



June 14, 2013

Jay Reader Trust  
c/o Atty. John M. VanLieshout  
P.O. Box 2965  
Milwaukee WI 53201-2965

**KEEP THIS DOCUMENT WITH YOUR PROPERTY RECORDS**

Subject: Final Case Closure with Continuing Obligations  
Jay Reader Trust Property, 701 East Geneva Street, Delavan, Wisconsin  
WDNR BRRTS Activity # 02-65-354526

Dear Mr. VanLieshout:

The Department of Natural Resources (DNR) considers the Jay Reader Trust Property case closed, with continuing obligations. No further investigation or remediation is required at this time. However, you and future property owners must comply with the continuing obligations as explained in the conditions of closure in this letter. Please read over this letter closely to ensure that you comply with all conditions and other on-going requirements. Provide this letter and any attached maintenance plan to anyone who purchases this property from you.

This final closure decision is based on the correspondence and data provided, and is issued under ch. NR 726, Wisconsin Administrative Code. The DNR's South Central Regional Closure Committee (the Closure Committee) reviewed the request for closure on January 11, 2013. The Closure Committee reviews environmental remediation cases for compliance with state laws and standards to maintain consistency in the closure of these cases. A conditional closure letter was issued by the DNR on January 14, 2013, and documentation that the conditions in that letter were met was received on June 10, 2013.

This is a former drycleaner site that has soil, groundwater, and soil vapor contaminated with chlorinated solvents. Contaminated soil was excavated on the northern part of the property. Groundwater is being addressed through natural attenuation. Soil vapor and indoor air concerns are being mitigated with a sub-slab depressurization system. The conditions of closure and continuing obligations required were based on the property being used for commercial purposes.

Continuing Obligations

The continuing obligations for this site are summarized below. Further details on actions required are found in the section Closure Conditions.

- Groundwater contamination is present above ch. NR 140, Wis. Adm. Code enforcement standards.
- Residual soil contamination exists that must be properly managed should it be excavated or removed.
- Barriers must be maintained over contaminated soil and the DNR must approve any changes to either barrier.
- If a structural impediment that obstructed a complete site investigation or cleanup is removed or modified, additional environmental work must be completed.
- A vapor mitigation system must be operated and maintained, and inspections must be documented.

### GIS Registry

This site will be listed on the Remediation and Redevelopment Program's internet accessible Geographic Information System (GIS) Registry, to provide notice of residual contamination and of any continuing obligations. DNR 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. 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> or at the web address listed below for the GIS Registry.

Case information is also on file at the South Central Regional DNR office, at the address in the letterhead. This letter and information that was submitted with your closure request application, including the maintenance plan, will be included on the GIS Registry in a PDF attachment. To review the site on the GIS Registry web page, visit the RR Sites Map page at <http://dnrmaps.wi.gov/imf/imf.jsp?site=brrts2>.

### Prohibited Activities

Certain activities are prohibited at closed sites because maintenance of a barrier is intended to prevent contact with any remaining contamination. When a barrier is required, the condition of closure requires notification of the DNR before making a change, in order to determine if further action is needed to maintain the protectiveness of the remedy employed. The barriers at the site include a soil cap to prevent direct contact with soil at the northeastern portion of the property, and the building slab, which is an integral part of the sub-slab vapor mitigation system. The sub-slab was also an impediment to site investigation. The barriers are shown on the **attached Maintenance Plan Diagram map**. The following activities are prohibited on any portion of the property where the barriers are required, unless prior written approval has been obtained from the DNR:

- removal of the existing barrier;
- replacement with another barrier;
- 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;
- changing the construction of a building that has either a passive or active vapor mitigation system in place.

### Closure Conditions

Compliance with the requirements of this letter is a responsibility to which you and any subsequent property owners must adhere. DNR staff will conduct periodic prearranged inspections to ensure that the conditions included in this letter and the attached maintenance plans are met. If these requirements are not followed, the DNR may take enforcement action under s. 292.11, Wisconsin Statutes to ensure compliance with the specified requirements, limitations or other conditions related to the property.

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

Groundwater contamination greater than enforcement standards is present both on this contaminated property and off this contaminated property, as shown on the **attached Extent of Remaining Groundwater Impacts Diagram map**. Affected property owners were notified of the presence of groundwater contamination. If you intend to construct a new well, or reconstruct an existing well, you'll need prior DNR approval.

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

Soil contamination remains on the north and east portions of the property, and on the property to the east as indicated on the **attached Extent of Remaining Soil Impacts Diagram map**. If soil in the specific locations

described above 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 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. 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.

Cover or Barrier (s. 292.12 (2) (a), Wis. Stats.)

The soil cap that exists in the location shown on the **attached Maintenance Plan Diagram map** shall be maintained in compliance with **the attached maintenance plan** in order to prevent direct contact with residual soil contamination that might otherwise pose a threat to human health.

The vapor mitigation system barrier that exists in the location shown on the **attached Maintenance Plan Diagram map**, as part of the sub-floor, shall be maintained in compliance with the **attached maintenance plan** in order to prevent or limit vapor intrusion into the building.

In this case, the building is also considered a structural impediment, and additional investigation and response requirements apply as described in the section titled Structural Impediments.

A cover or barrier for industrial land uses, or certain types of commercial land uses may not be protective if 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. Before using the property for such purposes, you must notify the DNR to determine if additional response actions are warranted.

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 DNR prior to implementation.

The **attached maintenance plan and inspection log** are to be kept up-to-date and on-site. Submit the inspection log to the DNR only upon request.

Structural Impediments (s. 292.12 (2) (b), Wis. Stats.)

The remaining building and building slab as shown on the **attached Maintenance Plan Diagram map**, made complete investigation and/or remediation of the soil contamination on this property impracticable. If the structural impediment is to be removed, the property owner shall notify the DNR before removal and conduct an investigation of the degree and extent of chlorinated volatile organic compound contamination below the structural impediment. If contamination is found at that time, the contamination shall be properly remediated in accordance with applicable statutes and rules.

Vapor Mitigation or Evaluation (s. 292.12 (2), Wis. Stats.)

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 mitigation systems are used to interrupt the pathway, thereby reducing or preventing vapors from moving into the building.

Soil vapor beneath the building contains chlorinated volatile organic compounds at levels that would pose a long-term risk to human health, if allowed to migrate into an occupied building on the property. The vapor mitigation system, installed in 2010, must be operated, maintained and inspected in accordance with the **attached maintenance plan**. System components, which are shown on the attached **Vapor Mitigation System Schematic and Maintenance Plan Diagram map**, must be repaired or replaced immediately upon discovery of a

malfunction. Annual inspections and any system repairs must be documented in the inspection log. The inspection log shall be kept up-to-date and on-site. Submit the inspection log to the DNR only upon request.

The integrity of the building slab that exists on the property, shown on the **attached Maintenance Plan Diagram map**, must be maintained in compliance with the **attached maintenance plan**. This will help ensure proper functioning of the vapor mitigation system, limiting vapor intrusion to indoor air spaces.

The property owner must notify occupants, and provide the maintenance plan to any occupant that is responsible for continued operation of the vapor mitigation system.

In addition, depending on site-specific conditions, construction over contaminated materials 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.

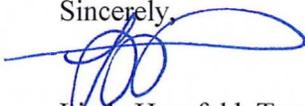
The following DNR fact sheet, "Continuing Obligations for Environmental Protection", RR-819, was included with this letter, to help explain a property owner's responsibility for continuing obligations on their property. If the fact sheet is lost, you may obtain a copy at <http://dnr.wi.gov/files/PDF/pubs/rr/RR819.pdf>.

Please send written notifications in accordance with the above requirements to the South Central Regional DNR office at the address in the letterhead, to the attention of Wendy Weihemuller.

Please be aware that the case may be reopened pursuant to s. NR 726.09, Wis. Adm. Code, if additional information regarding site conditions indicates that contamination on or from the site poses a threat to public health, safety, or welfare or to the environment.

The DNR appreciates your efforts to restore the environment at this site. If you have any questions regarding this closure decision or anything outlined in this letter, please contact Jeff Ackerman at (608) 275-3323.

Sincerely,



Linda Hanefeld, Team Supervisor  
South Central Region Remediation & Redevelopment Program

Attachments:

- Maintenance Plan Diagram map
- Extent of Remaining Groundwater Impacts Diagram map
- Extent of Remaining Soil Impacts Diagram map
- Maintenance Plan
- Vapor Mitigation System Schematic
- RR 819

cc: Trent Ott, EDS  
Marcia Blimbergs, Associated Bank (709 E. Geneva St. Delavan)  
Wayne Hibelink, Barker Lumber (327 S. 7<sup>th</sup> St. Delavan)

Approximate Property Boundary

Grass

Asphalt

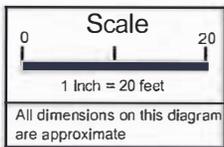
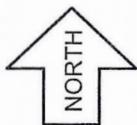
Overhead Electric

SSDS Vent

SSDS Drop Point

READER TRUST  
PROPERTY

Asphalt



### KEY

- = Sub-slab Depressurization System
- ▨ = Vapor Mitigation System Barrier
- = Direct Contact Barrier

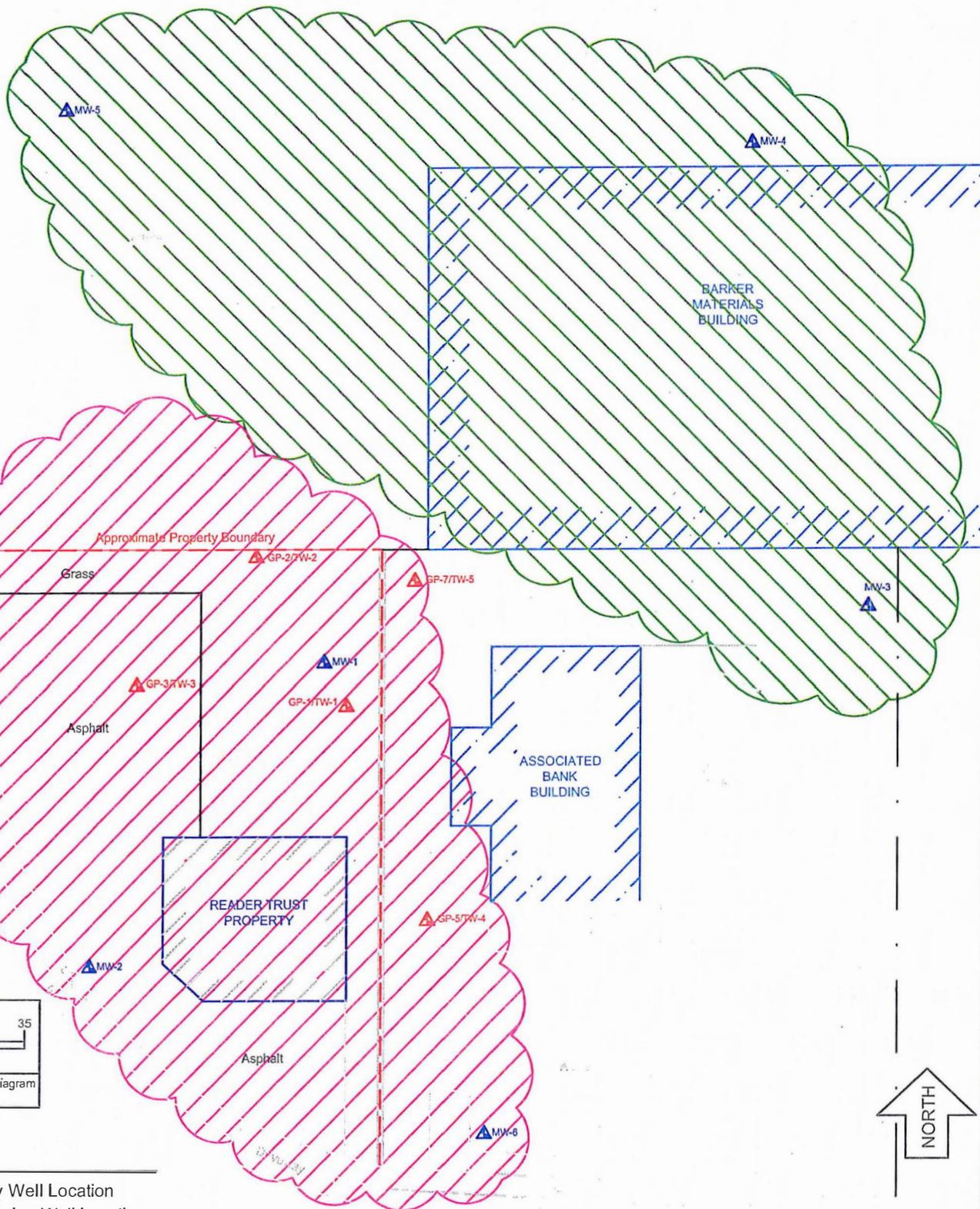


File No.: 091002g  
 DWG Date: 3-5-12  
 Rev Date:  
 Drawn By: TJO  
 Checked By (PM): TJO

**Maintenance Plan Diagram**  
 Reader Trust Property  
 701 East Geneva Street  
 Delavan, Wisconsin

Exhibit  
 A

LUMBER STORAGE BUILDING



**Scale**  
 0 35  
 1 inch = 35 feet  
 All dimensions on this diagram are approximate

**KEY**

- ▲ = Temporary Well Location
- ▲ = GW Monitoring Well Location
- ▲ = Piezometer Location
- 🌿 = Petroleum Groundwater Impacts Above ESs
- 🌸 = PERC Groundwater Impacts Above ES

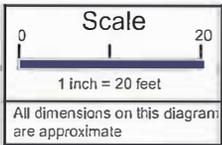
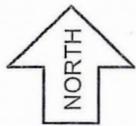
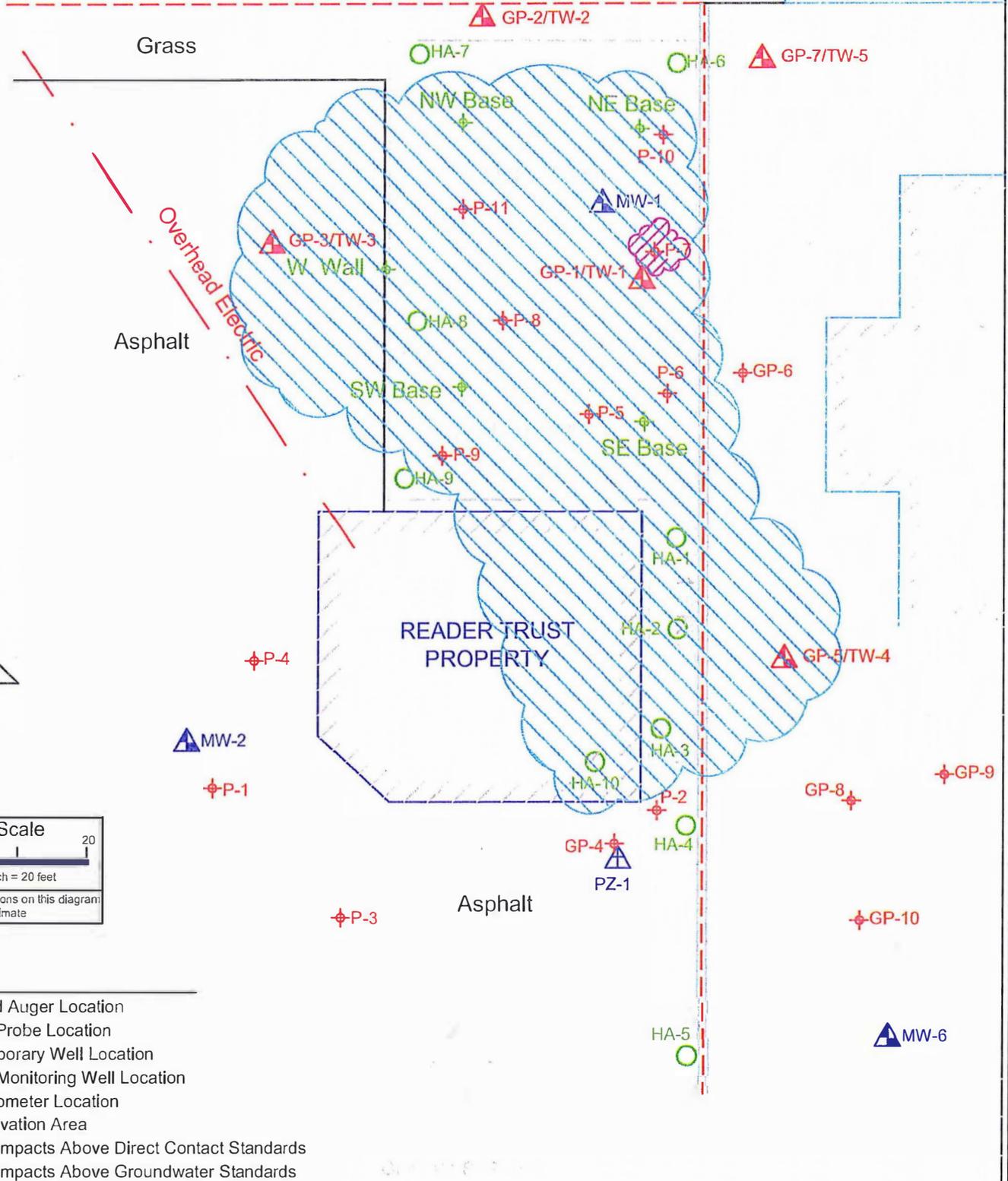


File No.: 091002f  
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 Checked By (PM): TJO

**Extent of Remaining Groundwater Impacts Diagram**  
 Reader Trust Property  
 701 East Geneva Street  
 Delavan, Wisconsin

**Figure**  
 6

Approximate Property Boundary



### KEY

- = Hand Auger Location
- ⊕ = Soil Probe Location
- △ = Temporary Well Location
- ▲ = GW Monitoring Well Location
- ▴ = Piezometer Location
- = Excavation Area
- ⊗ = Soil Impacts Above Direct Contact Standards
- ⊘ = Soil Impacts Above Groundwater Standards



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 Checked By (PM): TJO

### Extent of Remaining Soil Impacts Diagram

Reader Trust Property  
 701 East Geneva Street  
 Delavan, Wisconsin

### Figure

5

# **MAINTENANCE PLAN**

March 16, 2012

## **Property Located at:**

Jay Reader Trust property  
701 E. Geneva Street in Delevan, Wisconsin

FID No. 265078330  
BRRTS No. 02-65-354526

## **Described as follows:**

The E 67 FT of the W 97 FT, Block 13, Except Land for Highway, Aram & Downie's Addition, being in the City of Delavan, Walworth County and State of Wisconsin and Part of Lot 36, Block 13, Described as Commencing at the NW Corner of Lot 36, Block 13, Then Ely 4.09 FT to POB, Then Sly 45.69 FT, Then SEly 64.29 FT along an arc, Then Nly 107 FT, Then Wly 25.91 FT to POB, Aram & Downie's Addition, being in the City of Delavan, Walworth County and State of Wisconsin.

Tax Key Nos. XP 00181 & XP 00182

## **Introduction:**

This document is the Maintenance Plan for a cap and vapor mitigation system (VMS) at the above--referenced property (the "Property") in accordance with the requirements of s. NR 724.13(2), Wisconsin Administrative Code. The maintenance activities relate to the existing cap and VMS within specific areas of the Property.

More site-specific information about the Property may be found in:

- The case file in the Wisconsin Department of Natural Resources (DNR) southeast regional office
- BRRTS on the Web (DNR's internet based data base of contaminated sites): <http://botw.dnr.state.wi.us/botw/SetUpBasicSearchForm.do>
- GIS Registry PDF file for further information on the nature and extent of contamination: <http://dnrmapping.wisconsin.gov/imf/imf.jsp?site=brrts2> and
- The DNR project manager (contact information found on the last page).

## **Description of Residual Impacts:**

The Property is currently occupied by a commercial building, asphalt/concrete paved areas, and vacant grass covered areas. The Property is zoned commercial and the zoning is consistent with the current and planned future use. The Property was formerly utilized in dry cleaning operations. Site investigation (SI) activities have been conducted at the Property and the results indicated concentrations of residual soil impacts and sub-slab vapors associated with the historic dry cleaning operations at the Property. Tetrachloroethylene remains in soil at concentrations above its calculated residual contaminant level (RCL) for the non-industrial direct contact pathway. The area of residual soil impacts above its direct contact RCL is currently capped with at least 30-inches of topsoil within a grass covered area. Based on the soil sampling results, the residual soil impacts will be addressed through maintaining the existing cap as a direct contact barrier. Tetrachloroethylene vapors were also present beneath the floor slab above its sub-slab vapor risk screening level for potential vapor intrusion. As such, a VMS consisting of a sub-slab depressurization system (SSDS) was installed to remove the sub-slab vapors and mitigate potential vapor intrusion to affect indoor air quality.

The Property owner, in order to maintain the VMS and the integrity of the Cap, will maintain a copy of this Maintenance Plan on-site and make it available to all interested parties (i.e. on-site employees, contractors, future Property owners, etc.) for viewing.

## **CAP MAINTENANCE PLAN**

### **Description of the Cap to be maintained:**

The soil area (the "Cap") that exists over residual soil impacts on the above-described property in the locations shown on the attached map ("Exhibit A") serve as a barrier to prevent direct human contact with residual soil impacts that might otherwise pose a threat to human health. Based on the current and future use of the Property, the Cap should function as intended unless disturbed.

### **Annual Cap Inspection:**

The Cap overlying residual soil impacts and as depicted on the attached map ("Exhibit A") will be inspected once a year, normally in the spring after all snow and ice is gone, for deterioration, cracks and other potential problems that can cause exposure to underlying soils. The inspections will be performed by the Property owner or their designated representative. The inspections will be performed to evaluate damage due to settling, exposure to the weather, wear from traffic, increasing age, and other factors. Any area where soils have become or are likely to become exposed will be documented. A log of the inspections and any repairs will be maintained by the Property owner and is included as Exhibit C, "Maintenance Inspection Log." The inspection log will include recommendations for necessary repair of any areas of the Cap where underlying soils are exposed. Once repairs are completed, they will be documented in the inspection log. A copy of the inspection log will be kept at the address of the Property owner and available for submittal or inspection by DNR representatives upon their request.

### **Cap Maintenance Activities:**

If problems are noted during the annual inspections or at any other time during the year, repairs will be scheduled as soon as practical. Repairs can include patching and filling or larger resurfacing or construction operations. In the event that necessary maintenance activities expose the underlying soil, the Property owner must inform maintenance workers of the direct contact exposure hazard and provide them with appropriate personal protection equipment (PPE). The Property owner must also sample any soil that is excavated from the Property prior to disposal to ascertain if soil impacts remain. The soil must be treated, stored, and disposed of by the Property owner in accordance with applicable local, state, and federal law.

In the event the Cap overlying the residual soil impacts is removed or replaced, the replacement barrier must be equivalent for the purpose of minimizing direct contact with the underlying soils. Any replacement barrier will be subject to the same maintenance and inspection guidelines as outlined in this Cap Maintenance Plan unless indicated otherwise by the DNR or its successor.

### **Prohibition of Activities and Notification of DNR Prior to Actions Affecting the Cap:**

The following activities are prohibited on any portion of the Property where the Cap is required as shown on Exhibit A, unless prior written approval has been obtained from the DNR: (1) removal of the existing cap; (2) replacement of the cap with another barrier; (3) excavating or grading of the land surface; (4) filling on the capped surface; (5) plowing for agricultural cultivation; and (6) construction or placement of a building or other structure within the capped area.

## **VAPOR MITIGATION SYSTEM (VMS) MAINTENANCE PLAN**

### **Description of the VMS to be maintained:**

The building foundation and SSDS (these features combined construe the VMS) that exist on the above-described property in the locations shown on the attached map ("Exhibit A") serve as a barrier and active system to prevent potential vapor intrusion to affect indoor air quality that might otherwise pose a threat to human health. All floor penetrations and cracks within the foundation were sealed to inhibit vapor intrusion. The SSDS consists of an interior drop point drilled through the foundation

along the north central wall with 4-inch PVC exhaust pipe extending upwards and exiting the north wall of the building. The vent pipe then extends above the roof line by 10-inches to a goose neck exhaust point. The ventilation fan is located inline with the vertical exhaust pipe on the exterior of the building and a manometer is located inline with the vertical exhaust pipe on the interior of the building to indicate pressure within the system (fluid should be below the indicator mark on the manometer when operating). The system is powered on its own circuit from the main electrical panel and has a disconnect adjacent to the ventilation fan. The system is depicted on the attached schematic ("Exhibit B").

**Annual Inspection:**

The VMS will be inspected once a year, for deterioration, cracks, and other potential problems to the foundation that can result in vapor intrusion pathways and to confirm the SSDS is operational. The inspections will be performed by the Property owner or their designated representative. The inspections will be performed to evaluate damage to the foundation due to settling, exposure to the weather, wear from traffic, increasing age, and other factors. Any area where vapor intrusion pathways are present or are likely to become present will be documented. The inspections will also be performed to document any loss of pressure (manometer reading) or SSDS shutdown. A log of the inspections and any repairs will be maintained by the Property owner and is included as Exhibit C, "Maintenance Inspection Log." The inspection log will include recommendations for necessary repairs of any portion of the VMS found to be deficient. Once repairs are completed, they will be documented in the inspection log. A copy of the inspection log will be kept at the address of the Property owner and available for submittal or inspection by DNR representatives upon their request.

**Maintenance Activities:**

If problems are noted during the annual inspections or at any other time during the year, repairs will be scheduled as soon as practical. Repairs can include patching and filling or larger construction operations on the foundation or SSDS repairs by the SSDS installation contractor (contact information found on the last page) or similar contractor.

In the event the VMS is replaced, the replacement VMS must be equivalent for the purpose of minimizing potential vapor intrusion to affect indoor air quality. Any replacement VMS will be subject to the same maintenance and inspection guidelines as outlined in this VMS Maintenance Plan unless indicated otherwise by the DNR or its successor.

**Prohibition of Activities and Notification of DNR Prior to Actions Affecting the VMS:**

The following activities are prohibited on any portion of the Property where the VMS is required, unless prior written approval has been obtained from the DNR: (1) removal of the existing VMS; (2) replacement of the VMS; (3) construction or placement of a building or other enclosed structure on the property.

**Amendment or Withdrawal of Maintenance Plan:**

This Maintenance Plan can be amended or withdrawn by the Property owner and its successors with the written approval of DNR.

**Contact Information (as of March 2012):**

Site Owner and Operator: Jay Reader Trust  
M&I Marshall & Ilsley Trust Co. N.A.  
Mr. Terence Walsh  
111 East Kilbourn Avenue  
Milwaukee, WI 53202

Signature: \_\_\_\_\_  
Mr. Terence Walsh

Consultant: Environmental & Development Solutions, Inc.  
Attn: Richard W. Frieseke, P.E.  
6637 North Sidney Place  
Milwaukee, WI 53209  
(414) 228-9810

Signature: \_\_\_\_\_

DNR: Mr. Jeff Ackerman  
Hydrogeologist  
Wisconsin Department of Natural Resources  
3911 Fish Hatchery Road  
Fitchburg, WI 53711  
(608) 275-3323

SSDS Contractor: Mr. Thomas J. Heine  
Radon Abatement, Inc.  
12221 W. Rockne Avenue  
Hales Corners, WI 53130  
(414) 546-3691

Approximate Property Boundary

Grass

Asphalt

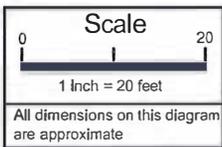
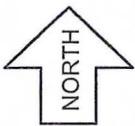
Overhead Electric

SSDS Vent

SSDS Drop Point

READER TRUST  
PROPERTY

Asphalt



### KEY

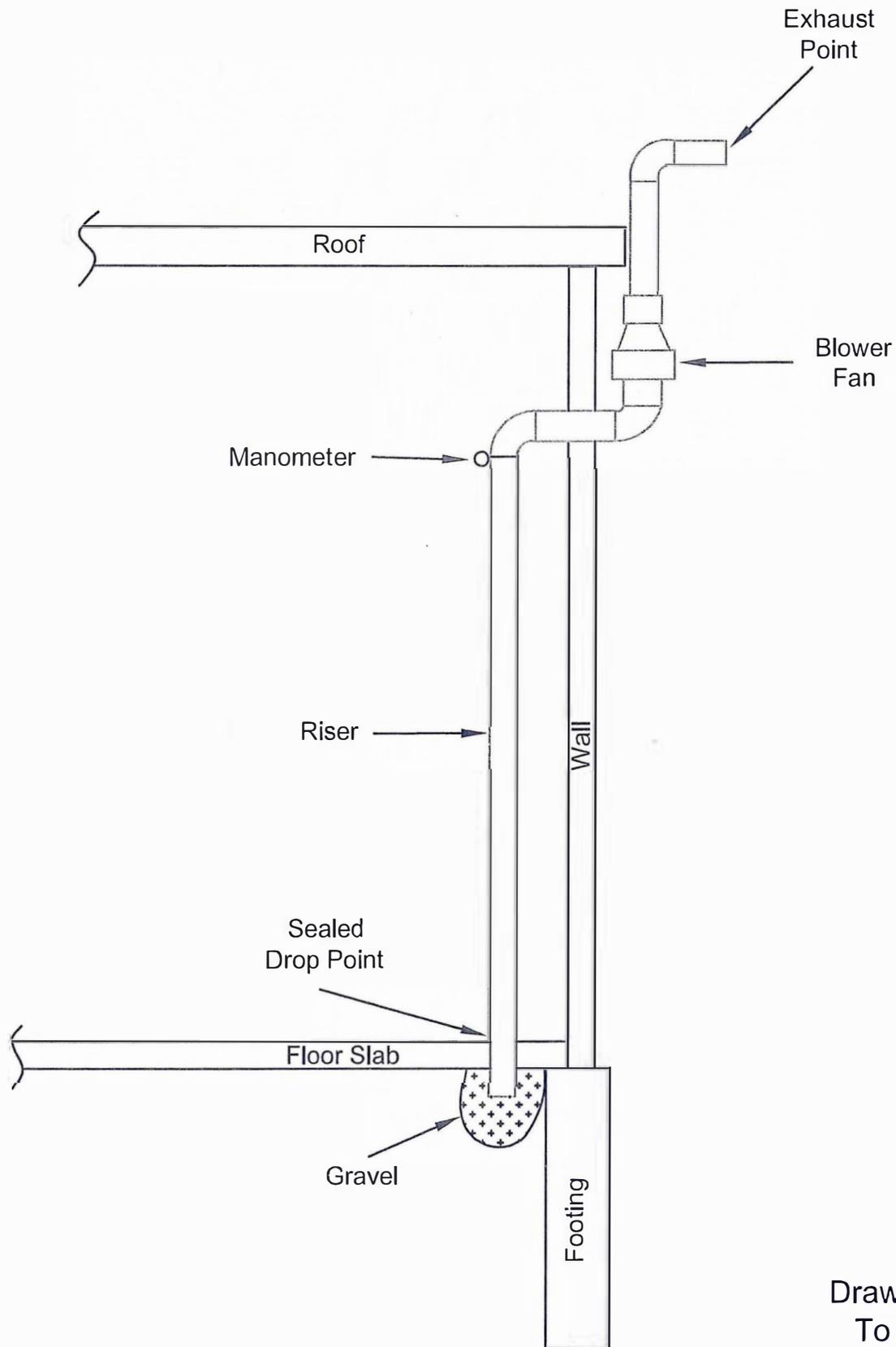
- = Sub-slab Depressurization System
- ▨ = Vapor Mitigation System Barrier
- = Direct Contact Barrier



File No.: 091002g  
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 Drawn By: TJO  
 Checked By (PM): TJO

**Maintenance Plan Diagram**  
 Reader Trust Property  
 701 East Geneva Street  
 Delavan, Wisconsin

Exhibit  
 A



Drawing Not  
To Scale



File No.: 091002h  
 DWG Date: 3-16-2012  
 Rev Date:  
 Drawn By: TJO  
 Checked By (PM): MJR

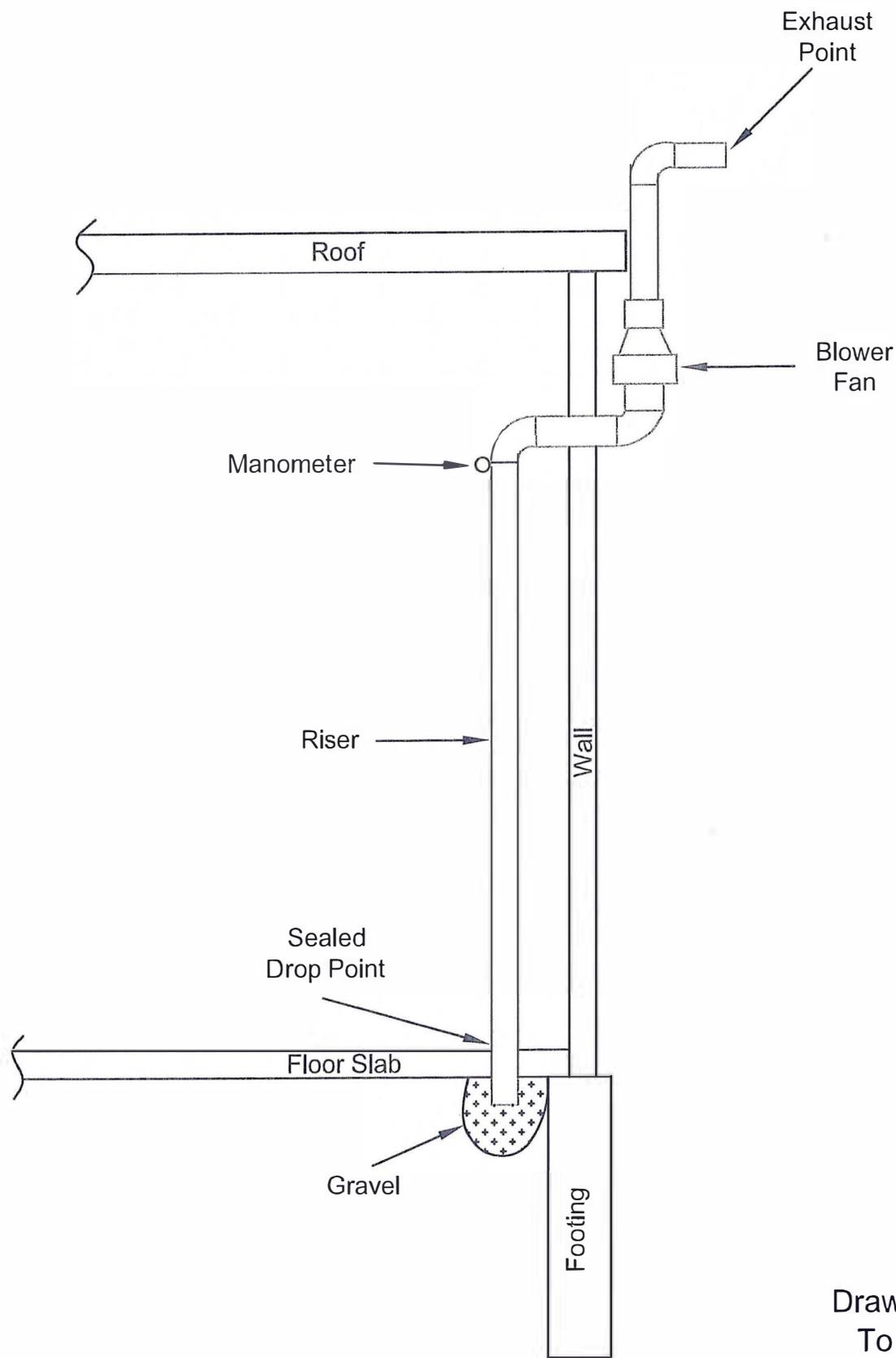
**Vapor Mitigation System Schematic**

Jay Reader Property  
 701 E. Geneva Street

Exhibit

B





Drawing Not  
To Scale



File No.: 091002h  
 DWG Date: 3-16-2012  
 Rev Date:  
 Drawn By: TJO  
 Checked By (PM): MJR

**Vapor Mitigation System Schematic**  
 Jay Reader Property  
 701 E. Geneva Street

Exhibit  
 B



# Continuing Obligations for Environmental Protection

## Responsibilities of Wisconsin Property Owners

PUB-RR-819

August 2012

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.)



## 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 “cap” 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. A fee is required for DNR’s review of this request (\$500 or \$750, depending on the nature of the request). Fees are subject to change; current fees are found in Chapter NR 749, Wis. Admin. Code, on the web at [www.legis.state.wi.us/rsb/code/nr/nr749.pdf](http://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.

Properties with continuing obligations can generally be located in DNR's *GIS Registry*, part of the *RR Sites Map*. 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.

However, some older cleanups may not be listed in the *GIS Registry*, so please consult DNR's comprehensive database of contaminated and cleaned up sites, *BRRTS on the Web*. This database shows all contamination activities known to DNR.

*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](http://dnr.wi.gov/topic/Brownfields/clean.html)

If a completed cleanup is shown in *BRRTS on the Web* but the site documents can not be found in the *GIS Registry*, 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](http://dnr.wi.gov/topic/Brownfields/Contact.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 off-site 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 \$500 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](http://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 off-site 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](http://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/](http://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.