that obtained the Site as part of a foreclosure action. KAB never caused or contributed to the Site's PCB contamination. KAB could have walked away, let the site become an urban, contaminated blight in the city of Kokomo, but instead, KAB has worked for over six years to remove the source material and remediate the PCB contamination at the Site. Yet the EPA continues to create new barriers to closure. The delay impedes the marketability of the Site and creates a significant financial burden to KAB.

Pursuant to 40 CFR § 761.61(c)(2), the EPA must approve an application for a risk-based method for PCB remediation if the method will not pose an unreasonable risk of injury to health or the environment. Further, EPA's continued refusal to issue a No Further Action letter despite KAB's compliance with KAB requests and remediation of the Site constitutes slander of title pursuant to I.C. § 32-20-5 *et seq.*

We are eager to resolve this matter and secure a proper closure and No Further Action letter from the EPA and IDEM promptly. If EPA does not act within 60 days to correct this violation of the Clean Water Act, however, we will pursue litigation in federal court to see injunctive and declaratory relief regarding this violation. If you have questions, do not hesitate to contact undersigned counsel who represents KAB in this matter.

Sincerely,

/s/ Brianna J. Schroeder

Brianna J. Schroeder, Esq.

schroeder@aglaw.us

Todd Janzen, Esq.

janzen@aglaw.us

Janzen Schroeder Agricultural Law, LLC

8425 Keystone Crossing, Suite 111

Indianapolis IN 46240

Tel: 317.855.9920

Cc: Lisa McCoy, IDEM, lmccoy@idem.in.gov



110 South Downey Avenue, Indianapolis, Indiana 46219-6406
Telephone 317-630-9060, Facsimile 317-630-9065
www.MundellAssociates.com

June 15, 2022

Mr. Jose G. Cisneros, Chief
Remediation Branch, LCRD
Land, Chemicals and Redevelopment Division
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Re: Keep America Beautiful
Request for Closure Status
1814 West Defenbaugh Street
Howard County, Kokomo, Indiana
MUNDELL Project No. M09034

Dear Mr. Cisneros,

Mundell & Associates, Inc. (MUNDELL), on behalf of Keep America Beautiful, LLC (KAB), is pleased to submit this *Request for Closure Status* letter to the United States Environmental Protection Agency (U.S. EPA) regarding the Toxic Substances and Control Act (TSCA) 40 CFR 761.61(c) Risk-Based Cleanup at the above-referenced facility ("the Site"). The purpose of this letter is simply to summarize the efforts made over the last six years to comply with every request of the U.S. EPA to appropriately remediate the environmental conditions posed by the Site so that it no longer poses a long-term risk to human health and the environment. Our client KAB has indicated that this last Request for Closure attempt should be made by MUNDELL in order to pursue a technical solution to achieve closure before the client pursues legal avenues to accomplish a resolution.

Starting with two rounds of remedial excavation in 2016 and 2017, followed by groundwater monitoring of the three site wells, MUNDELL has endeavored to work with the U.S. EPA on moving this site towards closure. MUNDELL first applied for site closure in a letter dated October 29, 2018. MUNDELL subsequently responded to EPA comments in detail to demonstrate that the site does not pose an unacceptable risk to human health and the environment. These responses are listed below:

Mundell & Associates, Inc., April 17, 2019, Risk-Based Application for PCBs in Groundwater, Keep America Beautiful, LLC, 1814 West Defenbaugh Street, Kokomo, Indiana

Mundell & Associates, Inc., August 15, 2019, Groundwater Sampling Report and Request for Site Closure, Keep America Beautiful, LLC, 1814 West Defenbaugh Street, Kokomo, Indiana

Mundell & Associates, Inc., January 23, 2020, Risk-Based Closure for PCBs in Groundwater, Keep America Beautiful, LLC, 1814 West Defenbaugh Street, Kokomo, Indiana

Mundell & Associates, Inc., August 25, 2020, Risk-Based Closure for PCBs in Groundwater – Addendum No. 1, Keep America Beautiful, LLC, 1814 West Defenbaugh Street, Kokomo, Indiana

Mundell & Associates, Inc., December 1, 2020, Risk-Based Closure for PCBs in Groundwater – Addendum No. 2, Keep America Beautiful, LLC, 1814 West Defenbaugh Street, Kokomo, Indiana

Mundell & Associates, Inc., March 5, 2021, Risk-Based Closure for PCBs in Groundwater – Addendum No. 3, Keep America Beautiful, LLC, 1814 West Defenbaugh Street, Kokomo, Indiana

Mundell & Associates, Inc., August 23, 2021, Risk-Based Closure for PCBs in Groundwater – Addendum No. 4, Keep America Beautiful, LLC, 1814 West Defenbaugh Street, Kokomo, Indiana

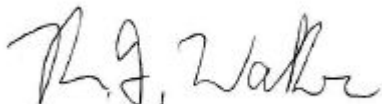
Mundell & Associates, Inc., February 15, 2022, Risk-Based Closure for PCBs in Groundwater – Addendum No. 5, Keep America Beautiful, LLC, 1814 West Defenbaugh Street, Kokomo, Indiana

As noted in *Addendum No. 5*, MUNDELL conducted a vacuum extraction and groundwater monitoring event at the Site in late 2021. The analytical results indicate that all three on-site monitoring wells were below the 0.5 µg/L drinking water screening level for PCBs. These results confirmed that the conditions observed at the site remain stable and will be protective of human health and the environment. A draft ERC was provided in *Addendum No. 5* containing restrictions regarding use of site groundwater and requirements for any future excavations per a U.S. EPA request, but without the burden of ongoing long-term groundwater monitoring. As of the submittal of Addendum No. 5, we believe that all requirements for closure of the Site have been properly documented and fulfilled, and that closure should be granted by the U.S. EPA.

It is our understanding from KAB that this letter represents the last technical request that MUNDELL will be asked to provide to the agency in the hopes of accomplishing Site closure.

We appreciate the opportunity to provide this information to the U.S. EPA on behalf of KAB and are hopeful that a technical resolution to this matter can still occur. If you should have any questions regarding the enclosed information, please do not hesitate to contact MUNDELL via telephone at (317) 630-9060 or via email (jmundell@MundellAssociates.com; rwalker@MundellAssociates.com).

Sincerely,
Mundell & Associates, Inc.


Rachel Walker, PhD, L.P.G.
Senior Project Geologist


John A. Mundell, P.E., L.P.G., P.G.
President/Senior Environmental Consultant

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