



March 28, 2018

Mr. Steve Eisch  
P.O. Box 621  
Neenah, WI 54957-0621

SUBJECT: Property Access for Investigating Contamination at the  
Korth Property, 1629 W. Washington St, Appleton, Wisconsin  
WDNR BRRTS # 03-24-558142

Dear Mr. Eisch:

The purpose of this letter is to explain the current status of the environmental investigation taking place at the Korth Property Site property located at 1629 W. Washington Street and to explain your rights and responsibilities as a property owner whose property may have been impacted by an off-site source. Please read this letter carefully, in its entirety.

#### **Investigation at the Korth Property:**

This investigation began due to petroleum contamination found in both the soil and groundwater on the Korth property. According to s. 292.11, Wisconsin State Stats, the Korths are responsible for defining the degree and extent of the contamination and seeing that contamination in the soil and groundwater is remediated to the extent practicable 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 petroleum. Groundwater is investigated by installing monitoring wells (MW) and analyzing groundwater for the same constituents. Vapor intrusion is the movement of vapors coming from volatile chemicals in the soil or groundwater, into buildings where people may breathe air contaminated by the vapors. Vapor intrusion into a building is investigated using multiple borings around the building foundation or sub-slab borings with vapor sampling.

During the investigation to define the degree and extent of contamination, METCO, the Korth's environmental consultant, sent you a request to access your property for the purpose of installing one additional monitoring well and two soil borings to collect soil and groundwater samples. The Department understands from METCO that you have refused to allow access to your property.

#### **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.*

**Site Specific Information**

It is my understanding that your property at 1713 W. Washington Ave was also potentially used as a petroleum bulk storage facility. If additional soil and groundwater sampling indicates residual contamination on your property and that the contamination originated on your property, then you would be responsible to investigate the extent of that contamination and to remediate it to the extent practicable.

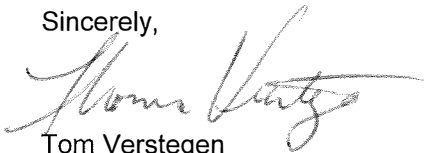
**Summary:**

In summary, Wisconsin law provides that further delay or denial by you of METCO's request to install soil borings and a groundwater monitoring well on your property, for the purpose of investigating and remediating the contamination in soil and groundwater associated with the Korth Property site, 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 any contamination that migrated onto your property. Therefore, it is in your best interest to address this issue immediately. I hope that you contact Mr. Ron Anderson at METCO and grant permission for the investigation to begin on your property as directed by the Department.

For the purpose of continuing the investigation at the Korth Property site 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 920-424-0025 or at [thomas.verstegen@wisconsin.gov](mailto:thomas.verstegen@wisconsin.gov).

Sincerely,



Tom Verstegen  
Hydrogeologist  
Remediation & Redevelopment Program

*Steve,  
I'm on vacation until  
8/28/18 - If you would like to talk  
about this site, please call them.  
Tom*

cc: Mr. Ron Anderson - METCO

[ron@metcohq.com](mailto:ron@metcohq.com)