



November 9, 2015

Reference No. 086165-02-01

Mr. Phil Richard
Wisconsin Department of Natural Resources
875 S 4th Avenue
Park Falls, Wisconsin 54552

Dear Phil:

**Re: Long-Term Response Action Operation and Maintenance Plan – Addendum No. 1
Penta Wood Products Superfund Site
Siren, Wisconsin**

The Wisconsin Department of Natural Resources (WDNR) has implemented Institutional Controls (ICs) at the Penta Wood Products Superfund Site (Site) in the form of Continuing Obligations (COs). On July 6, 2015, the WDNR provided a letter approving the Remedial Actions with Continuing Obligations (WDNR BRRRTS Activity #02-07-000532, FID #:807050310).

GHD Services Inc. (GHD) has prepared this letter providing Addendum No. 1 for the Long-Term Response Action Operation and Maintenance Plan (O&M Plan) (GHD; July 22, 2015) to document required ICs and COs for the Site. This portion of the O&M Plan effectively serves as an Institutional Control Implementation and Assurance Plan (ICIAP). The language in Attachment A of this letter is incorporated into the O&M Plan as Addendum No. 1.

Should you have questions, please do not hesitate to contact us.

Sincerely,

GHD

A handwritten signature in blue ink, appearing to read 'Tim Ree', with a stylized flourish at the end.

Tim Ree

TR/sb/18
Encl.

cc: Judy Fassbender, WDNR Madison (via email)
John Robinson, WDNR Wausau (via email)
Tim Panzer, WDNR Madison (via email)
Ron Frehner, GHD (via email)
Brian Sandberg, GHD (via email)
Pete Storlie, GHD (via email)
Linda Martin, USEPA (via email)

Attachment A
Long-Term Response Action Operation and
Maintenance Plan – Addendum No. 1



**Long-Term Response Action
Operation and Maintenance Plan
Addendum No. 1**

The Wisconsin Department of Natural Resources (WDNR) has implemented Institutional Controls (ICs) at the Site in the form of Continuing Obligations (COs). COs are legal requirements designed to protect public health and the environment in regard to contamination that remains on a property, and COs still apply after a property is sold. This portion of the Long-Term Response Action Operation and Maintenance Plan (O&M Plan) (GHD Services Inc.; July 22, 2015) effectively serves as an Institutional Control Implementation and Assurance Plan (ICIAP). The language below is incorporated into the O&M Plan as Addendum No. 1.

A. Institutional Control and Continuing Obligations

On July 6, 2015, the Wisconsin Department of Natural Resources (WDNR) provided a letter approving the Remedial Actions with Continuing Obligations (WDNR BRRTS Activity #02-07-000532, FID #: 807050310). That letter (included herein as Attachment 1) approved the remedies which have been implemented at the Site and specified the condition with which any current or future owner of the property must comply to ensure that the Site does not pose a threat. These conditions or "Continuing Obligations" (COs) meet the intent of the Institutional Controls (ICs) required by the Record of Decision for the Site.

B. Continuing Obligation Maintenance

CO maintenance consists of periodic monitoring and reporting to confirm that Site security is in place and providing protection as intended and that use of the land is restricted to maintain the integrity and functional effectiveness of the Site remedy.

Maintenance activities consist of periodic review of the property and COs by WDNR, notifications to new land owners or lessees, and continuing education for land owners and property users through annual updates and information. In the event of a transfer of ownership, it is the transferor's responsibility to ensure that the new owner or tenant is informed of the restrictions on the use of the property. In the event of property transfer, the intended use of the property may need to be evaluated to determine if the existing restrictions in place are sufficient to protect the public from exposure.

To facilitate monitoring of the COs, roles and responsibilities, schedules, corrective actions, and reporting requirements are performed as follows:

1. Periodic monitoring consists of at least yearly investigations and more frequently whenever WDNR or its contractors or other representatives are present at the Site.
2. Prohibition of use of the Site real estate is evaluated and updated on an annual basis (minimum frequency). This routine and critical evaluation assesses:

- a. Whether the operating remedy remains in place and remains effective
 - b. Whether Site security remains effective and real estate use meets the stated objectives and performance goals and provides protection required by the response. In the event of a property transfer or change of use, more frequent monitoring may be necessary
3. Evidence of improper use of the real estate comprising the Site may include (but is not limited to) the following:
- a. Removal of the existing barrier or cover
 - b. Replacement with another barrier or cover
 - c. Excavating or grading of the land surface
 - d. Filling on covered or paved areas
 - e. Plowing for agricultural cultivation
 - f. Construction or placement of a building or other structure
 - g. Changing the use or occupancy of the property to a residential exposure setting, which may include certain uses, such as single or multiple family residences, a school, day care, senior center, hospital, or similar residential exposure setting

C. Continuing Obligation Enforcement

Generally, enforcement at the Site will be the responsibility of WDNR with consultation and assistance from the United States Environmental Protection Agency (U.S. EPA). In the event that enforcement is not properly implemented, U.S. EPA has the authority to request compliance, and if necessary impose penalties for lack of compliance or in cases of ongoing noncompliance. At the Site, enforcement of the requirements of the July 6, 2015 Continuing Obligations letter is an administrative process that can be supported by legal action if necessary. If the property owner or party responsible for maintaining the integrity of the Site remedy has failed to maintain the written restrictions, legal action may be used to ensure the COs are implemented as designed. The most effective method of enforcement is early problem identification and communication such as the task in Section B above. This can include issuing letters or notices to provide documentation of the problem and the communication of violations. Enforcement may include (but is not limited to) the following tasks:

1. If during any Site visit WDNR or its Contractor or other representative notices unacceptable use of the real estate, the following personnel shall be contacted immediately:
 - a. Phil Richard
WDNR
875 South 4th Avenue
Park Falls, Wisconsin 54552
Phone: (715) 762-1352
Email: Philip.richard@wisconsin.gov

WDNR personnel shall determine whether immediate action is required by public safety professionals (such as the police or fire departments), and shall contact those agencies if/when appropriate and as

soon as is possible or feasible. WDNR shall then follow up with notices of violation and/or other appropriate action to the extent needed.

1. If during any Site visit WDNR or its Contractor or other representative notices unacceptable use of the real estate, U.S. EPA shall be contacted. The U.S. EPA Points of Contact are:
 - a. Linda Martin
Remedial Project Manager
U.S. EPA Region 5 – Superfund Division
77 West Jackson Blvd. (Mail Code: SR-6J)
Chicago, IL 60604
Phone: 312-886-3854
Email: martin.lindab@epa.gov
 - b. Terry Stanuch
Attorney - Office of Regional Council
U.S. EPA Region 5
77 West Jackson Blvd. (Mail Code: C-14J)
Phone: 312- 886-8044
Email: stanuch.terry@epa.gov
2. Contact information at the Site gate and along perimeter fencing has been made visible to passers-by to report possible improper real estate use at the Site. This serves as an additional method of reporting in the event a member of the public identifies a potential issue at the Site. Both WDNR and U.S. EPA are available to the community to respond to concerns and provide information and guidance.

D. Institutional Control Modification and Termination

At the Site, modification of ICs may be required in the event of a change in land use or ownership. If an event occurs that could lead to a modification that is more or less stringent than the requirements under the current COs, this plan should be reviewed and revised accordingly to ensure ICs and security measures at the Site are removed to a level below that which poses a risk to health and the environment. The WDNR is responsible for determining the modification of these restrictions and/or this chapter of the O&M Plan, with consultation and review by U.S. EPA. WDNR and U.S. EPA are responsible for termination of COs for this Site.

Attachment A1
WDNR Letter – Approval of Remedial Actions
with Continuing Obligations (July 6, 2015)

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
Wausau Service Center
5301 Rib Mountain Drive
Wausau WI 54401

Scott Walker, Governor
Cathy Stepp, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



July 6, 2015

Penta Wood Products, Inc.
8682 STH 70
Siren, WI 54872

KEEP THIS DOCUMENT WITH YOUR PROPERTY RECORDS

SUBJECT: Approval of Remedial Actions with Continuing Obligations
Penta Wood Products Superfund Site, 8682 Daniels 70, Siren, WI
DNR BRRTS Activity #: 02-07-000532
FID #: 807050310
EPA WID006176945

Dear Property Owner:

Penta Wood Products (PWP), an inactive wood treatment facility, operated on your property from 1953-1992. This property is located two miles west of the town of Siren, Burnett County, Wisconsin, in the unincorporated town of Daniels as shown on the attached map, figure 1, Site Location, prepared by Conestoga-Rovers & Associates (CRA), March 2015. The wood treatment facility operated on approximately 80 acres of a 120-acre property. PWP ceased operations in 1992, due to the inability of the facility to comply with Resource Conservation and Recovery Act (RCRA) drip track regulations and the inability to comply with Wisconsin Department of Natural Resources requirements. The site has been listed on the United States Environmental Protection Agency's (EPA) National Priorities List as a Superfund site since 1996.

The EPA conducted a \$2-million short-term action between April 1994 and June 1996. The remedial investigation and feasibility study was completed in May 1998. The record of decision (ROD) was signed on September 29, 1998. The remedial design (RD) was completed in November 1999. The remedial action (RA) was completed in September 2000. The RA consisted of the demolition of buildings, consolidation of pentachlorophenol (PCP) and arsenic-contaminated soils in a corrective action management unit (CAMU) protective of human health, installation of a groundwater pump and treatment system, and installation of bio-vent wells and capping of the CAMU. The treatment system was later upgraded, and became operational in May 2004. The total cost of fund-financed remedial actions at the site amounted to \$12.7 million. The site is now in the operations, maintenance and monitoring phase which will last until cleanup standards spelled out in the ROD are achieved. In September 2014, the Wisconsin Department of Natural Resources ("Department") assumed financial responsibility and oversight for the long-term remedial actions at the site.

In accordance with the ROD, institutional controls in the form of groundwater use restrictions and land use restrictions must be implemented in order to prohibit site groundwater use and restrict activities in areas of impacted soil. In approving remedial actions, the Department has authority under Wis. Stat. § 292.12(2), to impose limitations on a property to ensure that conditions at the site remain protective of public health, safety and welfare, and the environment. The Department considers the remedies which have been implemented at the site to be approved. This letter specifies the conditions with which any current or future owner of the property must comply to ensure that the site does not pose a threat. These conditions or "continuing obligations" are intended to

meet the intent of the Institutional Control Implementation and Assurance Plan required by EPA at Superfund sites. The continuing obligations outlined in this letter apply to 71.5 acres of the property, comprised of the following three parcels: 07-006-2-38-17-11-4-03-000-011000, 07-006-2-38-17-11-4-04-000-011000 and 07-006-2-38-17-11-4-03-000-012000 (see attached map, figure 2, Parcel Boundaries, Penta Wood Products Superfund Site, prepared by CRA, March 2015). There are two other parcels 07-006-2-38-17-14-1-01-000-013000 (south of Daniels Road) and 07-006-2-38-17-11-4-03-000-014000 (smallest parcel included in the map) that were part of the historic Penta Wood Products which are included in figures 1 and 2 (Site Map and Parcel Boundaries) which are subject to a lien filed by the Department to recover past costs associated with the clean-up but which do not have any continuing obligations imposed upon them.

You, future property owners, and occupants of the property must comply with the continuing obligations, conditions and other on-going requirements as explained in this letter. Provide this letter and all attachments to anyone who purchases, rents or leases this property from you. The continuing obligations placed on the property are based on the property being used for industrial purposes.

Continuing Obligations

The continuing obligations for this site are summarized below. Further details on actions required are found in the section Remedial Action Approval Conditions. The Operations and Maintenance (O&M) Plan for the site will be updated to specify the long term stewardship requirements for maintaining and monitoring the continuing obligations at the property.

- Groundwater contamination is present above ch. NR 140, Wis. Adm. Code enforcement standards. Prior Department approval is required before a new well can be constructed.
- Continued groundwater treatment, Light Non-Aqueous Phase Liquids (LNAPL) removal, and bioventing are required in accordance with the ROD.
- Continued environmental monitoring is required.
- Discharge of the treatment system effluent must continue to be done in accordance with the Substantive Requirements of A Wisconsin Pollutant Discharge Elimination System (WPDES) Permit for the Penta Wood site.
- Residual soil contamination exists that must be properly managed should it be excavated or removed.
- PCP and arsenic-contaminated soils are consolidated in the on-site CAMU and the soil cover overlying the contaminated soil must be maintained. Any proposed changes to this barrier must have prior written approval from the Department.
- Site-specific soil standards for PCP and arsenic were applied during the remedial action, based on current and anticipated land use (industrial). Industrial zoning is required. Before the land use may be changed from industrial to non-industrial, additional environmental work must be completed.
- Access to the soil cover area (CAMU) must continue to be restricted through the use of the existing fencing, which must be maintained.
- The CAMU must be maintained in accordance with the long-term care requirements specified in NR 664.0551(5)(2)(d), Wis. Adm. Code.

The DNR fact sheet, "Continuing Obligations for Environmental Protection", RR-819, helps to explain a property owner's responsibility for continuing obligations on their property. The fact sheet is attached and may be obtained at <http://dnr.wi.gov/files/PDF/pubs/rr/RR819.pdf>.

GIS Registry

This site will be included on the Bureau for Remediation and Redevelopment Tracking System (BRRTS on the Web) at <http://dnr.wi.gov/topic/Brownfields/clean.html>, as an informational institutional control in order to

provide public notice of residual contamination and of any continuing obligations. The site can also be viewed on the Remediation and Redevelopment Sites Map (RRSM), under the Geographic Information System (GIS) Registry layer, at the same web address.

Department approval prior to well construction or reconstruction is required for all sites shown on the GIS Registry, in accordance with s. NR 812.09 (4) (w), Wis. Adm. Code. This requirement applies to private drinking water wells and high capacity wells. To obtain approval, complete and submit Form 3300-254 to the DNR Drinking and Groundwater program's regional water supply specialist. This form can be obtained on-line at <http://dnr.wi.gov/topic/wells/documents/3300254.pdf>.

All site information is also on file at the Northern Region Park Falls DNR office, at 875 S 4th Ave, Park Falls, WI 54552-1130. This letter and other site information can be found as a Portable Document Format (PDF) in BRRTS on the Web.

Prohibited Activities

Certain activities are prohibited at this property to maintain the barrier intended to prevent contact with contaminated soil contained within the site CAMU. You are required to notify the Department before disturbing or modifying the barrier, in order to determine if further action is needed to maintain the protectiveness of the remedy employed. The location of the CAMU is shown on the attached map, figure 3, Site Plan, prepared by CRA March 2015. The following activities are prohibited on any portion of the property where the soil cover is required unless prior written approval has been obtained from the DNR:

- removal of the existing barrier or cover;
- replacement with another barrier or cover;
- excavating or grading of the land surface;
- filling on covered or paved areas;
- plowing for agricultural cultivation;
- construction or placement of a building or other structure;
- changing the use or occupancy of the property to a residential exposure setting, which may include certain uses, such as single or multiple family residences, a school, day care, senior center, hospital, or similar residential exposure settings.

Remedial Action Approval Conditions

Compliance with the requirements of this letter is a responsibility to which you and any subsequent property owners must adhere. Department staff will conduct periodic prearranged inspections to ensure that the conditions included in this letter are met. If these requirements are not followed, the Department may take enforcement action under s. 292.11, Wis. Stats. to ensure compliance with the specified requirements, limitations or other conditions related to the property. Details of how the environmental systems are to be operated and maintained, as well as required environmental monitoring, are contained in the site O&M Plan. Information on the inspection and maintenance requirements for the site continuing obligations and institutional controls is included in the site O&M Plan, in order to ensure the long-term effectiveness of the remedy. Any deviation from the O&M Plan must be approved in writing by the Department.

Residual Groundwater Contamination (ch. NR 140, 812, Wis. Adm. Code)

Groundwater contamination greater than enforcement standards is present on this contaminated property, as shown on the attached map, figure 4, Groundwater Pentachlorophenol Concentrations, prepared by CRA, March, 2015. If you intend to construct a new well, or reconstruct an existing well, you'll need prior Department approval.

Site-Specific Condition (s. NR 726.05 (9), NR 726.15 (2) (m), s. NR 727.07 (7), Wis. Adm. Code)

As part of the approved remedial action, continued groundwater treatment, LNAPL removal, and bioventing are required in accordance with the ROD. Any potential modifications to the remedy must be approved by the Department and documented in a decision document amendment, such as a ROD amendment or an explanation of significant differences (ESD), and approved by EPA.

Site-Specific Condition (s. NR 726.05 (9), NR 726.15 (2) (m), s. NR 727.07 (7), Wis. Adm. Code)

Continued environmental monitoring is required, as specified in the site O&M Plan. Sampling results must be submitted to the Department within 10 business days of receipt of the results. An annual inspection of the wells is required to verify the integrity of the monitoring well construction. The inspection log shall be submitted with the sampling results report. You may be held liable for any problems associated with the monitoring wells if they create a conduit for contaminants to enter groundwater.

Site-Specific Condition (s. NR 726.05 (9), NR 726.15 (2) (m), s. NR 727.07 (7), Wis. Adm. Code)

Discharge of the treatment system effluent must continue to be done in accordance with the Substantive Requirements of the Wisconsin Pollutant Discharge Elimination System (WPDES) Permit for the Penta Wood site.

Residual Soil Contamination (ch. NR 718, chs. 500 to 536, Wis. Adm. Code or ch. 289, Wis. Stats.)

The estimated extent of remaining soil contamination is shown on the attached map, figure 5, Soil Pentachlorophenol Concentrations-Residual Standard Exceedances, prepared by CRA, March 2015. If soil is excavated in the future, the property owner at the time of excavation must sample and analyze the excavated soil to determine if contamination remains. If sampling confirms that contamination is present, the property owner or right-of-way holder at the time of excavation will need to determine whether the material is considered solid or hazardous waste and ensure that any storage, treatment or disposal is in compliance with applicable standards and rules. Contaminated soil may be managed in accordance with ch. NR 718, Wis. Adm. Code, with prior Department approval.

In addition, all current and future owners and occupants of the property need to be aware that excavation of the contaminated soil may pose an inhalation or other direct contact hazard and as a result special precautions may need to be taken to prevent a direct contact health threat to humans.

Depending on site-specific conditions, construction over contaminated soils or groundwater may result in vapor migration of contaminants into enclosed structures or migration along newly placed underground utility lines. The potential for vapor inhalation and means of mitigation should be evaluated when planning any future redevelopment, and measures should be taken to ensure the continued protection of public health, safety, welfare and the environment at the site.

Cover or Barrier (s. 292.12 (2) (a), Wis. Stats., s. NR 726.15, s. NR 727.07 Wis. Adm. Code)

The soil cover that exists in the location identified as the 'CAMU Outline' on the attached map, figure 3 Site Plan, CRA, March 2015, shall be maintained in compliance with the O&M Plan in order to prevent direct contact with residual soil contamination that might otherwise pose a threat to human health.

The cover approved for this closure was designed to be protective for an industrial use setting. Before using the property for non-industrial purposes, you must notify the Department at least 45 days before taking an action, to determine if additional response actions are warranted. A cover or barrier for industrial land uses may not be protective if the use of the property were to change such that a residential exposure would apply. This may include, but is not limited to single or multiple family residences, a school, day care, senior center, hospital or similar settings.

A request may be made to modify or replace a cover or barrier. The replacement or modified cover or barrier must be protective of the revised use of the property, and must be approved in writing by the Department prior to implementation.

Industrial Soil Standards (s. NR 726.15, s. NR 727.07, Wis. Adm. Code)

Site-specific industrial soil standards were developed for this site. The soil contaminants of concern included arsenic (site-specific cleanup level of 1.2 ppm) and PCP (site-specific cleanup level of 2.1 ppm). The estimated extent of soil contamination exceeding the site-specific cleanup levels remains as shown on the attached map, figure 6, Soil Pentachlorophenol Concentrations-Industrial Standard Exceedances, prepared by CRA, March 2015.

This property may not be used or developed for a residential, commercial, agricultural or other non-industrial use, unless prior written approval has been obtained from the Department. The property owner shall notify the Department at least 45 days before changing the use. An investigation and remedial action to meet applicable soil cleanup standards may be required at that time.

Site-Specific Condition (s. NR 726.05 (9), NR 726.15 (2) (m), s. NR 727.07 (7), Wis. Adm. Code)

Access to the CAMU must continue to be restricted through the use of the existing fencing, which must be maintained. The fencing is required in order to prohibit interference with the CAMU and consolidation areas and to prohibit unnecessary exposure.

Site-Specific Condition (s. NR 726.05 (9), NR 726.15 (2) (m), s. NR 727.07 (7), Wis. Adm. Code)

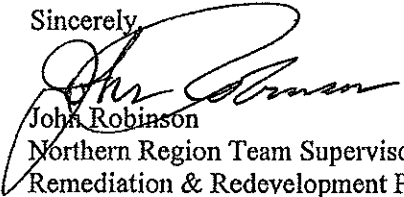
The CAMU must be maintained in accordance with the long-term care requirements specified in NR 664.0551(5)(2)(d), Wis. Adm. Code. This includes any monitoring or maintenance activities necessary to protect human health and the environment by ensuring the integrity of the cover over the long term.

In Closing

Please be aware that the Department may impose additional conditions, if additional information regarding site conditions indicates that contamination on or from the site poses a threat to public health, safety, welfare or to the environment.

If you have any questions regarding the continuing obligations for this site, or anything outlined in this letter, please contact Phil Richard at 715-762-1352, or at Philip.Richard@wisconsin.gov.

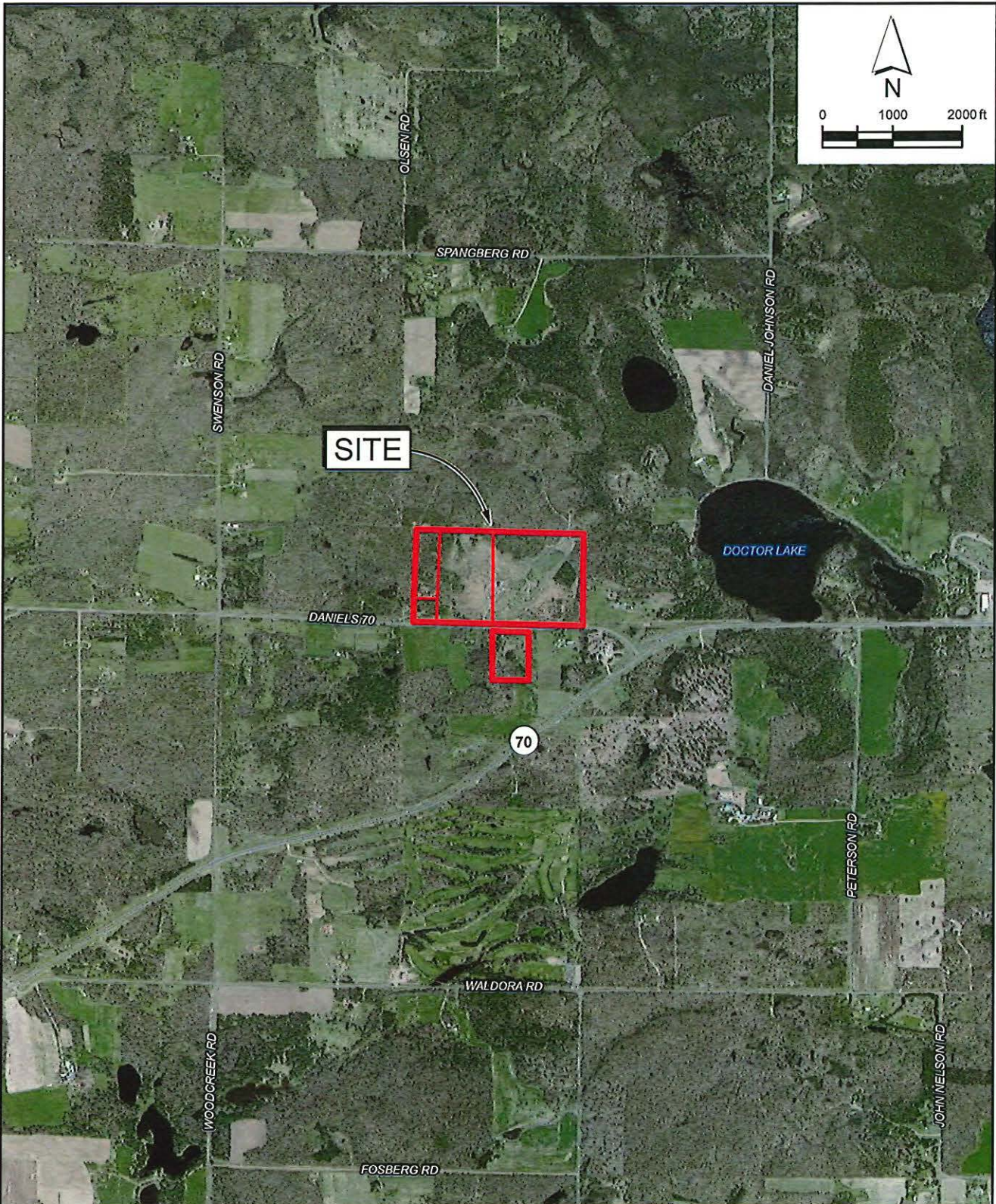
Sincerely,


John Robinson
Northern Region Team Supervisor
Remediation & Redevelopment Program

Attachments:

- Figure 1, Site Location, CRA, March 2015
- Figure 2, Parcel Boundaries, CRA, March 2015
- Figure 3, Site Plan, CRA March, 2015
- Figure 4, Groundwater Pentachlorophenol Concentrations, CRA, March 2015
- Figure 5, Soil Pentachlorophenol Concentrations-Residual Standard Exceedances, CRA, March 2015
- Figure 6, Soil Pentachlorophenol Concentrations-Industrial Standard Exceedances, CRA, March 2015
- RR-819 Continuing Obligations for Environmental Protection

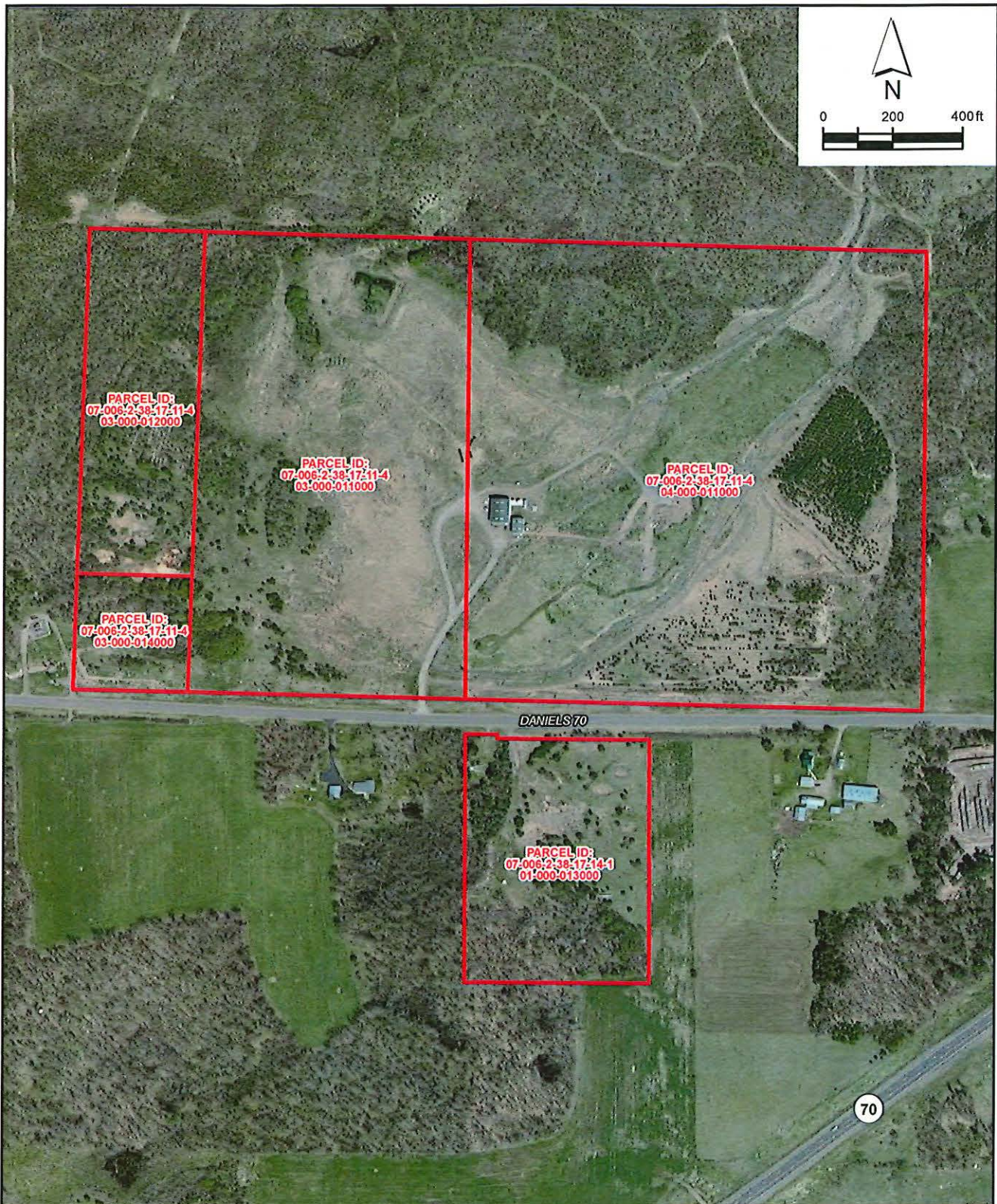
cc: Linda Martin, EPA Region 5, 77 West Jackson Boulevard SR-6J, Chicago, IL 60604-3507
Terry Stanuch, EPA Region 5, 77 West Jackson Boulevard C-14J, Chicago, IL 60604-3507
Phil Richard, DNR Park Falls
Judy Fassbender, DNR Madison RR/5
Tim Ree, CRA, 1801 Old Highway 8 NW, Suite 114, St Paul, MN 55112
Ron Frehner, CRA, 1801 Old Highway 8 NW, Suite 114, St Paul, MN 55112
Nathan Ehalt, Burnett County Administrator, 7410 County Road K #116, Siren, WI 54872
Liz Simonsen, Town Clerk Town of Daniels, 8851 Waldora Road, Siren, Wisconsin 55872



SOURCE: DIGITALGLOBE 2011



figure 1
 SITE LOCATION
 PENTA WOOD PRODUCTS SUPERFUND SITE
 Siren, Wisconsin



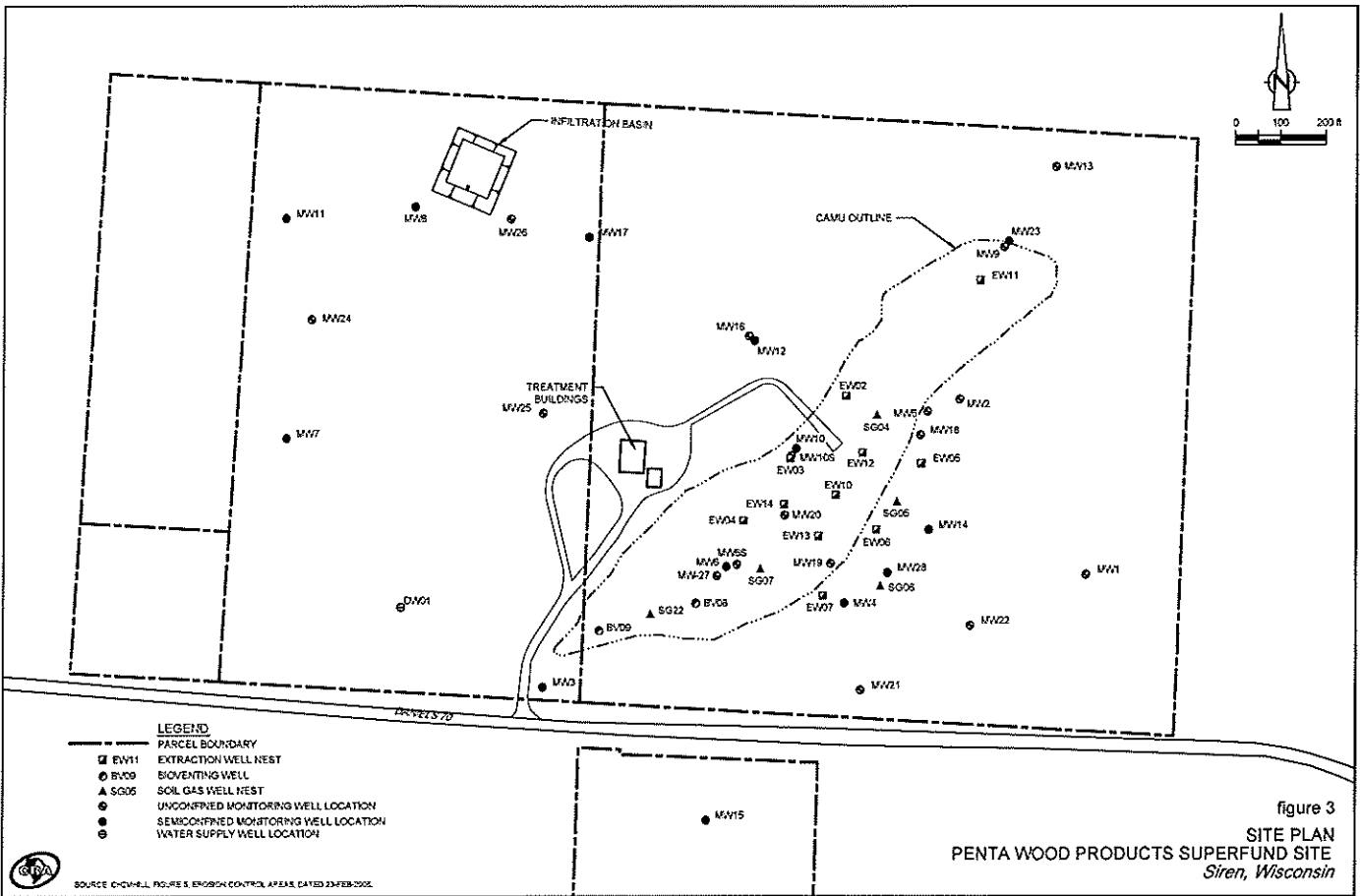
SOURCE: BURNETT CO. LAND INFORMATION / COUNTY SURVEYOR DEPARTMENT

LEGEND

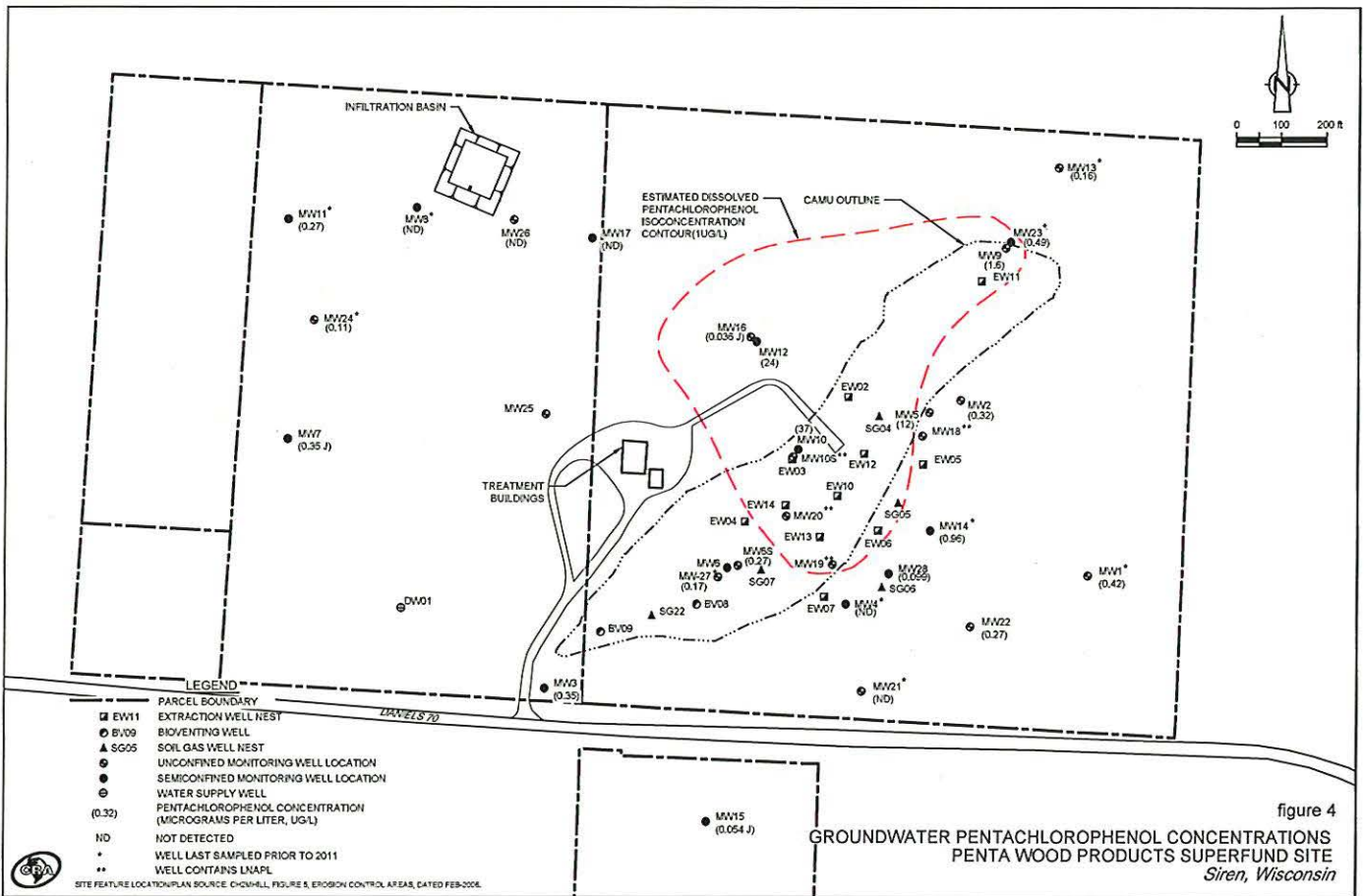
— PARCEL BOUNDARY

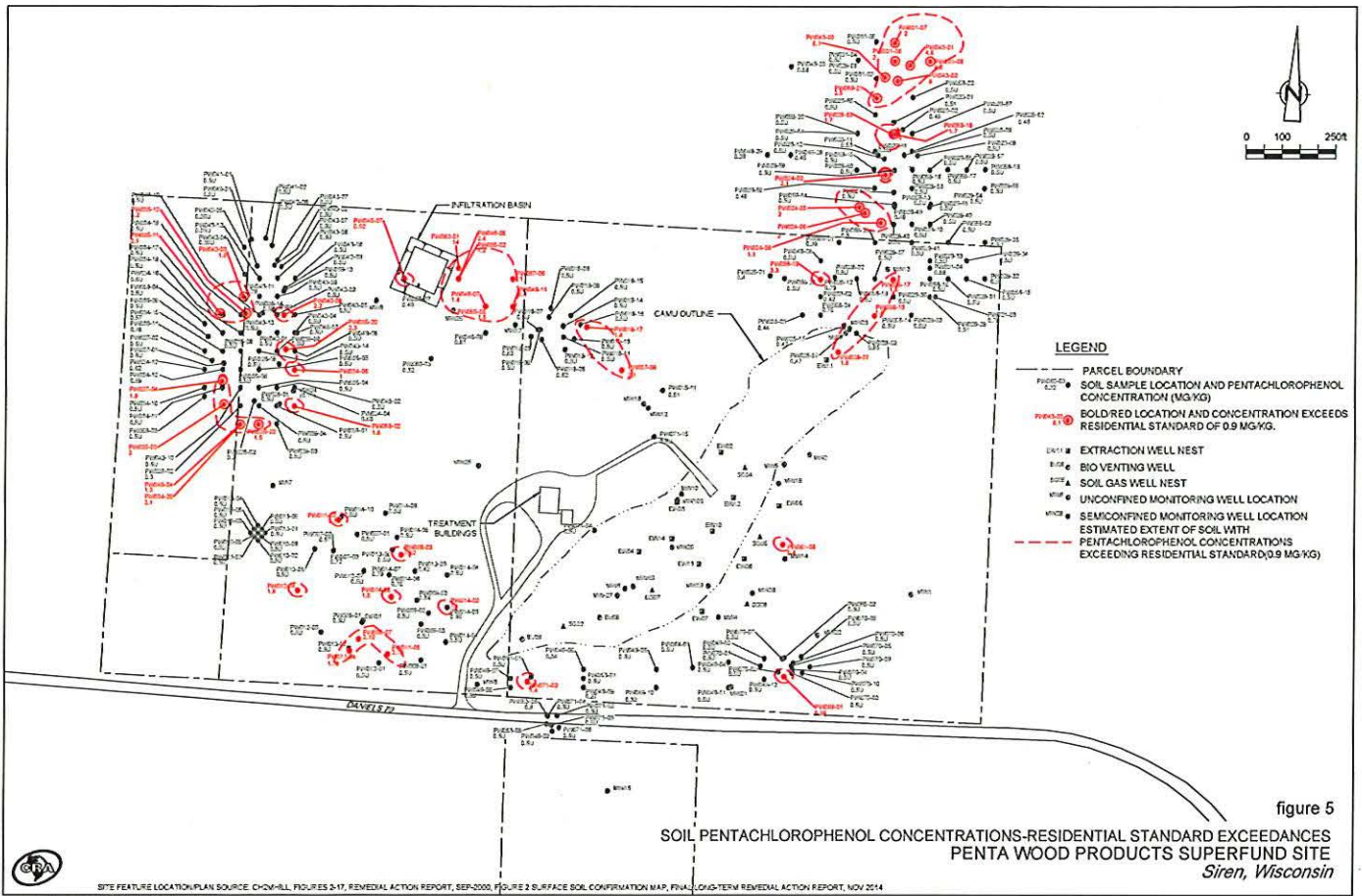


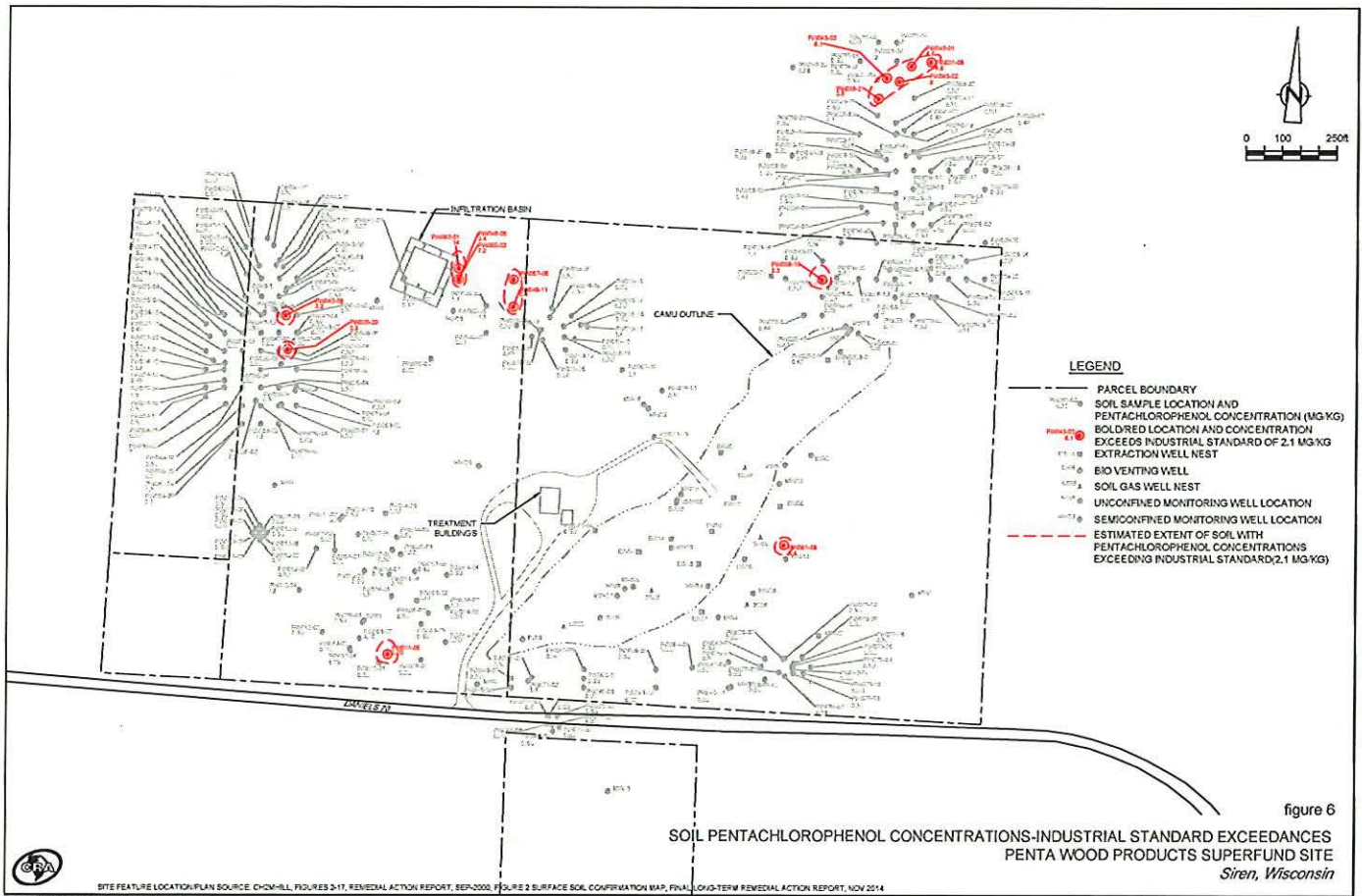
figure 2
PARCEL BOUNDARIES
PENTA WOOD PRODUCTS SUPERFUND SITE
Siren, Wisconsin



86165-00, WISC001, CI-EU006 MAR 20 2015
 SOURCE: CH2M-HILL, FIGURE 3, EMERSON CONTROL AREA, DATED 23 FEB 2005.









Continuing Obligations for Environmental Protection

Responsibilities of Wisconsin Property Owners

PUB-RR-819

November 2013

This fact sheet is intended to help property owners understand their legal requirements under s. 292.12, Wis. Stats., regarding continuing obligations that arise due to the environmental condition of their property.

The term “continuing obligations” refers to certain actions for which property owners are responsible following a completed environmental cleanup. They are sometimes called environmental land use controls or institutional controls. These legal obligations, such as a requirement to maintain pavement over contaminated soil, are most often found in a cleanup approval letter from the state.

Less commonly, a continuing obligation may apply where a cleanup is not yet completed but a cleanup plan has been approved, or at a property owned by a local government that is exempt from certain cleanup requirements.

What Are Continuing Obligations?

Continuing obligations are legal requirements designed to protect public health and the environment in regard to contamination that remains on a property.

Continuing obligations still apply after a property is sold. Each new owner is responsible for complying with the continuing obligations.

Background

Wisconsin, like most states, allows some contamination to remain after cleanup of soil or groundwater contamination (residual contamination). This minimizes the transportation of contamination and reduces cleanup costs while still ensuring that public health and the environment are protected.

The Department of Natural Resources (DNR), through its Remediation and Redevelopment (RR) Program, places sites or properties with residual contamination on a public database in order to provide notice to interested parties about the residual contamination and any associated continuing obligations. Please see the “Public Information” section on page 3 to learn more about the database. (Prior to June 3, 2006, the state used deed restrictions recorded at county courthouses to establish continuing obligations, and those deed restrictions have also been added into the database.)



Wisconsin Department of Natural Resources
P.O. Box 7921, Madison, WI 53707
dnr.wi.gov, search “brownfield”



Types of Continuing Obligations

1. Manage Contaminated Soil that is Excavated

If the property owner intends to dig up an area with contaminated soil, the owner must ensure that proper soil sampling, followed by appropriate treatment or disposal, takes place. Managing contaminated soil must be done in compliance with state law and is usually done under the guidance of a private environmental professional.

2. Manage Construction of Water Supply Wells

If there is soil or groundwater contamination and the property owner plans to construct or reconstruct a water supply well, the owner must obtain prior DNR approval to ensure that well construction is designed to protect the water supply from contamination.

Other Types of Continuing Obligations

Some continuing obligations are designed specifically for conditions on individual properties. Examples include:

- keeping clean soil and vegetation over contaminated soil;
- keeping an asphalt “cover” over contaminated soil or groundwater;
- maintaining a vapor venting system; and
- notifying the state if a structural impediment (e.g. building) that restricted the cleanup is removed. The owner may then need to conduct additional state-approved environmental work.

It is common for properties with approved cleanups to have continuing obligations because the DNR generally does not require removal of all contamination.

Property owners with the types of continuing obligations described above will find these requirements described in the state’s cleanup approval letter or cleanup plan approval, and *must*:

- comply with these property-specific requirements; and
- obtain the state’s permission before changing portions of the property where these requirements apply.

The requirements apply whether or not the person owned the property at the time that the continuing obligations were placed on the property.

Changing a Continuing Obligation

A property owner has the option to modify a continuing obligation if environmental conditions change. For example, petroleum contamination can degrade over time and property owners may collect new samples showing that residual contamination is gone. They may then request that DNR modify or remove a continuing obligation. Fees are required for DNR’s review of this request and for processing the change to the database (\$1050 review fee, \$300/\$350 database fee). Fees are subject to change; current fees are found in Chapter NR 749, Wis. Adm. Code, on the web at www.legis.state.wi.us/rsb/code/nr/nr749.pdf.

Public Information

The DNR provides public information about continuing obligations on the Internet. This information helps property owners, purchasers, lessees and lenders understand legal requirements that apply to a property. DNR has a comprehensive database of contaminated and cleaned up sites, *BRRTS on the Web*. This database shows all contamination activities known to DNR. Site specific documents are found under the *Documents* section. The information includes maps, deeds, contaminant data and the state's closure letter. The closure letter states that no additional environmental cleanup is needed for past contamination and includes information on property-specific continuing obligations. If a cleanup has not been completed, the state's approval of the remedial action plan will contain the information about continuing obligations.

Properties with continuing obligations can generally be located in DNR's *GIS Registry*, part of the *RR Sites Map*. *RR Sites Map* provides a map view of contaminated and cleaned up sites, and links to *BRRTS on the Web*.

If a completed cleanup is shown in *BRRTS on the Web* but the site documents cannot be found in the *Documents* section, DNR's closure letter can still be obtained from a regional office. For assistance, please contact a DNR Environmental Program Associate (see the *RR Program's Staff Contact* web page at dnr.wi.gov/topic/Brownfields/Contact.html).

BRRTS on the Web and
RR Sites Map are part of
CLEAN
(the Contaminated Lands
Environmental Action Network) at
dnr.wi.gov/topic/Brownfields/clean.html

Off-Site Contamination: When Continuing Obligations Cross the Property Line

An off-site property owner is someone who owns property that has been affected by contamination that moved through soil, sediment or groundwater from another property. Wisconsin law, s. 292.13, Wis. Stats., provides an exemption from environmental cleanup requirements for owners of "off-site" properties. The DNR will generally not ask off-site property owners to investigate or clean up contamination that came from a different property, as long as the property owner allows access to his or her property so that others who are responsible for the contamination may complete the cleanup.

However, off-site property owners are legally obligated to comply with continuing obligations on their property, even though they did not cause the contamination. For example, if the state approved a cleanup where the person responsible for the contamination placed clean soil over contamination on an off-site property, the owner of the off-site property must either keep that soil in place or obtain state approval before disturbing it.

Property owners and others should check the *Public Information* section above if they need to:

- determine whether and where continuing obligations exist on a property;
- review the inspection, maintenance and reporting requirements, and
- contact the DNR regarding changing that portion of the property. The person to contact is the person that approved the closure or remedial action plan.

Option for an Off-Site Liability Exemption Letter

In general, owners of off-site properties have a legal exemption from environmental cleanup requirements. This exemption does not require a state approval letter. Nonetheless, they may request a property-specific liability exemption letter from DNR if they have enough information to show that the source of the contamination is not on their property. This letter may be helpful in real estate transactions. The fee for this letter is \$700 under Chapter NR 749, Wis. Adm. Code. For more information about this option, please see the RR Program's Liability web page at dnr.wi.gov/topic/Brownfields/Liability.html.

Legal Obligations of Off-Site Property Owners

- Allow access so the person cleaning up the contamination may work on the off-site property (unless the off-site owner completes the cleanup independently).
- Comply with any required continuing obligations on the off-site property.

Required Notifications to Off-Site Property Owners

1. The person responsible for cleaning up contamination must notify affected property owners of any proposed continuing obligations on their off-site property **before** asking the DNR to approve the cleanup. This is required by law and allows the off-site owners to provide the DNR with any technical information that may be relevant to the cleanup approval.

When circumstances are appropriate, an off-site neighbor and the person responsible for the cleanup may enter into a "legally enforceable agreement" (i.e. a contract). Under this type of private agreement, the person responsible for the contamination may also take responsibility for maintaining a continuing obligation on an off-site property. This agreement would not automatically transfer to future owners of the off-site property. The state is not a party to the agreement and can not enforce it.

2. If a cleanup proposal that includes off-site continuing obligations is approved, DNR will send a letter to the off-site owners detailing the continuing obligations that are required for their property. Property owners should inform anyone interested in buying their property about maintaining these continuing obligations. For residential property, this would be part of the real estate disclosure obligation.

More Information

For more information, please visit the RR Program's Continuing Obligations web site at dnr.wi.gov/topic/Brownfields/Residual.html.

For more information about DNR's Remediation and Redevelopment Program, see our web site at dnr.wi.gov/org/aw/rr/. This document contains information about certain state statutes and administrative rules but does not include all of the details found in the statutes and rules. Readers should consult the actual language of the statutes and rules to answer specific questions.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Equal Opportunity Office, Department of Interior, Washington, D.C. 20240. This publication is available in alternative format upon request. Please call 608-267-3543 for more information.