

**From:** Keller, Ethan J - DNR  
**Sent:** Tuesday, February 27, 2024 11:07 AM  
**To:** jgiese@wctc.net  
**Cc:** Lynn; Brian Youngwirth  
**Subject:** Off-site Access Assistance Letter - MONTELLO LODGE (BRRTS #02-39-283764 )  
**Attachments:** Parcel\_251-00211-0000\_Access\_Letter.pdf

Good Morning,

Attached is a copy of the Off-site Access Assistance Letter sent to Freitag H A & Son Inc (owner of Parcel 251-00211-0000) for your records.

Let me know if you have any questions or would like to discuss anything in more detail.

Best Regards,

**We are committed to service excellence.**

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

**Ethan Keller**

Phone: (920) 718-0063

[ethan.keller@Wisconsin.gov](mailto:ethan.keller@Wisconsin.gov)



**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

02/27/2024

Freitag H A & Son Inc  
PO Box 744  
Montello, WI 53949

SUBJECT: Property Access at Parcel 251-00211-0000 for Investigating Contamination  
Montello Lodge, South 22 Main Street, Montello, Wisconsin  
WDNR BRRTS # 02-39-283764

Dear Mr. Freitag:

The purpose of this letter is to explain the current status of the environmental investigation taking place at the Montello Lodge property located at South 22 Main Street and to explain your rights and responsibilities as a property owner whose property may have been impacted by an off-site source, Montello Lodge. Please read this letter carefully, in its entirety.

**Investigation at Montello Lodge:**

As a result of the identified chlorinated solvent contamination found in soil and groundwater on the Montello Lodge property. This contamination was identified during the petroleum underground storage tank investigation on your property (Freitag & Sons Site #2, BRRTS# 03-39-02478) and closed in 2002. According to s. 292.11, Wisconsin State Stats, Montello Lodge #141, is responsible for defining the degree and extent of the contamination and seeing that contamination in soil and groundwater is remediated (cleaned up) in accordance with chs. NR 700-754, Wis. Adm. Code.

Defining the extent of contamination in soil is performed by drilling soil borings and analyzing the soil for constituents of the source contamination. In this particular case, the source contaminants are chlorinated solvents from dry cleaning activities. Groundwater is investigated by installing monitoring wells and analyzing groundwater for the same constituents.

During the investigation to define the degree and extent of contamination, Montello Lodge's consultant, sent you a request on August 11, 2020, to access your property for the purpose of installing soil borings and groundwater monitoring wells to collect soil and ground samples. Montello Lodge's consultant reported that access was denied on 01/04/2024. Access denial was confirmed during our phone conversation on February 22, 2024. Please be aware that Montello Lodge's consultants worked for General Engineering Inc. in 2020 and currently work for Carow Land Surveying & Environmental (CLSE).

**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, s. 292.13(1), Wisconsin State Stats., (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 Department as taking “possession and control” of the discharge. S. 292.11(3), Wisconsin State Stats., 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 you of Montello Lodge’s request to install soil borings and groundwater monitoring wells on your property, for the purpose of investigating and remediating the contamination in soil and groundwater at the Montello Lodge, will result in the Department naming you as a responsible party for this contamination under s. 292.11, Wisconsin State Stats. This would make you liable for the contamination that may have migrated onto your property. Therefore, it is in your best interest to address this issue immediately. I hope that you contact Lynn Bradley of Carow Land Surveying & Environmental at (920) 381-4979 and grant permission for the investigation to begin on your property as directed by the Department.

For the purpose of continuing the investigation at Montello Lodge in a timely manner, please respond to the Department 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 you for potentially migrated contamination.

If you have any questions regarding the content of this letter, please contact me at (920) 718-0063 or [ethan.keller@wisconsin.gov](mailto:ethan.keller@wisconsin.gov).

Sincerely,

A handwritten signature in black ink that reads "Ethan Keller". The signature is written in a cursive, slightly slanted style.

Ethan Keller  
Hydrogeologist  
Remediation & Redevelopment Program

cc:

James Giese, Montello Lodge #141 ([jgiese@wctc.net](mailto:jgiese@wctc.net))

Lynn Bradley, Carow Land Surveying & Environmental ([Lynn@clse.pro](mailto:Lynn@clse.pro))

Brian Youngwirth, Carow Land Surveying & Environmental ([brian@clse.pro](mailto:brian@clse.pro))

USPS TRACKING #



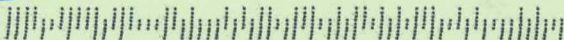
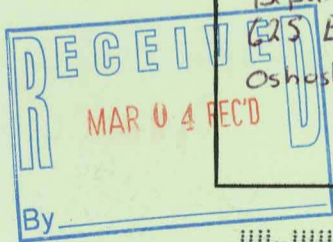
First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

9590 9402 4118 8092 7947 02

United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Ethan Keller  
Department of Natural Resources  
625 E. County Road Y, Suite 700  
Oshosh, WI 54901



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Richard W. Freitag  
 41 Main Street  
 P.O. Box 744  
 Montello, WI 53949



9590 9402 4118 8092 7947 02

2. Article Number (Transfer from service label)

7019 1120 0000 0641 3429

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

 Agent Addressee

B. Received by (Printed Name)

C. Date of Delivery

 D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery

 Priority Mail Express® Registered Mail™ Registered Mail Restricted Delivery Return Receipt for Merchandise Signature Confirmation™ Signature Confirmation Restricted Delivery

Restricted Delivery