

Sager, John E - DNR

From: Sager, John E - DNR
Sent: Tuesday, June 20, 2023 4:24 PM
To: ryan@arrowheadconcreteworks.com
Cc: Saari, Christopher A - DNR; Jamie Mehle (SWLP)
Subject: SWL&P Property Access Request
Attachments: Lakehead Concrete Access Letter.pdf

Mr. Tuhkanen,

The attached letter was mailed to you last week with delivery expected today. Please contact me as soon as possible regarding this situation.

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

John Sager

Hydrogeologist – Remediation and Redevelopment Program

Wisconsin Department of Natural Resources

1701 N. 4th St.

Superior, WI 54880

Phone: (715) 919-7239

john.sager@wisconsin.gov





CERTIFIED MAIL – RETURN RECEIPT REQUESTED

June 13, 2023

Mr. Ryan Tuhkanen
Lakehead Concrete Works, Inc.
5572 Miller Trunk Highway
Hermantown, MN 55811

(Delivered via Certified Mail to the above address and email to Ryan@arrowheadconcreteworks.com)

SUBJECT: Property Access for Remedial Action Associated with the former Superior Water Light and Power manufactured gas plant, Winter Street and US Highway 53, Superior, Wisconsin
WDNR BRRTS # 02-16-275446

Dear Mr. Tuhkanen:

The purpose of this letter is to explain the status of the remedial action taking being conducted by Superior Water Light and Power (SWL&P) on property owned by Cutler Laliberte McDougal (CLM), located northwest of property owned by Lakehead Concrete Works, Inc. (Lakehead), identified as Douglas County Parcel Identification number (PID) number 028020710203, located on East 1st Street in Superior Wisconsin. This letter also explains your rights and responsibilities as a property owner whose property was impacted by contamination from an off-site discharge of a hazardous substance associated with the former SWL&P manufactured gas plant (MGP) and gas distribution. Please read this letter carefully, in its entirety.

Remedial Action at the former SWL&P MGP:

The remedial action being conducted by SWL&P for the soil, groundwater, and sediment contamination resulting from the operation of the former MGP and gas distribution activities is to fulfill SWL&P's responsibility under Wisconsin Statutes (Wis. Stats.) § 292.11, to define the degree and extent of the contamination and seeing that contamination in soil, groundwater, and sediment is remediated (cleaned up) in accordance with Wisconsin Administrative (Wis. Admin.) Code chs. NR 700-799. During the site investigation of contamination resulting from discharges of hazardous substances from the former MGP and gas distribution, contamination was found on PID 028020710203.

Remediation of contamination associated with the former MGP, and gas distribution involves excavation of contaminated soil and sediment and installation of a remedial action system of air sparging wells and soil vapor extraction wells and trenches. The remedial action system will be in operation for years following its installation. Periodic maintenance and monitoring of the remedial action system as well as groundwater monitoring will continue during the operation of the remedial action system. For SWL&P to fulfill its responsibilities under Wis. Stats. ch. 292, SWL&P has designed their remedial action to include contamination that has migrated onto PID 028020710300 and PID 028020710203.

The Wisconsin Department of Natural Resources (DNR) has learned that SWL&P has attempted to contact Lakehead numerous times regarding gaining access to PID 028020710203 for installation and operation of the remedial action system referenced above and has received no response from Lakehead.

Explanation of Relevant Court Decision and Statutes:

Section 292.11(3), Wis. Stats., imposes liability on persons who cause a discharge of a hazardous substance and persons who are in possession or control of a hazardous substance that is discharged. The Wisconsin Supreme Court held, in State v. Mauthe, 123 Wis.2d 288 (1985), that the owner of property with contamination that is continuing to discharge to the environment is “in possession or control” of those contaminants even if the property owner did not cause the contamination.

However, after the Mauthe decision was handed down, the State Legislature enacted the off-site liability exemption statute, s. 292.13, Wis. Stats. This statute generally provides that a person is exempt from liability under s. 292.11(3), (4) and (7)(b) and (c) (certain provisions of the Hazardous Substance Discharge statute) with respect to hazardous substances on property possessed or controlled by the person if the discharge of the hazardous substance originated from a source on property that is not possessed or controlled by the person and if certain other conditions are met.

Specifically, Wis. Stats. § 292.13(1) (property affected by off-site discharges), states:

A person, other than a state agency, is exempt from s. 292.11(3), (4) and (7)(b) and (c) with respect to the existence of a hazardous substance in the groundwater on property possessed or controlled by that person if... (d) The person agrees to allow the Department, any authorized representatives of the Department, any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance and any consultant or contractor of such a party to enter the property to take action to respond to the discharge.
and

(f) The person agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.

Refusal of reasonable access to the responsible party, or their representative, to enter an impacted property to address the contamination is viewed by the DNR as taking “possession and control” of the discharge. S. Wis. Stats. § 292.11(3), states:

A person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state.

Summary:

In summary, Wisconsin law provides that further delay or denial by Lakehead of SWL&P’s request to conduct a remedial action on PID 028020710203, for the purpose of remediating the contamination associated with MGP operation and gas distribution activities at the former SWL&P MGP site could result in the DNR naming Lakehead as a responsible party for this contamination under Wis. Stats. § 292.11. This would make you liable for the contamination that has migrated onto PID 028020710203. Therefore, it is in your best interest to address this issue immediately. Please contact Mr. Jamison Mehle, SWL&P at 218-395-6288 and grant permission for the remedial action as directed by the Department.

To continue the remedial action at the former SWL&P MGP site in a timely manner, please respond to me in writing with your decision within 14 days from the date you receive this letter. Failure to provide an adequate response within this time frame will result in a recommendation for the transfer of responsibility to Lakehead for contamination that has migrated onto PID 028020710203.

If you have any questions regarding the content of this letter, please contact me at 715-919-7239 or at john.sager@wisconsin.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Sager".

John Sager
Hydrogeologist
Remediation & Redevelopment Program

cc: Jamison Mehle, SWL&P
Greg Prom, SWL&P
Chris Saari, Northern Region RR Supervisor, DNR

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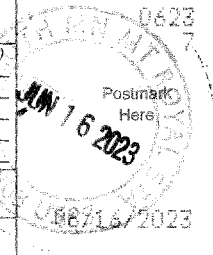
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Duluth, MN 55811

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Sent To
 Ryan Toikkanen
 Street and Apt. No., or PO Box No.
 5572 Miller Trunk Hwy
 City, State, ZIP+4®
 Hennepin, MN 55811

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<p>1. Article Addressed to: Ryan Toikkanen Lakehead Concrete 5572 Miller Trunk Hwy Hennepin, MN 55811</p>  <p>9590 9402 6162 0220 8700 00</p>	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td></td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Collect on Delivery Restricted Delivery	
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