



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

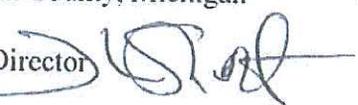
US EPA RECORDS CENTER REGION 5



REPLY TO THE ATTENTION OF

DATE: DEC 10 2018

SUBJECT: Request for Concurrence on Proposed Nationally-Significant Removal at the Rock-Tenn Site, Otsego, Allegan County, Michigan

FROM: Thomas Richard Short Jr., Acting Director  
Superfund Division, Region 5 

TO: Reggie Cheatham, Director  
Office of Emergency Management

The purpose of this memorandum is to request your concurrence on the proposed time-critical removal action at the Rock-Tenn Site (Site), Otsego, Allegan County, Michigan. The Site is not on the National Priorities List (NPL). OLEM Re-delegation of Authority R-14-2 gives you the authority to concur on nationally-significant or precedent-setting removals at non-NPL sites.

The On-Scene Coordinator (OSC) has discussed this proposed removal with staff of the Office of Emergency Management's Preparedness & Response Operations Division (PROD). PROD has advised the OSC that this removal is considered nationally significant or precedent-setting because the principal contaminant is asbestos-containing material (ACM).

The Site is a vacant paper mill located in Otsego, Michigan (see Figure 1), which ceased operations in 2004. The Site occupies an area of 17 acres and consists of over 40 buildings and structures. The building intended for the proposed time-critical removal action is the Power House Building, located on the east central portion of the property (see Figure 2). Occupied residences and businesses are located immediately adjacent to the Site.

A fire damaged the plant in 2006. In 2011, Allegan County and the State of Michigan referred the Site to EPA to conduct a removal assessment of approximately 200 containers found on the Site. EPA oversaw a voluntary removal action by Rock-Tenn Company in 2012 to properly dispose of onsite drums and containers. EPA conducted an emergency response immediately following the voluntary removal action, during which the Power House Building's windows and entrances were boarded up, with "Asbestos Hazard" signs affixed.

In 2013, Allegan County hired a consultant to conduct asbestos and structural surveys of the Power House Building, which confirmed ACM release and imminent structural

concerns. In April 2018, at the request of Allegan County, EPA assessed the Site and found evidence of trespassing, vandalism, removed boards over windows and doors, and additional structural damage, raising concern of partial or complete structural failure of the Building. In June 2018, the Site was referred to EPA by the City of Otsego and Allegan County requesting a time-critical removal action, with concurrence from the State of Michigan.

The Site is currently unoccupied. The Power House Building is a two-floor structure, with supporting piping chases, concrete floors, walkways, and load-bearing beams which are broken, cut, and/or removed, rendering the Building structurally compromised. The Building's north and east exterior walls have large vertical cracks, partial floor collapse has occurred inside the structure, and the south wall has a missing foundation wall. The Building is severely damaged and contains friable ACM throughout the inside, which poses an imminent and substantial threat to public health and environment due to current trespassing/vandalism on Site and potential future threat due to further degradation (e.g., via weather) or collapse and release of ACM into the environment.

The proposed time-critical removal action would mitigate threats to public health, welfare and the environment that the presence and release of uncontrolled hazardous substance (ACM) at the Site poses. The proximity of the Site to residential and commercial properties and the fact that the Site is vacant and unsecured, with widespread asbestos contamination inside the Building, require that this removal action be classified as time-critical.

The Action Memorandum Amendment is attached for your review. My approval awaits your concurrence.

Concur:

  
\_\_\_\_\_  
Reggie Cheatham, Director  
Office of Emergency Management

2/13/19  
Date

According to the re-delegation, authority to non-concur remains with the Assistant Administrator. If you choose not to concur on this action, please forward this memorandum to the Assistant Administrator.

Non-Concur:

\_\_\_\_\_  
Barry Breen, Acting Assistant Administrator,  
Office of Land and Emergency Management

\_\_\_\_\_  
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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REPLY TO THE ATTENTION OF:

**MEMORANDUM**

**SUBJECT:** ACTION MEMORANDUM – 1<sup>st</sup> AMENDMENT: Request for an Exemption from the 12-month Statutory Limit, Change in Scope of the Response and Ceiling Increase for a Time-Critical Removal Action at the Rock-Tenn Site (SSID # C5A2) located in Otsego, Allegan County, Michigan 49078

**FROM:** Paul Ruesch, On-Scene Coordinator  
Emergency Response Branch 2 - Section 3

**THRU:** Samuel Borries, Chief *Sam Borries*  
Emergency Response Branch 2

**TO:** Thomas Richard Short Jr., Acting Director  
Superfund Division

**I. PURPOSE**

The purpose of this Action Memorandum Amendment is to request and document your approval for an exemption from the 12-month statutory limit and to request a ceiling increase for a time-critical removal action at the Rock-Tenn Site (Site) located in Otsego, Allegan County, Michigan (see Figure 1). The sought increase of \$1,377,842 would raise the project ceiling from \$45,000 to \$1,422,842.

The Site is an unattended, vacant paper mill located in Otsego, Michigan, which ceased operations in 2004 (see Attachment 2, photo 1). This Action Memorandum Amendment changes the scope of the response action due to a change in conditions at the Site from the original Action Memorandum dated December 12, 2012 (Attachment 7). The original Action Memorandum was for an emergency response to secure the windows and doors of the Power House Building (Building) at the Site (see photo 2) to prevent asbestos from migrating outside of the Building. In addition, signage was placed on Building walls, doors and perimeter fencing to alert the public of the asbestos hazard.

Since the original emergency response in 2012, the Power House Building has become severely dilapidated, damaged and structurally unstable. Many of the boards have been removed from the windows and doors, allowing entry by trespassers for scavenging, vandalism and squatting. The Power House Building contains friable asbestos-containing material (ACM) throughout the inside, which poses an imminent and substantial threat to public health and environment due to current trespassing/vandalism on Site and potential future threat due to further degradation (*e.g.*, via weather) or collapse and release of ACM into the environment. In June 2018, the Site was

referred to EPA by the City of Otsego and Allegan County requesting a time-critical removal action, with concurrence from the State of Michigan.

The changes proposed herein are necessary to continue to mitigate threats to public health, welfare, and the environment posed by the presence of uncontrolled hazardous substances (ACM) at the Site. The proximity of the Site to residential, industrial, agricultural and commercial properties and the fact that the Site is vacant and unsecured, with widespread asbestos contamination inside the building and evidence of trespassing/vandalism, require that this removal action be classified as time-critical.

The Site is a nationally-significant or precedent-setting because the principal contaminant the removal addresses is ACM.

An exemption from the 12-month statutory limit is necessary as the scope of response has increased from the previously approved emergency removal action, based on several factors listed in Section 104(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC § 9604(c)(1).

This Action Memorandum Amendment would serve as approval for EPA to expend, as the lead technical agency, resources to take actions described herein to abate the imminent and substantial endangerment posed by hazardous substances (ACM) at the Site. Asbestos is defined as a hazardous substance by 40 C.F.R. § 302.4. EPA will conduct the removal of hazardous substances pursuant to Section 104(a)(1) of CERCLA, 42 USC § 9604(a)(1), and Section 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. § 300.415, to abate the immediate threats posed to public health and/or the environment.

The project is estimated to take 60 on-site working days to complete.

## **II. SITE CONDITIONS AND BACKGROUND**

SSID: C5A2

SEMS ID: MIN000510668

Location: 431 Helen Ave, Otsego, Allegan County, Michigan 49078

Long/Lat: 42.4647, -85.7043.

Category: Time-Critical Removal Action

### **A. Site Description**

The Site is a vacant paper mill located in Otsego, Michigan (see Figure 1), which ceased operations in 2004. MacSimBar Paper Company began papermaking at the Site in 1906. Paper and related products were produced at the Site for 98 years during which time the facility operated under several different names until it was closed by the Rock-Tenn Company. A fire damaged the plant in 2006. Cogswell Property LLC (Cogswell) bought the facility in September 2006. Cogswell failed to pay taxes for all of 2007, 2008 (\$54,401.40), 2009, 2010 (\$33,377.28), and partial 2011 of (\$10,373.91). Cogswell did, however, conduct scrap metal recovery from the facility during this time period, and the owner of Cogswell was prosecuted for criminal

violations of the Clean Air Act relating to improper asbestos removal associated with the scrap recovery activity. The property entered foreclosure in April 2011. Currently, Allegan County owns the Site.

The Site occupies an area of 17 acres and consists of over 40 buildings and structures, many of which are in severe disrepair and collapsing (see Attachment 2, photo 1). The building intended for the proposed removal action is the Power House Building, located on the east central portion of the property (see Attachment 2, photo 2).

The Site is in a mixed industrial/agricultural/commercial/residential area near downtown Otsego, Michigan. Occupied residences are located immediately adjacent to the Site.

### **1. Removal site evaluation**

A recent site assessment was conducted on April 2, 2018. During the exterior reconnaissance of the Power House Building, EPA and the Superfund Technical Assessment and Response Team (START) contractors observed that many of the previously boarded up entrances to the Building were torn down or missing. EPA and START documented unsecured entrances on all sides of the Building (see Attachment 2, photos 3 & 4). Adjacent buildings to the west and south also have multiple openings which lead into the Power House Building. Debris piles in adjacent buildings near these openings may have been impacted by ACM released from the Power House Building.

The interior condition of the Power House Building is severely compromised with fallen debris such as brick, metal piping, and cut structural beams (see Attachment 2, photos 6 & 7). Large portions of the main floor are missing next to the boilers with evidence of trespassing (*i.e.*, graffiti, vandalism) throughout the Building (see Attachment 2, photo 5). The basement area shows areas of wear in the concrete ceiling (main level) where rebar is exposed and visible cracks are present along the posts that hold up the ceiling. EPA observed potential ACM crumbling and falling to the ground from a boiler and a large hopper as well as on both levels of the Building throughout both floors.

A total of six bulk potential ACM samples and one duplicate sample were collected during the investigation. The bulk sampling strategy was based upon the protocol of homogenous areas established by EPA. A homogeneous sampling area (HSA) is defined as an area of material that is uniform in color, texture, construction, general appearance, and date of installation. All samples collected were soft, crumbly material that had deposited on the Building floor. Two samples were collected on the main level and three samples were collected in the basement level along the northern portion of the basement. One sample was collected from a side building to the Power House connected by a corridor in the basement (see Figure 2).

Samples were submitted to an EPA approved commercial laboratory for asbestos determination in bulk building materials using polarized light microscopy (PLM) by EPA Method 600/R-93/116. Bulk samples were analyzed using Asbestos Hazard Emergency Response Act (AHERA) "positive stop" protocol, meaning each sample of each HSA group is analyzed until

asbestos is found in the HSA or all samples in the group are analyzed and are found to be negative for asbestos content.

Analytical sample results confirmed ACM in five of six samples collected from various crumbling materials on the floor of each level. Sample results ranged from 1% to 40% amosite. The highest amosite result was found in a sample collected on the basement level, RT05 (see Attachment 1). All six ACM samples collected were friable based on the definition in 40 C.F.R. § 61.141.

During the removal site evaluation, EPA reviewed information from a March 2014 Environmental Consulting & Technology, Inc (ECT) report for Allegan County, which documented that many of the supporting piping chases, concrete floors, walkways and structural steel beams had been cut and removed, rendering large sections of the Building potentially structurally compromised. ECT recommended that before any restoration/renovation actions are considered, a structural engineer should assess the Building.

During a structural assessment of the Power House Building performed by START in September 2018, a structural engineer documented cracks along the exterior walls and crumbling concrete and brick near the base of a bay door (see Attachment 2, photo 8). Additional damage was found on the exterior side of the north and west walls of the Building, increasing concern that partial or complete structural failure of the Building is imminent unless stabilization or controlled demolition measures are taken immediately. It was estimated that structural fortification measures would cost between \$65,000 - \$90,000 to stabilize the Building and prevent partial or full collapse during removal activities.

## **2. Physical location**

The Site is located 431 Helen Avenue, Otsego, Allegan County, Michigan 49078. The geographic center of the Site is Latitude 42.4647 / Longitude -85.7043.

An Environmental Justice (EJ) analysis for the Site was conducted (Attachment 6). Screening of the surrounding area used Region 5's EJ Screen Tool (which applies the interim version of the national EJ Strategic Enforcement Assessment Tool (EJSEAT)). Region 5 has reviewed environmental and demographic data for the area surrounding the Site and determined that there is a low potential for EJ concerns at this location.

## **3. Site characteristics**

The Site is a vacant former paper mill located at 431 Helen Avenue in Otsego, Michigan (see Figure 1). The Site occupies an area of 17 acres and consists of over 40 buildings and structures in a fenced area, which has been breached repeatedly in several locations. The proposed time-critical removal action is focused on the Power House Building located on the east central portion of the Site (see Figure 2). The Site is bounded to the north by W. River Street, to the south by the Kalamazoo River, to the west by vacant land, and to the east by John Street and N. North Street. Nearby land uses include industrial, commercial, residential and agricultural.

#### **4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant**

The Site presents a threatened release of hazardous substances. Past actions to secure the Power House Building have failed, several windows are now open as boards have been removed, and several doors and windows are open, posing potential release of ACM to the environment. Additionally, this Building is severely damaged, and contains friable ACM throughout the inside, which poses an imminent and substantial threat to public health and environment due to current trespassing/vandalism on Site and potential future threat due to further structural degradation (e.g., via weather) or collapse, which may result in the release of ACM into the environment.

The source of the friable ACM was the illegal stripping of the asbestos from building, boilers, storage hoppers, and pipe insulation. On September 21, 2012, the United States charged the former owner of the Site, Mr. Davis, with violating the Clean Air Act. The five-count indictment filed in U.S. District Court charged Mr. Davis with failing to obtain an asbestos inspection, failing to have a representative trained in asbestos regulation on-site, failing to wet asbestos-containing material, failing to label asbestos-containing waste and failing to properly dispose of ACM. Asbestos is defined as a hazardous substance by 40 C.F.R. § 302.4. Mr. Davis plead guilty to one count, and on June 20, 2013, the court sentenced him to one year in federal prison and to pay restitution to EPA in the amount of \$168,029.59 for costs associated with the emergency removal action.

#### **5. NPL status**

The Site is not on the National Priorities List (NPL), nor is it anticipated to be referred to the NPL site assessment program.

#### **6. Maps, pictures and other graphic representations**

- Figure 1. Site Location Map
- Figure 2. Site Layout w/ Analytical Result Summary
- Attachment 1. Example Analytical Result
- Attachment 2. Photographs
- Attachment 3. Detailed Cleanup Contractor Cost Estimate
- Attachment 4. Independent Government Cost Estimate
- Attachment 5. Administrative Record Index
- Attachment 6. Environmental Justice Screen Results
- Attachment 7. Original Action Memorandum

#### **B. Other Actions to Date**

##### **1. Previous actions**

EPA and START conducted a removal assessment in 2011 and oversaw a voluntary removal action by Rock-Tenn Company in April 2012 to properly dispose of onsite drums and containers.

The Site was referred to EPA's Emergency Response Branch (ERB) by EPA's Criminal Investigative Division (CID) in August 2012. CID provided ERB with an asbestos report that documented chrysotile asbestos as high as 95% and amosite asbestos as high as 60% in bulk samples inside the Power House Building. The report noted that all debris inside the Building should be considered to contain asbestos. Because the Building containing the asbestos lacks intact windows and doors, the presence of loose ACM exposed to wind and weather posed a risk of asbestos exposure to the environment.

EPA conducted an emergency response removal action at the Power House in September 2012. The response was necessitated because of the illegal stripping of asbestos pipe insulation and the severe deterioration of the Building structure, which combined, presented an asbestos exposure risk to the surrounding community. To prevent this exposure, EPA conducted an emergency removal action, which included placing boards on the windows and doors of the facility and posting "Asbestos Hazard" signs on the Building and perimeter fencing to minimize exposure to the public from potential ACM.

## **2. Current actions**

The City of Otsego and Allegan County have been monitoring the condition of the Power House Building and the Site, generally. The City of Otsego Police and Fire Departments continue to respond to incidents of fires, trespassing and vandalism on the Site.

Cost estimates have been solicited by Allegan County for controlled demolition and asbestos removal in the Power House Building. The cost of asbestos removal far exceeds the cost of controlled demolition of the Power House Building. Current conditions pose an extreme safety hazard for any potential stabilization work.

In October 2017, Allegan County requested that EPA conduct a site visit to determine the status of the Power House. In April 2018, EPA and START conducted a removal assessment at the Power House. Analytical results for samples collected and analyzed for asbestos indicated 5 out of 6 samples as meeting the criteria of ACM as defined by Title 29 § 1910.1001 and friable asbestos material as defined by 40 C.F.R. § 61.141. EPA and START found multiple points of entry into the Power House Building that were compromised and the Building is easily accessible to trespassers from the outside and through adjacent buildings. A structural assessment of the Building was conducted in September 2018 indicating that partial or total collapse of the Power House Building might be imminent if stabilization or demolition efforts are not taken.

## **C. State and Local Authorities' Roles**

### **1. State and local actions to date**

Allegan County acquired the Site through property foreclosure in 2011. Allegan County and the State of Michigan referred the Site to EPA to conduct a removal assessment in 2011 to address approximately 200 containers found on the Site.

In October 2017, Allegan County requested that EPA conduct a site assessment to determine the status of the Power House Building. Upon review of the results of the site assessment, the City of Otsego and Allegan County formally requested assistance from EPA to deal with the Power House Building.

Allegan County is attempting to maintain perimeter fencing to prevent trespassing onto the Site. In August 2018, Allegan County utilized a county corrections work crew and a contractor to repair several intentional breaches in perimeter fencing. However, the City of Otsego Police and Fire Departments continue to respond to incidents of fires, trespassing and vandalism on the Site property.

In a letter dated June 28, 2018, Allegan County and the City of Otsego requested assistance from EPA to conduct a time-critical removal action to mitigate the potential threats at the Site. In an email dated July 2, 2018, the Michigan Department of Environmental Quality (MDEQ) provided support for the June 28, 2018 request.

## **2. Potential for continued State/local response**

Allegan County, the City of Otsego, and the State of Michigan do not have the resources to address the potential release of asbestos into the environment from the Power House Building at the Site. Allegan County has received interest from developers for the entire paper mill property, but none have expressed any interest in the Power House Building due to the structural and ACM-related issues.

### **III. THREATS TO PUBLIC HEALTH OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES**

The conditions present at the Site present a substantial threat to the public health or welfare, and the environment, and meet the criteria for a time-critical removal action as provided for in 40 C.F.R. § 300.415(b)(1), based on factors in § 300.415(b)(2) of the NCP. These factors include, but are not limited to, the following:

#### **§ 300.415(b)(2)(i) - Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants.**

During the April 2018 removal assessment, START documented ACM at the Site (see Figure 2). Analytical results confirmed presence of ACM, indicating total asbestos ranging from 1% to 40% amosite in sampled materials. EPA found Boiler and pipe insulation strewn throughout the Building (see Photographs 1 & 2) from illegal and improper scavenging operations. EPA observed unrestricted access into Site buildings and evidence of trespassing in several areas of the Site (Photographs 3 & 4). The samples collected were friable ACM, which is a listed hazardous substance (40 C.F.R § 302.4, Table 302.4).

According to a structural assessment conducted by START in September 2018, the Power House Building is structurally unsound and poses a significant threat of release of asbestos into the environment if a catastrophic failure occurs. Asbestos is a hazardous substance under CERCLA. The Site is not adequately secured, and is located near the downtown business district area, posing significant exposure threat to adjacent businesses, homes, pedestrians, and trespassers.

According to the City of Otsego, and as evidenced in the site assessment conducted by EPA, the Site is the subject of ongoing trespassing and vandalism. The Site cannot be adequately secured from trespassers because of the buildings' dilapidated condition and many open access points. Vandals and homeless persons have and may continue to cause fires at the Site that potentially release asbestos from the smoke plume into the surrounding community. The current structure has no operating fire alarm or sprinkler system. The City of Otsego Fire Department reports responding to several small fires and trespasser issues at the Site over the past several years.

Asbestos is the name given to a number of naturally occurring fibrous minerals having high tensile strength, the ability to be woven, and resistance to heat and most chemicals. Because of these properties, asbestos fibers have been used in a wide range of manufactured goods, including roofing shingles, ceiling and floor tiles, paper and cement products, textiles, coatings, and friction products such as automobile clutch, brake, and transmission parts.

EPA's Integrated Risk Information System (IRIS), the Department of Health and Human Services (DHHS) and the International Agency for Research on Cancer (IARC) consider chrysotile, as well as other forms of asbestos, to be human carcinogens.

Exposure to airborne friable asbestos may result in a potential health risk because persons breathing the air may breathe in the asbestos fibers. Chronic inhalation exposure to excessive levels of asbestos fibers suspended in air can result in lung disease such as asbestosis, mesothelioma, and lung cancer. Sub-acute exposures as short as a few days have been shown to cause mesothelioma.

According to ATSDR, asbestos mainly affects the lungs and the membrane that surrounds the lungs. Breathing high levels of asbestos fibers for a long time may result in scar-like tissue in the lungs and in the pleural membrane (lining) that surrounds the lung. This disease is called asbestosis and is usually found in workers exposed to asbestos, but not in the general public. People with asbestosis have difficulty breathing, often a cough and, in severe cases, heart enlargement. Asbestosis is a serious disease and can eventually lead to disability and death. ATSDR also indicates that breathing lower levels of asbestos may result in changes called plaques in the pleural membranes. Pleural plaques can occur in workers and sometimes in people living in areas with high environmental levels of asbestos. Effects on breathing from pleural plaques alone are not usually serious, but higher exposure can lead to a thickening of the pleural membrane that may restrict breathing.

**§ 300.415(b)(2)(v) - Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released.**

The Site is deteriorating due to exposure to the environment. The Building is not structurally stable according to an assessment by a structural engineer. Several windows, loading docks, overhead doors and man-doors are open and unsecured to trespassers and vandals. ACM in the Power House Building is also subject to further deterioration due to wind and rain entering the unsecured Building.

The weather at the Site is average for Michigan, and it is reasonable to assume that severe weather may impact the Site. Ongoing water impacts to the interior of the north and south walls of the Building continue to deteriorate the integrity of the brick. Normal weather conditions, such as snow, rain and wind, will continue to be the main cause of ACM release, and increase the possibility of a complete structural failure of the Building. Wind may also transport asbestos fibers outside of the Building potentially exposing nearby residential, commercial, industrial and agricultural receptors.

**§ 300.415(b)(2)(vii) - The availability of other appropriate federal or state response mechanisms to respond to the release.**

Based on the information currently available, neither Allegan County, the City of Otsego, nor the State of Michigan have the funds or resources at this time to respond to a time-critical removal action of this magnitude.

**IV. EXEMPTION FROM STATUTORY LIMITS**

Section 104(c)(1) of CERCLA, as amended by the Superfund Amendments and Reauthorization Act (SARA), limits a Federal response action to 12 months unless response actions meet certain emergency and/or consistency exemptions. The change in conditions and quantities/levels of hazardous substances (asbestos) found at the Site warrants application of the 12-month exemption, based on the following factors:

**A. Section 104(c)(1)(ii): There is an immediate risk to public health or welfare or the environment.**

During the April 2018 site assessment, unrestricted access into Site buildings and evidence of trespassing was observed in several areas of the Site (see Attachment 2, photographs 3 & 4), resulting in likely exposure to friable ACM based on HSA samples collected. In addition, during a structural assessment September 2018, the Power House Building was determined to be structurally unsound and poses a significant threat of release of asbestos if a catastrophic failure (partial or total collapse) occurs. The Site is not adequately secured, and is located near the downtown business district area, posing significant exposure threat to adjacent businesses, farms, residences, pedestrians, and trespassers. Wind and other weather conditions may also transport asbestos fibers outside of the Building potentially exposing nearby residential, commercial, industrial and agricultural receptors.

**B. Section 104(c)(1)(i): Continued response actions are immediately required to prevent, limit, or mitigate an emergency.**

The quantity and levels of asbestos in the abandoned Power House Building constitute an imminent threat to human health as documented above. Continued response actions are immediately required to mitigate exposure to nearby residents to hazardous substances through the air pathway. Young children live in adjacent residences and the Site shows evidence of repeated trespassing and vandalism by teenagers. Adults and children may be exposed to asbestos from normal foot traffic, yard work, and play. The proposed time-critical removal actions listed below will prevent, limit, and mitigate threats to human health including to any sensitive populations.

**C. Section 104(c)(1)(iii): Assistance will not otherwise be provided on a timely basis.**

Neither state nor local agencies have the resources to conduct this work. Without this removal action by EPA, assistance will not be provided on a timely basis to prevent, limit, or mitigate threats.

**V. ENDANGERMENT DETERMINATION**

Given the Site conditions, the nature of the known and suspected hazardous substances on Site, and the potential exposure pathways described in Sections II and III above, actual or threatened releases of hazardous substances from this Site may present an imminent and substantial endangerment to public health, or welfare, or the environment, if not addressed by implementing the response actions selected in this Action Memorandum Amendment.

**VI. PROPOSED ACTIONS AND ESTIMATED COSTS**

**A. Proposed Actions**

**1. Proposed action description**

The response actions described in this memorandum directly address actual or potential releases of hazardous substances (ACM) on Site, which may pose an imminent and substantial endangerment to public health, or welfare, or the environment. Removal activities on Site will include:

- 1) Developing and implementing a Site Health and Safety Plan to include a Perimeter Air Monitoring and Sampling Plan and developing measures to control ACM dust during the removal and deconstruction of the facility;
- 2) Developing a site-specific sampling plan to conduct additional characterization of the Site and thereby determine the nature and extent of asbestos contamination in the Power House Building debris;
- 3) Destructing the Power House Building at the Site and remove, excavate, recycle, load, transport, and dispose of readily identifiable ACM;

- 4) Clean subsurface foundation, leaving exterior walls of foundation below grade intact, and backfilling with suitable materials agreeable to the City of Otsego and Allegan County;
- 5) Removing asbestos-contaminated debris and soil in and around the Site that presents an unacceptable risk to public health and the environment;
- 6) Transporting and disposing of all characterized or identified hazardous substances, pollutants, wastes, or contaminants at a EPA-approved disposal facility in accordance with EPA's Off-Site Rule (40 C.F.R. § 300.440);
- 7) Conducting post-confirmation sampling in accordance with the site-specific sampling plan to confirm the removal action's efficacy; and
- 8) Backfilling excavated areas with clean material and topsoil, restoring other disturbed areas.

The removal action will be conducted in a manner not inconsistent with the NCP. The OSC has determined that post-removal site controls (PRSCs) consistent with the provisions at 40 C.F.R. § 300.415(l) of the NCP will not be required upon completion of this removal action. The threats the asbestos debris pose meet the criteria listed in NCP at 40 C.F.R. § 300.415(b), and the response actions proposed herein are consistent with any long-term remedial actions that may be required.

#### Off-Site Rule

All hazardous substances, pollutants, or contaminants removed off-site pursuant to this removal action for treatment, storage, and disposal shall be treated, stored or disposed of at a facility in compliance, as determined by EPA, with the EPA Off-Site Rule at 40 C.F.R. § 300.440.

### **2. Contribution to remedial performance**

The proposed action will not impede future actions based on available information. No long-term remedial actions are anticipated for the Site.

### **3. Engineering Evaluation/Cost Analysis (EE/CA)**

Not Applicable. 40 C.F.R. § 300.415(a)(4) does not require an EE/CA when less than a 6-month planning period exists before the on-site response must be initiated.

#### **4. Applicable or relevant and appropriate requirements (ARARs)**

All applicable, relevant and appropriate requirements (ARARs) of federal and State law will be complied with to the extent practicable considering the exigencies of the circumstances.

##### Federal

EPA National Emissions Standards for Hazardous Air Pollutants at 40 C.F.R. § 61, Subparts A and M. In addition, 49 C.F.R. Parts 171 and 172 address requirements for transportation of asbestos waste, including waste containment and shipping papers.

##### State

By letter dated October 3, 2018, EPA requested that the State identify potential state ARARs for this TCRA. Any state ARARs identified in a timely manner for this TCRA will be complied with to the extent practicable. To date, the State has not provided EPA with a list of ARARs.

#### **5. Project Schedule**

The removal activities are expected to take approximately 60 on-site working days to complete.

**B. Estimated Costs**

<u>Extramural Costs</u>	<u>Current Ceiling</u>	<u>Proposed Increase</u>	<u>Proposed Ceiling</u>
<u>Regional Removal Allowance Costs:</u>	\$45,000	\$1,048,202	\$1,093,202
Total Cleanup Contractor Costs (This cost category includes estimates for ERRS, subcontractors, Notices to Proceed, and Interagency Agreements with Other Federal Agencies and 15% Contingency)			
<u>Other Extramural Costs Not Funded from the Regional Allowance:</u>	\$0	\$100,000	\$100,000
Total START, including multiplier costs			
<u>Subtotal</u>			
Subtotal Extramural Costs	\$45,000	\$1,148,202	\$1,193,202
Extramural Costs Contingency (20% of Subtotal, Extramural Costs rounded to nearest thousand for Proposed Increase)	\$0	\$229,640	\$229,640
<b>TOTAL REMOVAL ACTION PROJECT CEILING</b>	<b>\$45,000</b>	<b>\$ 1,377,842</b>	<b>\$1,422,842</b>

The response actions described in this memorandum directly address actual or threatened releases of hazardous substances, pollutants, or contaminants at the Site that may pose an imminent and substantial endangerment to public health and safety and the environment. These response actions do not impose a burden on the affected property disproportionate to the extent to which that property contributes to the conditions being addressed.

## **VII. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN**

Given the Site conditions, the nature of the hazardous substances and pollutants or contaminants documented on Site, and the potential exposure pathways to nearby populations described in Sections II, III and IV, above, failing to take or delaying action may present an imminent and substantial endangerment to public health, or welfare, or the environment. Such failure to act would likely increase the potential that those hazardous substances would be released, thereby threatening the adjacent population and the environment.

## **VIII. OUTSTANDING POLICY ISSUES**

The proposed time-critical removal actions are nationally-significant or precedent-setting because the principal contaminant addressed by the removal is ACM. There are no outstanding policy issues.

## **IX. ENFORCEMENT**

For administrative purposes, information concerning the enforcement strategy for this Site is contained in the Enforcement Confidential Addendum.

The total EPA costs for this removal action based on full-cost accounting practices that will be eligible for cost recovery are estimated to be \$2,288,649.<sup>1</sup>

$$(\$1,422,842 + \$50,000) + (55.39\% \times \$1,472,842) = \$2,288,649$$

---

<sup>1</sup> Direct Costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States' right to cost recovery.

**X. RECOMMENDATION**

This decision document, along with the original Action Memorandum signed December 12, 2012, represents the selected removal action for the Rock-Tenn Site, Otsego, Allegan County, Michigan, developed in accordance with CERCLA as amended, and is not inconsistent with the NCP. This decision is based on the administrative record for the Site (Attachment 5).

Conditions at the Site meet the NCP criteria for a removal action at 40 C.F.R. § 300.415(b), and the CERCLA § 104(c) emergency exemption from the 12-month limitation.

The total removal project ceiling if approved, will be \$1,422,842, of which an estimated \$1,322,842 may be used for cleanup contractor costs. You may indicate your approval by signing below.

Approve:   
\_\_\_\_\_  
Thomas Richard Short Jr., Acting Director  
Superfund Division

2/14/2019  
Date

Disapprove: \_\_\_\_\_  
Thomas Richard Short Jr., Acting Director  
Superfund Division

\_\_\_\_\_  
Date

Enforcement Addendum

Figure 1. Site Location Map

Figure 2. Site Layout and Analytical Results

Attachments:

1. Example Analytical Result
2. Photographs
3. Detailed Cleanup Contractor Cost Estimate
4. Independent Government Cost Estimate
5. Administrative Record Index
6. Environmental Justice Screen Results
7. Original Action Memorandum

cc: S. Ridenour, U.S. EPA, 5104A/B452E  
([Ridenour.Steve@epa.gov](mailto:Ridenour.Steve@epa.gov))  
L. Nelson, U.S. DOI, **w/o Enf. Addendum**, ([Lindy\\_Nelson@ios.doi.gov](mailto:Lindy_Nelson@ios.doi.gov))  
H. Grether, Director, MDEQ, **w/o Enf. Addendum**  
([GretherH@michigan.gov](mailto:GretherH@michigan.gov))  
B. Schuette, Michigan Attorney General, **w/o Enf. Addendum**  
([SchuetteB@michigan.gov](mailto:SchuetteB@michigan.gov))  
J. Walczak, MDEQ, **w/o Enf. Addendum**  
([walczakj@michigan.gov](mailto:walczakj@michigan.gov))  
B. Zimont, MDEQ, **w/o Enf. Addendum**  
([zimontb@michigan.gov](mailto:zimontb@michigan.gov))  
D. Peabody, MDEQ, **w/o Enf. Addendum**  
([peabody.dan@michigan.gov](mailto:peabody.dan@michigan.gov))

**BCC PAGE HAS BEEN REDACTED**

**NOT RELEVANT TO SELECTION  
OF REMOVAL ACTION**

**ENFORCEMENT ADDENDUM**

**HAS BEEN REDACTED – THREE PAGES**

**ENFORCEMENT CONFIDENTIAL**

**NOT SUBJECT TO DISCOVERY**

**FOIA EXEMPT**

**NOT RELEVANT TO SELECTION**

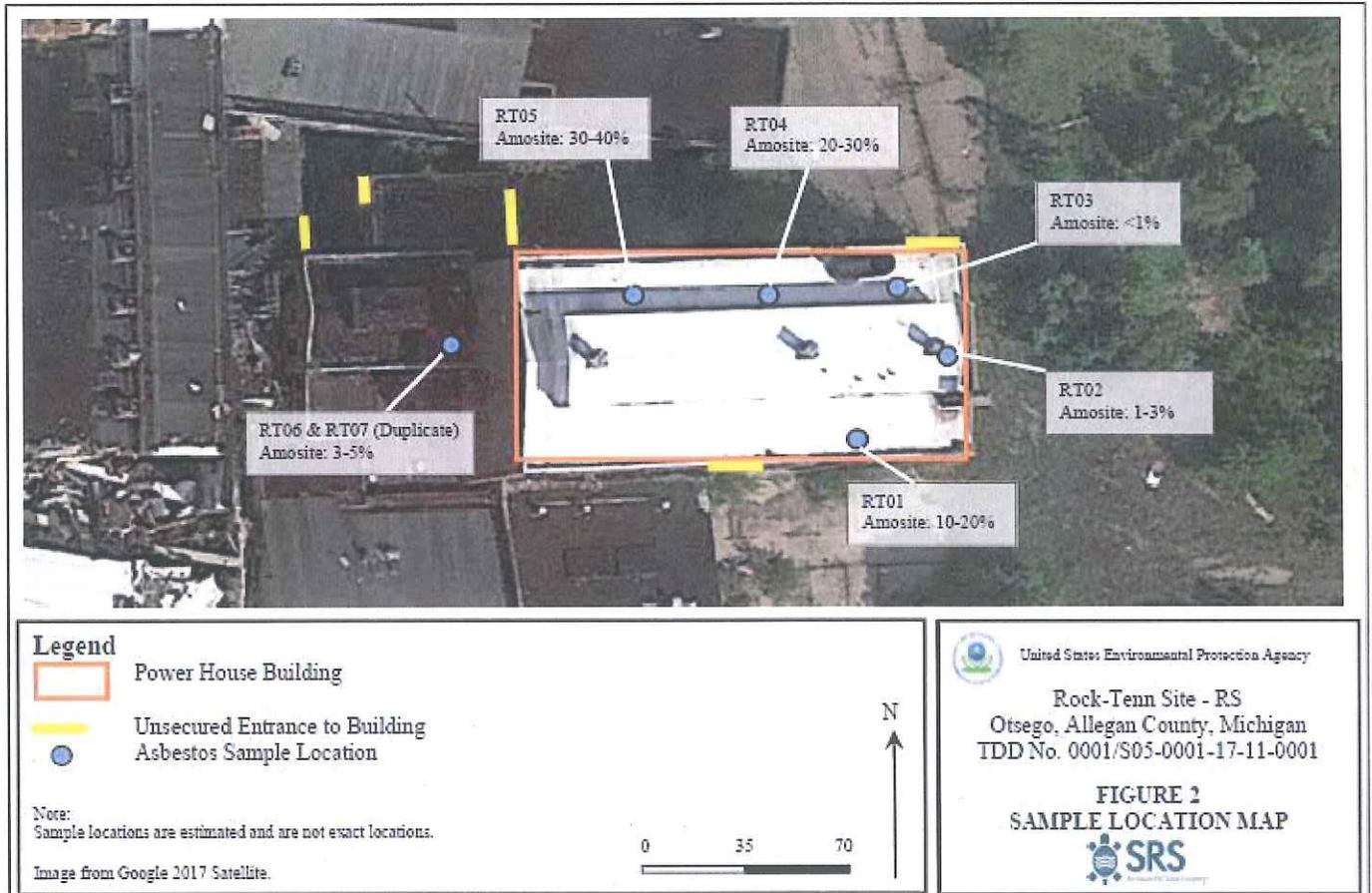
**OF REMOVAL ACTION**



FIGURE 2

SITE LAYOUT W/ ANALYTICAL RESULT SUMMARY\*

Rock-Tenn Site  
Otsego, Michigan



\*Sample RT05 analytical results are found in Attachment 1. Full analytical results are in the AR.

## ATTACHMENT 1

### EXAMPLE ANALYTICAL RESULT\*

#### Rock-Tenn Site Otsego, Michigan

Sample ID	RT05	RT06 & RT07 (Duplicate)
Sample Location	Basement level	Basement level
Material Description	Black homogeneous crumbly material - Friable	Gray homogeneous crumbly material - Friable
		
<b>Lab Results</b>		
Amosite	<b>30-40%</b>	<b>3-5%</b>
<p>Notes:</p> <p>RT                 Rock-Tenn Site</p> <p>%                 percentage</p> <p>&lt;                 less than</p> <p><b>bold/highlighted</b>   sample result meets ACM criteria</p> <p>Samples were submitted to ALS Environmental for analysis by PLM under TDD No. 0001/505-0001-17-11-001. The Occupational Safety and Health Administration (OSHA) defines ACM in 29 CFR 1910.1001 as any material that contains more than one percent asbestos.</p>		

ALS Environmental			Date: 09-Apr-13
Client:	SRS	Work Order: 1804041	
Project:	Rock-Tenn Site		
Lab ID:	1804041-05A	Collection Date:	4/2/2018 12:55:00 PM
Client Sample ID:	RT05	Matrix:	BULK
Analyses	Result	Units	Analytical Results
<b>Asbestos by PLM</b>			Date Analyzed 4/9/2018
Macroscopic Examination	Prep Date: 4/6/2018	E600/R-93/116	Analyst: MRS
Color	Black		
Description	Material		
Homogeneity	Homogeneous		
Texture	Crumbly		
<b>Other Materials</b>		E600/R-93/116	
Cellulose	ND	%	
Fiberglass	>1<=3	%	
Non-fibrous	>50<=60	%	
Other fibers	ND	%	
Resin/binder	ND	%	
<b>Asbestiform Minerals</b>		E600/R-93/116	
Amosite	>30<=40	%	
Anthophyllite	ND	%	
Chrysotile	ND	%	
Crocidolite	ND	%	
Tremolite - actinolite	ND	%	
<b>Total asbestos</b>	<b>&gt;30&lt;=40</b>	<b>%</b>	

\*Full analytical results can be found in the AR and are summarized in Figure 2.

**ATTACHMENT 2**

**SITE PHOTOGRAPHS**  
**Rock-Tenn Site**  
**Otsego, Michigan**



**Site:** Rock-Tenn

**Photograph No.:** 1

**Direction:** South

**Subject:** Former Rock-Tenn paper mill (all structures)

**Date:** 06/26/2018

**Photographer:** MSG



**Site:** Rock-Tenn

**Photograph No.:** 2

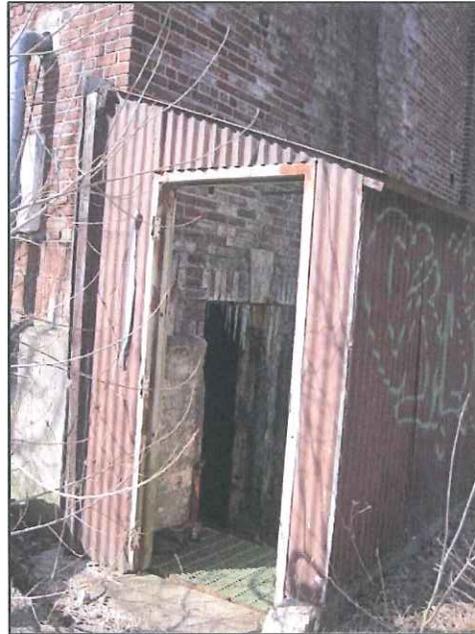
**Direction:** South

**Subject:** Power House Building

**Date:** 06/26/2018

**Photographer:** MSG

**SITE PHOTOGRAPHS (cont.)**



**Site:** Rock-Tenn

**Photograph No.:** 3

**Direction:** Southwest

**Subject:** Unsecured entrance at northeast corner of Power House Building.

**Date:** 04/02/2018

**Photographer:** SRS



**Site:** Rock-Tenn

**Photograph No.:** 4

**Direction:** Southwest

**Subject:** Unsecured entrance on western wall of Power House Building.

**Date:** 04/02/2018

**Photographer:** SRS

**SITE PHOTOGRAPHS (cont.)**



**Site:** Rock-Tenn  
**Photograph No.:** 5  
**Direction:** North

**Date:** 04/02/2018  
**Photographer:** SRS

**Subject:** Floor collapsed adjacent to boiler and graffiti inside Power House Building.



**Site:** Rock-Tenn  
**Photograph No.:** 6  
**Direction:** Northwest

**Date:** 07/15/2018  
**Photographer:** EPA

**Subject:** Structural beams cut inside Power House Building.

**SITE PHOTOGRAPHS (cont.)**



**Site:** Rock-Tenn

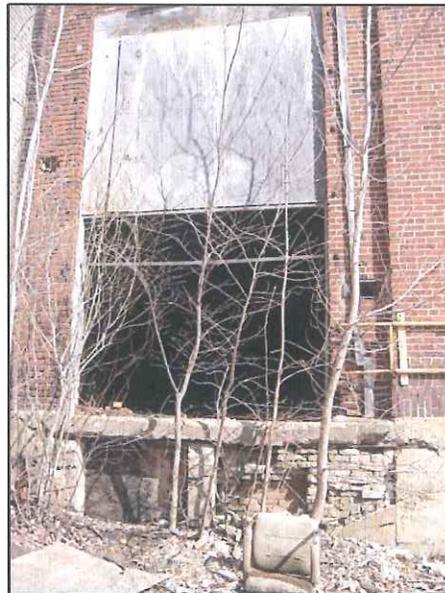
**Photograph No.:** 7

**Direction:** Southwest

**Subject:** Loose ACM on the floor inside the Power House Building.

**Date:** 07/15/2018

**Photographer:** EPA



**Site:** Rock-Tenn

**Photograph No.:** 8

**Direction:** North

**Subject:** Missing foundation wall under unsecured loading dock door of Power House Building.

**Date:** 04/02/2018

**Photographer:** SRS

**ATTACHMENT 3**

**DETAILED CLEANUP CONTRACTOR ESTIMATE**

**HAS BEEN REDACTED – ONE PAGE**

**NOT RELEVANT TO SELECTION**

**OF REMOVAL ACTION**

**ATTACHMENT 4**

**INDEPENDENT GOVERNMENT COST  
ESTIMATE HAS BEEN REDACTED – ONE PAGE**

**NOT RELEVANT TO SELECTION  
OF REMOVAL ACTION**

## ATTACHMENT 5

### ADMINISTRATIVE RECORD Rock-Tenn Site Otsego, Allegan County, Michigan

#### UPDATE 1 OCTOBER 2018 SEMS ID:

<u>NO.</u>	<u>SEMS ID</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
1	943671	5/6/08	EOCT	Cogswell Property, LLC	Asbestos Survey Report Pt. 1	25
2	943672	5/6/08	EOCT	Cogswell Property, LLC	Asbestos Survey Report Pt. 2	23
3	943676	1/18/12	Babu, N., OTIE	Kelly, B., U.S. EPA	Site Assessment Report	76
4	943675	4/2/12	Kelly, B., U.S. EPA	Distribution List	Pollution Report (POLREP) #3 - Final POLREP	4
5	446502	12/12/12	Kelly, B., U.S. EPA	El-Zein, J., U.S. EPA	Action Memorandum: Request for Approval of a Removal Action (Redacted Version)	12
6	943669	3/1/14	ECT	Allegan County Brownfield Redevelopment Authority	Otsego Power Plant Asbestos Abatement Cost Evaluation	8
7	943685	12/28/17	File	File	Michigan's Chemical, Action and Location Specific Response Actions Summary (ARARS)	13
8	943668	6/28/18	Brooks, S., Allegan County of	Ruesch, P., U.S. EPA	Letter Re: Former Rock-Tenn Paper Mill - Power House Asbestos	1
9	943673	7/2/18	Heywood, D., MDEQ	Ruesch, P., U.S. EPA & Peabody, D., MDEQ	Email Re: Rock Tenn Request	2

<u>NO.</u>	<u>SEMS ID</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
10	943674	7/3/18	SRS	Kelly, B., U.S. EPA	Removal Assessment Report	45
11	943677	8/2/18	Brooks, S., Allegan County of	U.S. EPA	Consent For Access To Property	1
12	943679	9/17/18	Mannik Smith Group	Baldino, R., SRS	Structural Assessment - Site Report	5
13	943670	10/3/18	Ruesch, P., U.S. EPA	Peabody, D., MDEQ	Letter Re: Request For State Applicable, Relevant and Appropriate Requirements (ARARs)	2
14	943678	10/5/18	Nagam, R., SRS	Ruesch, P., U.S. EPA	Letter Re: Building Structural Evaluation Report	1
15	943684	10/17/18	Heywood, D., MDEQ	Peabody, D., MDEQ	Email Re: ARAR Request Letter - Rock Tenn	3
16	-	-	Ballotti, D., U.S. EPA	Cheatham, R., U.S. EPA	Action Memorandum re: Request for Concurrence on Proposed Nationally-Significant Removal at the Rock-Tenn Site ( <i>PENDING</i> )	-

**ATTACHMENT 6**

**ENVIRONMENTAL JUSTICE (EJ) SCREEN RESULTS**

**Rock Tenn Site**

**Otsego, Allegan County, Michigan**

**Updated - October 2018**



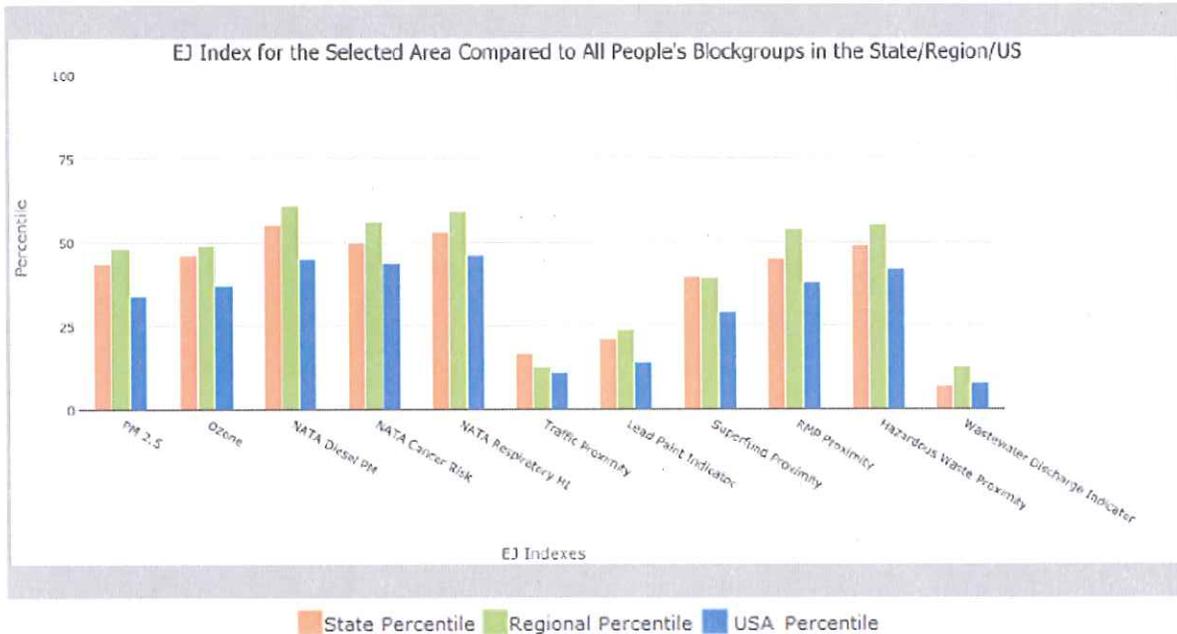
1 mile Ring Centered at 42.464847, -85.704959, MICHIGAN, EPA Region 5

Approximate Population: 3,403

Input Area (sq. miles): 3.14

Rock Tenn Site

Selected Variables	State Percentile	EPA Region Percentile	USA Percentile
<b>EJ Indexes</b>			
EJ Index for PM2.5	44	48	34
EJ Index for Ozone	46	49	37
EJ Index for NATA* Diesel PM	55	61	45
EJ Index for NATA* Air Toxics Cancer Risk	50	56	44
EJ Index for NATA* Respiratory Hazard Index	53	59	46
EJ Index for Traffic Proximity and Volume	17	13	11
EJ Index for Lead Paint Indicator	21	24	14
EJ Index for Superfund Proximity	40	39	29
EJ Index for RMP Proximity	45	54	38
EJ Index for Hazardous Waste Proximity	49	55	42
EJ Index for Wastewater Discharge Indicator	7	13	8



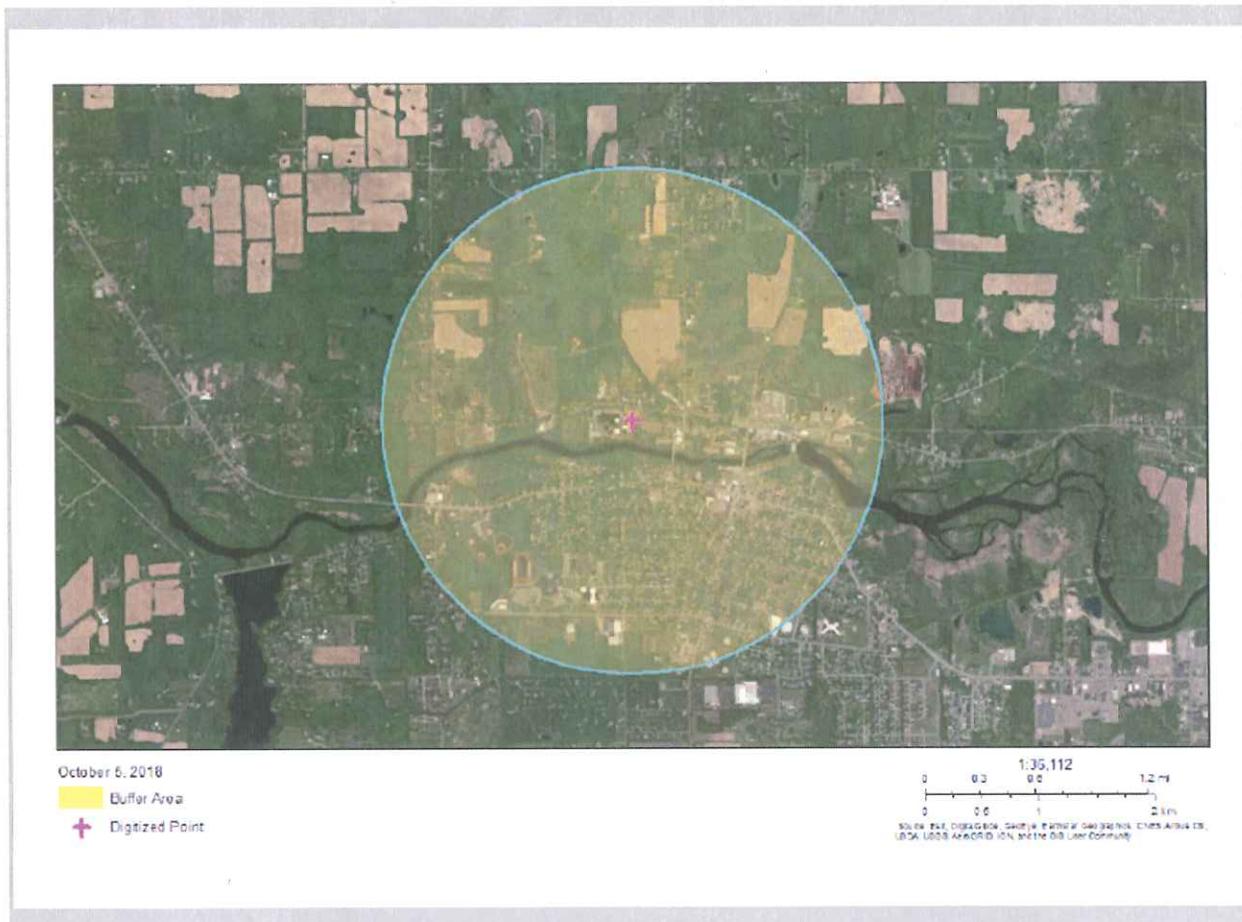
This report shows the values for environmental and demographic indicators and EJSCREEN indexes. It shows environmental and demographic raw data (e.g., the estimated concentration of ozone in the air), and also shows what percentile each raw data value represents. These percentiles provide perspective on how the selected block group or buffer area compares to the entire state, EPA region, or nation. For example, if a given location is at the 95th percentile nationwide, this means that only 5 percent of the US population has a higher block group value than the average person in the location being analyzed. The years for which the data are available, and the methods used, vary across these indicators. Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators. Please see EJSCREEN documentation for discussion of these issues before using reports.

1 mile Ring Centered at 42.464847,-85.704959, MICHIGAN, EPA Region 5

Approximate Population: 3,403

Input Area (sq. miles): 3.14

Rock Tenn Site



Sites reporting to EPA	
Superfund NPL	0
Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)	0

## EJSCREEN Report (Version 2018)



1 mile Ring Centered at 42.464847, -85.704959, MICHIGAN, EPA Region 5

Approximate Population: 3,403

Input Area (sq. miles): 3.14

Rock Tenn Site

Selected Variables	Value	State Avg.	%ile in State	EPA Region Avg.	%ile in EPA Region	USA Avg.	%ile in USA
<b>Environmental Indicators</b>							
Particulate Matter (PM 2.5 in $\mu\text{g}/\text{m}^3$ )	11.1	10.2	89	10.8	48	9.53	80
Ozone (ppb)	44.8	42.9	94	42.6	86	42.5	73
NATA* Diesel PM ( $\mu\text{g}/\text{m}^3$ )	0.304	0.726	19	0.932	<50th	0.938	<50th
NATA* Cancer Risk (lifetime risk per million)	26	31	25	34	<50th	40	<50th
NATA* Respiratory Hazard Index	0.84	1.3	18	1.7	<50th	1.8	<50th
Traffic Proximity and Volume (daily traffic count/distance to road)	620	570	74	370	85	600	81
Lead Paint Indicator (% Pre-1960 Housing)	0.59	0.38	74	0.38	73	0.29	81
Superfund Proximity (site count/km distance)	0.056	0.13	54	0.12	56	0.12	54
RMP Proximity (facility count/km distance)	0.17	0.52	45	0.81	32	0.72	36
Hazardous Waste Proximity (facility count/km distance)	0.14	0.8	34	1.5	27	4.3	30
Wastewater Discharge Indicator (toxicity-weighted concentration/m distance)	0.031	0.16	91	4.2	81	30	86
<b>Demographic Indicators</b>							
Demographic Index	21%	29%	45	28%	48	36%	32
Minority Population	4%	24%	16	25%	19	38%	9
Low Income Population	38%	34%	61	32%	66	34%	61
Linguistically Isolated Population	0%	2%	61	2%	58	4%	44
Population With Less Than High School Education	10%	10%	60	10%	61	13%	51
Population Under 5 years of age	6%	6%	54	6%	49	6%	48
Population over 64 years of age	19%	15%	73	15%	75	14%	77

\* The National-Scale Air Toxics Assessment (NATA) is EPA's ongoing, comprehensive evaluation of air toxics in the United States. EPA developed the NATA to prioritize air toxics, emission sources, and locations of interest for further study. It is important to remember that NATA provides broad estimates of health risks over geographic areas of the country, not definitive risks to specific individuals or locations. More information on the NATA analysis can be found at: <https://www.epa.gov/national-air-toxics-assessment>.

For additional information, see: [www.epa.gov/environmentaljustice](http://www.epa.gov/environmentaljustice)

EJSCREEN is a screening tool for pre-decisional use only. It can help identify areas that may warrant additional consideration, analysis, or outreach. It does not provide a basis for decision-making, but it may help identify potential areas of EJ concern. Users should keep in mind that screening tools are subject to substantial uncertainty in their demographic and environmental data, particularly when looking at small geographic areas. Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators. Please see EJSCREEN documentation for discussion of these issues before using reports. This screening tool does not provide data on every environmental impact and demographic factor that may be relevant to a particular location. EJSCREEN outputs should be supplemented with additional information and local knowledge before taking any action to address potential EJ concerns.

**ATTACHMENT 7**

**ORIGINAL (EMERGENCY RESPONSE) ACTION MEMORANDUM**

**Rock-Tenn Site**

**Otsego, Allegan County, Michigan**

**Original - December 2012**



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 W. JACKSON BLVD

CHICAGO, IL 60604

12 DEC 2012

MEMORANDUM

**SUBJECT:** Action Memorandum: Request for Approval of a Removal Action at the Rock-Tenn Site (SSID # C5A2) located in Otsego, Allegan County, Michigan 49078

**FROM:** Brian Kelly, On-Scene Coordinator  
Emergency Response Section 2

**THRU:** Mindy Clements, Chief  
Emergency Response Section 2

**TO:** Jason H. El-Zein, Chief  
Emergency Response Branch 1

**I. PURPOSE**

The purpose of this Action Memorandum is to request and document approval of the selected removal action taken at the Rock-Tenn Site located in Otsego, Allegan County, Michigan 49078 and a ceiling amount of site costs not to exceed \$45,000. On August 28, 2012, Branch Chief Jason El-Zein verbally approved \$30,000 to conduct the response. On September 4, 2012, Branch Chief Sam Borries approved an additional \$15,000.

The removal was necessary due to the potential risk posed by illegally stripped asbestos inside a deteriorated building that lacked intact windows and doors, and was therefore open to the weather. The removal action secured the windows and doors with boards to prevent asbestos from migrating outside of the building. Asbestos is defined as a hazardous substance by 40 C.F.R. § 302.4.

The Action Memorandum, if approved, would serve as authorization for expenditures by EPA, as the lead technical agency, for actions described herein to abate the imminent and substantial endangerment posed by hazardous substances at the site. The response actions were conducted in accordance with Section 104(a)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9604(a)(1), and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. § 300.415, to abate the immediate threats posed to public health and/or the environment.

The uncontrolled conditions of the hazardous substances present at the site required that this action be classified as an emergency removal action. The project was estimated to take 14 days to complete, but was completed in seven.

Removals involving asbestos, when it is the principal contaminant of concern, have been designated as nationally significant. Due to the emergency nature of the site, the OSC verbally discussed the project with headquarters. The site is not on the National Priorities List (NPL).

## **II. SITE INFORMATION**

### **A. Site Description**

Site Name: Rock-Tenn ER Site

Superfund Site ID: C5A2

CERCLIS ID: MIN000510668

Location: 431 Helen Ave, Otsego, Allegan County, Michigan 49078

Lat/Long: 42.4647, -85.7043

Category: Emergency Response

### **B. Site Background**

#### **1. Removal site evaluation**

The emergency response took place on the powerhouse of an abandoned paper mill. The response was necessitated due to the illegal stripping of asbestos pipe insulation and the severe deterioration of the building structure, which combined, presented an asbestos exposure risk to the surrounding community. To prevent this exposure, EPA placed boards on the windows and doors of the facility.

The site was referred to EPA's Emergency Response Branch (ERB) by EPA's Criminal Investigative Division (CID). CID provided ERB with an asbestos report that documented Chrysotile asbestos as high as 95% and Amosite asbestos as high as 60%. The report noted that all debris inside the building should be considered to contain asbestos.

#### **2. Physical location and site characteristics**

The site is located 431 Helen Ave, Otsego, Allegan County, Michigan 49078. The geographic center of the site is Long/Lat 42.4647, -85.7043.

Allegan County took possession of the property in 2011 after the previous owner, Cogswell Property LLC, failed to pay property taxes. Anthony Michael Davis is the managing member of Cogswell.

The area surrounding the site was screened for Environmental Justice (EJ) concerns using Region 5's EJ Assist Tool (which applies the interim version of the national EJ Strategic Enforcement Assessment Tool (EJSEAT)). Census tracts with a score of 1, 2, or 3 are considered

to be high-priority potential EJ areas of concern according to EPA Region 5. This site is in a census tract with a score of 5 (Attachment 2). Therefore, Region 5 does not consider this site to be a high-priority potential EJ area of concern. Please refer to the attached analysis for additional information.

3. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant

The source of the asbestos was the illegal stripping of the asbestos from insulation. On September 21, 2012, the United States charged the former owner of the site, Mr. Davis, with violating the Clean Air Act. The five-count indictment filed in U.S. District Court charges Mr. Davis with failing to obtain an asbestos inspection, failing to have a representative trained in asbestos regulation on-site, failing to wet asbestos-containing material, failing to label asbestos-containing waste and failing to properly dispose of asbestos-containing material. Asbestos is defined as a hazardous substance by 40 C.F.R. § 302.4.

**III. THREATS TO PUBLIC HEALTH OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES**

**A. Nature of Actual or Threatened Release of Hazardous Substances, Pollutants or Contaminants.**

The response was initiated after CID provided ERB with an asbestos report that documented Chrysotile asbestos as high as 95% and Amosite asbestos as high as 60%. The report said all debris inside the building should be considered to contain asbestos. Because the building containing the asbestos lacked intact windows and doors, the presence of loose asbestos containing materials exposed to wind and weather posed a risk of asbestos exposure to the environment.

**B. Check Applicable Factors (from 40 C.F.R. § 300.415) Which Were Considered in Determining the Appropriateness of a Removal Action:**

The conditions at the site presented a substantial threat to the public health or welfare, and the environment, and met the criteria for a time-critical removal action as provided for in the NCP, 40 C.F.R. § 300.415(b)(2). These criteria include, but are not limited to, the following:

Actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants [300.415(b)(2)(i)].

Actual or potential contamination of drinking water supplies or sensitive ecosystems [300.415(b)(2)(ii)].

Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that pose a threat of release [300.415(b)(2)(iii)].

High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate [300.415(b)(2)(iv)].

X Weather conditions that may cause hazardous substances or pollutants to migrate or to be released [300.415(b)(2)(v)].

    Threat of fire or explosion [300.415(b)(2)(vi)].

X The availability of other appropriate federal or state response mechanisms to respond to the release [300.415(b)(2)(vii)].

    Other situations or factors that may pose threats to the public health or welfare of the United States or the environment [300.415(b)(2)(viii)].

#### **IV. ENDANGERMENT DETERMINATION**

Given the site conditions, the nature of the known hazardous substances on site, and the potential exposure pathways described in Sections II and III above, actual or threatened releases of hazardous substances from this site, if not addressed by implementing the response actions selected in this memorandum, may have presented an imminent and substantial endangerment to public health, or welfare, or the environment.

#### **V. SELECTED REMOVAL ACTIONS AND ESTIMATED COSTS**

##### **A. Situation and Removal Actions to Date**

###### **1. Current Situation:**

Removal is complete. Allegan County is working on redevelopment of the property, which includes the removal of the asbestos.

###### **2. Removal activities to date:**

Between September 4 and October 1, 2012, EPA secured the powerhouse building with boards over the windows. The second and third floor windows were reached by use of man lifts and the boards were secured to the building using frames. Prior to mobilizing to the site, EPA attempted to have Mr. Davis secure the building. While he initially verbally agreed to secure the building, Mr. Davis failed to do so and did not meet the deadline set by EPA. EPA also coordinated with the Allegan County in an attempt to have the county secure the building, but due to a lack of funds, the county was unable to secure the building.

In 2009, Michigan Department of Environmental Quality and Mr. Davis signed a consent agreement that documented Mr. Davis's violations of the Clean Air Act including failure to inspect prior to renovation, failure to remove asbestos before disturbing the material, failure to notify the State, failure to remove the asbestos, failure to wet the asbestos, and failure to seal the asbestos waste in leak tight containers. Mr. Davis has not paid the full amount of the fines he agreed to pay in the consent agreement.

The response actions described in this memorandum directly addressed actual or potential releases of hazardous substances on site, which may have posed an imminent and substantial

endangerment to public health, or welfare, or the environment. Specific removal activities on site included:

- a. Developing and implementing a site Health and Safety Plan and Work Plan;
- b. Framing, boarding, and sealing the doors and windows to prevent the release of asbestos to the environment;

The removal action was conducted in a manner not inconsistent with the NCP. The OSC initiated planning provisions for post-removal site control consistent with the provisions of Section 300.415(l) of the NCP.

The threats posed by uncontrolled substances considered hazardous meet the criteria listed in NCP § 300.415(b)(2), and the response actions proposed herein were consistent with any long-term remedial actions which may be required. Elimination of hazardous substances, pollutants and contaminants that posed a substantial threat of release minimized substantial requirements for post-removal site controls.

All hazardous substances, pollutants, or contaminants removed off-site pursuant to this removal action for treatment, storage, and disposal were treated, stored, or disposed of at a facility in compliance, as determined by EPA, with the EPA Off-Site Rule, 40 C.F.R. § 300.440.

The response actions described in this memorandum directly addressed the actual or threatened releases of hazardous substances, pollutants or contaminants at the site which posed an imminent and substantial endangerment to public health or welfare or to the environment. These response actions did not impose a burden on affected property disproportionate to the extent to which that property contributes to the conditions being addressed.

3. Enforcement:

For administrative purposes, information concerning the enforcement strategy for this Site is contained in the Enforcement Confidential Addendum.

Direct Costs	+(Indirect Costs)	= Estimated EPA Costs for
(\$45,000 + \$5,000)	[(61.61%) x (\$50,000)]	Removal Action
		\$80,805

The total EPA costs for this removal action based on full-cost accounting practices that will be eligible for cost recovery are estimated to be \$80,805.

**B. Planned Removal Actions**

- 1. Proposed action description

N/A

2. Contribution to remedial performance

The removal action will not impede future actions based on available information.

3. Applicable or relevant and appropriate requirements (ARARs)

EPA complied with all applicable, relevant, and appropriate requirements (ARARs) of federal and State laws to the extent practicable considering the emergency exigencies of the circumstances.

4. Project Schedule

These activities required approximately seven on-site working days to complete.

**C. Estimated Costs**

REMOVAL ACTION PROJECT CEILING ESTIMATE	
<b>Extramural Costs:</b>	\$ 45,000
<u>Regional Removal Allowance Costs:</u> Cleanup Contractor Costs	
<u>Other Extramural Costs Not Funded from the Regional Allowance:</u> START	\$ 0
<b>Subtotal</b>	\$ 45,000
Contingency	\$ 0
<b>Total Removal Project Ceiling</b>	\$ 45,000

An independent government cost estimate is included in Attachment 3.

**VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN**

Given the site conditions, the nature of the hazardous substances and pollutants or contaminants documented on site, and the potential exposure pathways to nearby populations described in Sections II, III and IV above, actual or threatened release of hazardous substances and pollutants or contaminants from the site, failing to take or delaying action may have presented an imminent and substantial endangerment to public health, welfare or the environment, increasing the potential that hazardous substances would have been released, thereby threatening the adjacent population and the environment.

**VII. OUTSTANDING POLICY ISSUES**

The site was conducted as an emergency response. EPA Headquarters was verbally consulted.

## VIII. RECOMMENDATION

This decision document represents the selected removal action for the Rock-Tenn Site, Otsego, Allegan County, Michigan developed in accordance with CERCLA as amended, and is not inconsistent with the NCP. This decision is based on the administrative record for the site (Attachment 1).

Conditions at the site met the NCP Section 300.415(b)(2) criteria for a removal and I recommend your approval of the completed removal action documented in this Action Memorandum.

The total project ceiling if approved will be \$45,000, of which an estimated \$45,000 may be used for cleanup contractor costs. You may indicate your approval by signing below.

APPROVE:  DATE: 12-12-2012  
Jason H. El-Zein, Chief  
Emergency Response Branch 1

DISAPPROVE: \_\_\_\_\_ DATE: \_\_\_\_\_  
Jason H. El-Zein, Chief  
Emergency Response Branch 1

### Enforcement Addendum

- Attachments
1. Administrative Record Index
  2. Region 5 EJ Analysis
  3. Independent Government Cost Estimate

cc: cc: S. Fielding, U.S. EPA, 5104A  
(fielding.sherry@epa.gov)  
V. Darby, U.S. Department of Interior, w/o Enf. Attachment  
(Valincia\_Darby@ios.doi.gov)  
D. Wyant, Director, MDEQ, w/o Enf. Addendum  
(WyantD@michigan.gov)  
B. Schuette, Michigan Attorney General, w/o Enf. Addendum  
(SchuetteB@michigan.gov)  
J. Walczak, MDEQ, w/o Enf. Addendum  
(walczakj@michigan.gov)  
B. Zimont, MDEQ, w/o Enf. Addendum  
(zimontb@michigan.gov)

**BBC PAGE HAS BEEN REDACTED**

**NOT RELEVANT TO SELECTION OF**

**REMOVAL ACTION**

**ENFORCEMENT ADDENDUM ENFORCEMENT SENSITIVE  
- DO NOT RELEASE - NOT SUBJECT TO  
DISCOVERY - FOIA EXEMPT**

**ROCK-TENN SITE**

**431 HELEN AVENUE**

**ALLEGAN COUNTY, OTESGO, MICHIGAN 49078**

- 1. OCTOBER 2012 HAS BEEN REDACTED THREE PAGES  
ENFORCEMENT SENSITIVE NOT APPLICABLE TO DISCOVERY NOT  
RELEVANT TO SELECTION OF REMOVAL ACTION**

ATTACHMENT 1

ADMINISTRATIVE RECORD  
 FOR  
 ROCK-TENN SITE  
 OSTEGO, ALLEGAN COUNTY, MICHIGAN

ORIGINAL  
 OCTOBER 2012

<u>NO.</u> <u>PAGES</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>
1	05/06/08	Environmental & Occupational Consulting & Training, Inc.	Andrews, D., Cogswell Property, LLC &	Asbestos Survey Report for the Cogswell Property, LLC Powerhouse
2	05/14/08	Environmental & Occupational Consulting & Training, Inc.	File	Photographs and Drawings re: Cogswell Property, LLC Powerhouse
3	10/14/09	Hellwig, G., MDEQ	Davis, M., Cogswell Property, LLC & Riverside roperty Investment, LLC	Stipulation for Entry of Final Order by Consent
4	10/01/12	Kelly, B., U.S. EPA	File	Pollution/Situation Report (POLREP) #1 Initial and Final for the Rock-Tenn Site
5	00/00/00	Kelly, B., U.S. EPA		Action Memorandum: Rock-Tenn Site (Pending)

ATTACHMENT 2  
EJ ANALYSIS FOR  
ROCK-TENN SITE  
OTSEGO, MICHIGAN  
OCTOBER 2012

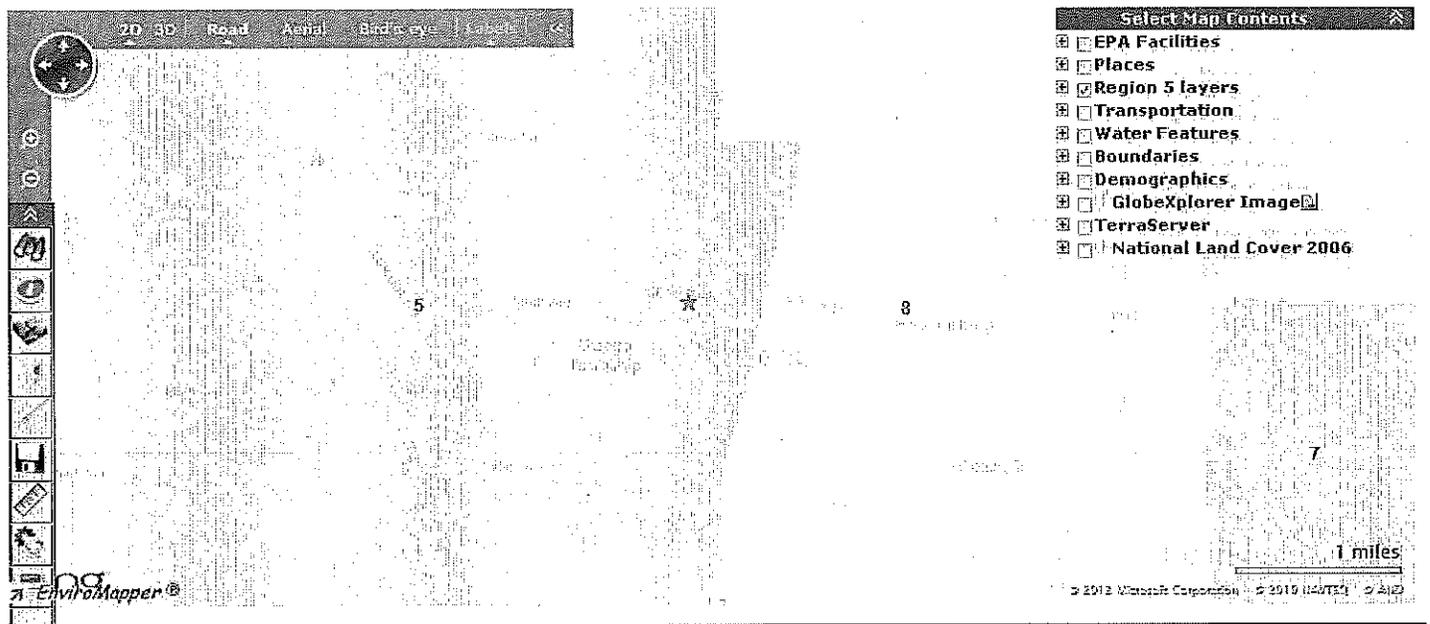
The area surrounding the site was screened for Environmental Justice (EJ) concerns using Region 5's EJ Assist Tool (which applies the interim version of the national EJ Strategic Enforcement Assessment Tool (EJSEAT)). Census tracts with a score of 1, 2, or 3 are considered to be high-priority potential EJ areas of concern according to EPA Region 5. This site is in a census tract with a score of 5. Therefore, Region 5 does not consider this site to be a high-priority potential EJ area of concern.

Map Showing EJ SEAT Values For Surrounding Area

Region 5 EJAssist

Share

You are here: ISS Mapping Apps » EJAssist Home » EJAssist Map



**ATTACHMENT 3 DETAILED CLEANUP CONTRACTOR  
ESTIMATE**

**AND**

**INDEPENDENT GOVERNMENT COST ESTIMATE**

**ROCK-TENN SITE**

**OTSEGO, MICHIGAN**

**OCTOBER 2012**

- 2. HAS BEEN REDACTED TWO PAGES NOT RELEVANT TO SELECTION  
OF REMOVAL ACTION**