

**From:** Chronert, Roxanne N - DNR  
**Sent:** Wednesday, September 6, 2023 12:18 PM  
**To:** jbrown@wafco.com  
**Cc:** bolson@sehinc.com; areichling@sehinc.com; ategen@manitowoc.org; Beggs, Tauren R - DNR; Thistle, Jodie M - DNR; Prager, Michael A - DNR  
**Subject:** Liability Clarifications Mirro Facility (Former), 1512 Washington St, Manitowoc, BRRTS #07-36-548528 & 02-36-545108  
**Attachments:** 20230905\_684\_GLC\_Ltr\_Wis\_Alum\_Foundry.pdf

Attached is the requested liability clarification letter regarding environmental liabilities and current environmental conditions at the Mirro Facility (former), 1512 Washington St, Manitowoc.

If you have any additional questions, please feel free to reach out to us.

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**Roxanne Nelezen Chronert**

Northeast Region Remediation and Redevelopment Team Supervisor

Wisconsin Department of Natural Resources

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[dnr.wi.gov](http://dnr.wi.gov)





September 5, 2023

Wisconsin Aluminum Foundry Co.  
Attn: Joe Brown  
838 South 16<sup>th</sup> Street  
Manitowoc, WI 54220  
Via Electronic Mail Only to [jbrown@wafco.com](mailto:jbrown@wafco.com)

Subject: Liability Clarifications  
Mirro Facility (Former), 1512 Washington Street, Manitowoc, WI  
BRRTS #s: 07-36-548528 and 02-36-545108; FID # 436033730  
County Tax Parcel # 052-000-246-000.00

Dear Mr. Brown:

On May 26, 2023, the Wisconsin Department of Natural Resources (DNR) received a *Technical Assistance, Environmental Liability Clarification or Post Closure Modification Request, Form 4400-237* (Request), submitted on behalf of Wisconsin Aluminum Foundry Co. (WAF) by Short Elliot Hendrickson, Inc. (SEH) for the property listed above (the Property). The appropriate review fee under Wisconsin Administrative (Wis. Admin.) Code ch. NR 749 was submitted with the Request. The purpose of this letter is to provide you clarification as to environmental liabilities and current environmental conditions at the Property. Wisconsin Statutes (Wis. Stat.) § 292.55(1)(d)1 authorizes the DNR to issue a letter to a person seeking assistance concerning the liability of a person owning or leasing a property for environmental pollution. The DNR based this letter on review of documentation in the case file Mirro Plt 9 (Former) – LGU, BRRTS # 02-36-545108, documentation in the closed cases for the Property, Mirro Facility (Former), BRRTS # 07-36-548528, and the Request, *Technical Assistance, Environmental Liability Clarification or Post Closure Modification Request, Form 4400-237*, with Attachments, dated 5/24/2023, by Short Elliot Hendrickson, Inc.

### Property Use

The Property consists of a 3.72 acre parcel of land located at 1512 Washington Street in the city of Manitowoc, Wisconsin. The Community Development Authority of the City of Manitowoc (CDA) currently owns the Property. The Property is currently vacant with some building foundations still present. Formerly, buildings spanned the entire Property and were utilized for the operation of Mirro Aluminum Company Plant 9 for the manufacturing of various aluminum products including aluminum cookware. Actions associated with building demolition occurred over several years prior to the CDA acquiring the Property. The remaining portion of building demolition was completed in 2017 by contractors hired by the CDA. According to city of Manitowoc, the northern portion of the Property is zoned Heavy Industrial District and the southern portion is zoned Multiple-Family District.

### Background and Environmental Summary

Multiple environmental repair (ERP) cases, leaking underground storage tank (LUST) cases, spill cases, and one General Property case associated with the Property, dating back to 1988, are identified in the DNR's Remediation and Redevelopment Tracking System (BRRTS) database. The following is a list of identified cases:

- 1512 Washington St, BRRTS # 04-36-046037, closed July 16, 1991;
- 1512 Washington St, BRRTS # 04-36-049803, closed August 8, 1994;

- Mirro Plt #9, BRRTS # 04-36-223347, closed February 14, 1997;
- Mirro Plt #9 (East Side), BRRTS # 03-36-000085, closed March 2, 1999;
- Mirro Plt #9 - West Side, BRRTS # 02-36-216391, closed September 22, 2000;
- Mirro Plt #9, BRRTS # 03-36-274209, closed November 26, 2003;
- Mirro Plt 9 (Former) - LGU, BRRTS # 02-36-545108, opened March 7, 2006; and
- Mirro Facility (Former), BRRTS # 07-36-548528, general property.

The CDA declared the Property blighted and acquired it in 2016 through condemnation, an acquisition method eligible for the local governmental unit (LGU) environmental liability exemption under Wis. Stat. § 292.11(9)(e). A more extensive background summary of the Property predating when the CDA acquired the Property is available in the LGU liability exemption clarification letter dated March 8, 2016, available in BRRTS on the Web (BOTW) under BRRTS # 07-36-548528. Newell Operating Company (Newell) is a responsible party for the Property as a causer. Newell acquired the Mirro Aluminum Company business in 1983 and continued operating the manufacturing business.

The site investigation for the Mirro Plt 9 (Former) case identified volatile organic compounds (VOCs), polycyclic aromatic hydrocarbons (PAHs), Metals, polychlorinated biphenyls (PCBs), and perfluoroalkyl and polyfluoroalkyl substances (PFAS) at the Property. While the on-site investigation is essentially complete, further off-site investigation is needed. Remedial actions were previously completed on the Property as part of the cleanup process for the closed cases. During demolition of the on-site buildings, contaminated soil, waste materials found within the buildings, and impacted building materials were removed from the Property and properly disposed. However, significant contamination on the Property is still present; remedial action options need to be evaluated with respect to the open case. Remedial actions will likely need to be completed to reduce contaminant mass and concentrations to meet the requirements of case closure under Wis. Admin. Code NR 726.

### Liability Clarification Questions

It is the DNR's understanding that WAF is considering the acquisition of the northern portion (approximately half) of the Property (as shown on the attached Figure 1, Proposed Property Acquisition, dated May 19, 2023). WAF has asked the following liability clarification questions:

- 1) Site Investigation: "The [Property] appears to currently be in the site investigation phase of the Wis. Adm. Code NR 700 process. If WAF were to acquire the northern portion of the [Property] during the ongoing site investigation activities, how would that affect WAF's liability? What would be required of WAF, by [DNR], with respect to the current and any future site investigation activities being completed on WAF's potential portion of the [Property]?"
- 2) Remedial Actions: "As remedial actions have not yet been completed for the [Property], how does that affect WAF's liability? What would be required of WAF, by [DNR], with respect to any future remedial actions being completed on WAF's potential portion of the [Property]?"
- 3) Remedial Action led by Responsible Party: "Newell Operating Company (Newell), as the currently identified Responsible Party (RP), is currently conducting the investigation activities for the [Property]. What is WAF's liability as the current RP is conducting the investigation and subsequent cleanup? What is WAF's potential or actual liability if the RP no longer continues to make acceptable progress in the Wis. Adm. Code NR 700 process or ceases to be a viable RP?"
- 4) Long-Term Operation, Monitoring, and Maintenance: "As the remedial actions to be completed for the Site have not yet been determined and have the potential to range significantly in spatial and temporal scales, how does that affect WAF's liability and any future requirements of WAF by the [DNR]? For example, if monitoring wells or treatment system equipment were to remain on-site for long-term monitoring or operation, how does that affect WAF's liability? Additionally, if a direct contact cover

would be required for the [Property], what is WAF's liability with respect to cap maintenance and inspections?"

- 5) Property Use: "How does the planned use as a paved parking area affect WAF's liability? If WAF were to construct a storage building in the future, how does that affect WAF's liability? If the subgrade structures that remain in place at the site (including tunnels, building foundations, and pits) were to be encountered during WAF's use of the property, either in establishing a paved parking area or in constructing a storage building, how does that affect WAF's liability?"
- 6) Construction: "What is WAF's liability or obligation during construction of a parking area or other development, especially if a remedy (such as a direct contact cover) has not been approved by [DNR] at the time of purchase or planned construction? How would [DNR] engage in WAF's development and construction plans?"

*DNR Response to Questions 1 - 6: Wis. Stat. ch. 292 and Wis. Admin. Code chs. NR 700 to 799 require those who are responsible for a hazardous substance discharge or environmental pollution, to take 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 the state.*

*If WAF purchases the Property, WAF will be in possession or control of one or more hazardous substance discharges or other environmental pollution (contamination) at the Property, and as such, WAF may be held responsible under Wis. Stat. ch. 292 for the investigation and cleanup of the contamination for the open case Mirro Plt 9 (Former) - LGU, BRRTS # 02-36-545108. If WAF purchases the Property, the DNR would issue a responsible party (RP) letter to WAF as the current owner of the Property. However, if the causer, Newell, continues to make sufficient progress under Wis. Admin. Code chs. NR 700 – 799, the DNR does not currently plan to seek WAF's involvement in site investigation and cleanup. However, if at any time Newell is no longer able or willing to continue progress and comply with site investigation and clean-up requirements, the DNR may require WAF to take action as an RP to conduct any required site investigation and clean-up.*

*If WAF purchases the Property, WAF is expected to do the following:*

- *Allow the DNR and its authorized representatives, any party that possessed or controlled the hazardous substance discharge or caused the discharge, and any consultant or contractor of such a party reasonable access to the Property to take actions to respond to the discharges.*
- *Avoid any interference with action undertaken to respond to the discharges and avoid actions to worsen any discharge.*

*The DNR and its authorized representatives may access the Property to respond to a hazardous substance discharge or environmental pollution in accordance with Wis. Stat. §§ 292.11(8) and/or 292.31(3)(e).*

*The most significant contamination on the Property is primarily located on the northern half of the Property. The highest concentrations of VOCs, Metals, PAHs, PCBs and PFAS are located within the proposed portion of the Property that WAF is potentially interested in acquiring. The sources of PCBs subject to the Toxic Substance Control Act (TSCA) are located in what is referred to as the former Loading Dock Area and Area 8 (as shown on the attached Figure 2, PCB Focus Areas, dated December 20, 2016).*

*Any person conducting or allowing development on the Property, would need to ensure that the environment and public health is protected, contaminated material is properly handled, managed, and/or*

*disposed of, and applicable requirements under Wis. Stat. ch. 292, Wis. Admin. Code chs. NR 700- 799, and other applicable laws are followed.*

*WAF may need to submit a materials management plan before construction activities for DNR approval and then follow that plan during construction and submit construction documentation to the DNR. Evaluation of whether covering/capping is appropriate to prevent surface water infiltration through contaminated soil and/or to prevent direct contact with contaminated soil will be needed. Evaluation of potential vapor intrusion risk would be needed due to residual VOCs. In addition, this Property is subject to the U.S. Environmental Protection Agency's (EPA's) TSCA requirements, as applicable, under 40 Code of Federal Regulations (CFR) § 761 due to PCBs on-site. Determine the applicable method of coordination, review, and approval with U.S. EPA under 40 CFR § 761 prior to any development.*

*If WAF purchases the Property, the DNR strongly recommends that construction on the Property be undertaken in a manner consistent with the planned remedial actions and that WAF coordinate with the consultant for Newell and the DNR as WAF moves forward. A development plan, outlining the actions proposed to be taken to construct a parking lot or storage building, should be submitted to the DNR to ensure that the applicable criteria are met. It is recommended that a development plan is submitted for DNR's review and approval. A fee under Wis. Admin. Code ch. NR 749 needs to be submitted with the development plan if WAF requests DNR review and approval.*

*Use of the Property for a paved parking area would generally be a use compatible with the site conditions. The reuse actions should be taken in a manner consistent with the planned remedial actions and the DNR recommends that WAF coordinates with the consultant for Newell and DNR as WAF moves forward. If the paved parking areas are built before the remedial actions have been taken, understand that there may be a need to remove part or all of the paved parking area to conduct remedial actions, if warranted. Otherwise, construction of the paved parking areas should be undertaken after or as part of a remedial action at the Property. A storage building could potentially be built on the northern portion of the Property; however, planning should include consideration of the locations of remaining contamination and remedial action plans. The DNR recommends coordinating with the consultant for Newell and the DNR before any building is constructed. A building should not be constructed in an area where it would impede efforts by the RP to respond to the hazardous discharges on the Property. Also, evaluation of potential vapor intrusion risk would be needed for any occupied structures due to residual VOCs and vapor intrusion mitigation measures may be needed in newly constructed buildings. If subgrade structures are encountered during development, WAF should consult with the DNR and its consultant to consider appropriate proposed actions that do not interfere with remedial actions or cause or exacerbate hazardous substance discharges.*

*If operation, monitoring, and maintenance is necessary as part of the remedial actions, Wis. Admin. Code ch. NR 724 requires that the RP undertake those actions until the requirements of closure are met under Wis. Admin. Code ch. NR 726. As indicated above, WAF would be an RP, but DNR would pursue the causer first to evaluate and implement remedial actions, conduct monitoring, and maintain any remedial systems or engineering controls (such as covers, vapor mitigation systems, treatment systems, etc.). This could include things such as maintenance of monitoring wells and groundwater monitoring, operation and maintenance of a treatment system, etc. However, in some situations, RPs have a 3<sup>rd</sup> party agreement on operating and/or maintaining certain requirements, such as the property owner inspecting and maintaining a parking lot that is acting as a cover, since the property owner is using it for its business operation. The DNR is not involved in 3<sup>rd</sup> party agreements. However, the DNR ensures that the operation, monitoring, and maintenance requirements are being complied with under Wis. Admin. Code ch. NR 724 by RPs.*

*Once requirements have been met under Wis. Admin. Code ch. NR 726 for case closure, continuing obligations may be imposed in the closure letter. Continuing obligations are legal requirements designed to protect public health and the environment from contamination that remains on a property. If the DNR places continuing obligations on the property at the time of closure, these obligations will become the property owner's responsibility. Wis. Admin. Code ch. NR 727 outlines requirements for continuing obligations after a case has been closed under Wis. Admin. Code ch. NR 726, which could include cap maintenance, land use limitations and other continuing obligations. Modifications to continuing obligations require notification and DNR approval prior to taking action under Wis. Admin. Code § NR 727.07. This modification process is referred to as a Post-Closure Modification.*

- 7) Reopening Closed Cases: “There are several BRRTS cases listed with the [DNR] for the [Property], of which only one is currently an open ERP case. Under what conditions would the [DNR] potentially consider reopening the closed cases for the [Property], and how would that affect WAF’s liability?”

*DNR Response: As described above, there were three ERP and/or LUST cases where hazardous substance discharges were identified and response actions were completed. The state issued case closure letters that indicated no further response action were necessary at the site, based upon the information available at that time. The DNR may require further action to address a previously closed case if certain criteria are met, including if information regarding the site or facility conditions indicates that contamination on or from the site or facility poses a threat to public health, safety, welfare or the environment, or if the property owner has not complied with the continuing obligations applied in the closure approval (the closed case reopening criteria are found in Wis. Admin. Code § NR 727.13).*

*Thus, before the DNR can require further action to address residual contamination in existence at the time that the site (i.e., the area of contamination at the Property that was the subject of the closure letter) was closed, the DNR must make a determination that the reopening criteria have been met and that further action is required. More recent sampling has been performed in the vicinity of the areas of the closed cases as part of either tank system site assessment activities or investigation activities for the open ERP case, Mirro Plt 9 (Former) – LGU, BRRTS # 02-36-545108. That sampling data has not indicated that there is a new or substantial threat to human health or the environment that would require reopening the closed cases. There have been other contaminants identified in these same areas related to other discharges or contaminated soil fill that were not part of the investigation for the closed cases, but these contaminants are being addressed under the investigation and cleanup for the open ERP case, Mirro Plt 9 (Former) – LGU, BRRTS # 02-36-545108.*

- 8) Other Regulatory Programs: “Can the [DNR] comment on any additional potential liability clarifications under other (non-NR 700) [DNR] regulatory programs or other federal, state, or local regulatory programs? Are there any such other local, state, or federal regulatory programs that the [DNR] is aware of and for which [DNR] would recommend WAF seek liability clarification?”

*DNR Response: The liability clarifications provided by the DNR in response to this request do not include other DNR regulatory programs or other federal, state, or local regulatory programs. If WAF purchases the Property, WAF must comply with any applicable local, state, or federal laws applicable to the Property.*

*WAF may reach out to the EPA if it has questions regarding its liability under federal laws including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Toxic Substances Control Act (TSCA). Information about CERCLA and liability protections can be found on*

*this EPA webpage: <https://www.epa.gov/enforcement/addressing-liability-concerns-support-cleanup-and-reuse-contaminated-lands>*

- 9) Other Ownership Scenarios: “What is WAF’s liability or obligation under other occupancy scenarios (i.e., lease, lease to own) that may be considered?”

*DNR Response: When a party leases a property, the party is not typically pursued as a responsible party under Wis. Stat. ch. 292.11(3) unless the tenant possesses or controls the hazardous substance discharge. If WAF were to lease the property from the CDA, the DNR could review the lease and provide a lease liability clarification letter. More information about liability and tenant obligations when leasing property is available in the DNR fact sheet, Lease Letters: Liability When Leasing Property (RR-620). Go to [dnr.wi.gov](http://dnr.wi.gov) and search “RR-620.”*


*Once a BRRTS case is closed there may be continuing obligations (COs) and other closure conditions that must be followed. Closure conditions are legally required conditions which include both COs and other requirements for case closure (Wis. Stat. § 292.12(2)). Under Wis. Stat. § 292.12(5), the current owner, any subsequent property owners, and occupants of the Property must comply with the closure conditions. The RP must notify occupants for any condition specified in the case closure letter under Wis. Admin. Code §§ NR 726.15(1)(b) and NR 727.05(2) and (3) prior to case closure approval.*

### Closing

This letter relates and refers only to the open and closed cases described above. The DNR makes no determination concerning the presence or absence of hazardous substances or environmental pollution on the Property other than those identified in the documents and reports listed above, which you submitted to the DNR, and the available case file documentation already available in BRRTS. If WAF were to cause hazardous substance discharges related to its operations on the Property in the future, WAF would be responsible for reporting and responding to those discharges.

This letter, case-related information, and DNR contacts can be found online in BRRTS on the Web (BOTW); go to [dnr.wi.gov](http://dnr.wi.gov) and search “BOTW.” Use the BRRTS #s found at the top of this letter. The DNR hopes this letter provides WAF with the requested clarifications concerning the Property. If you have any questions regarding this letter, please contact the DNR Project Manager, Tauren Beggs, at (920) 510-3472 or at [Tauren.Beggs@wisconsin.gov](mailto:Tauren.Beggs@wisconsin.gov).

Sincerely,

  
Roxanne N. Chronert  
Team Supervisor, Northeast Region  
Remediation & Redevelopment Program

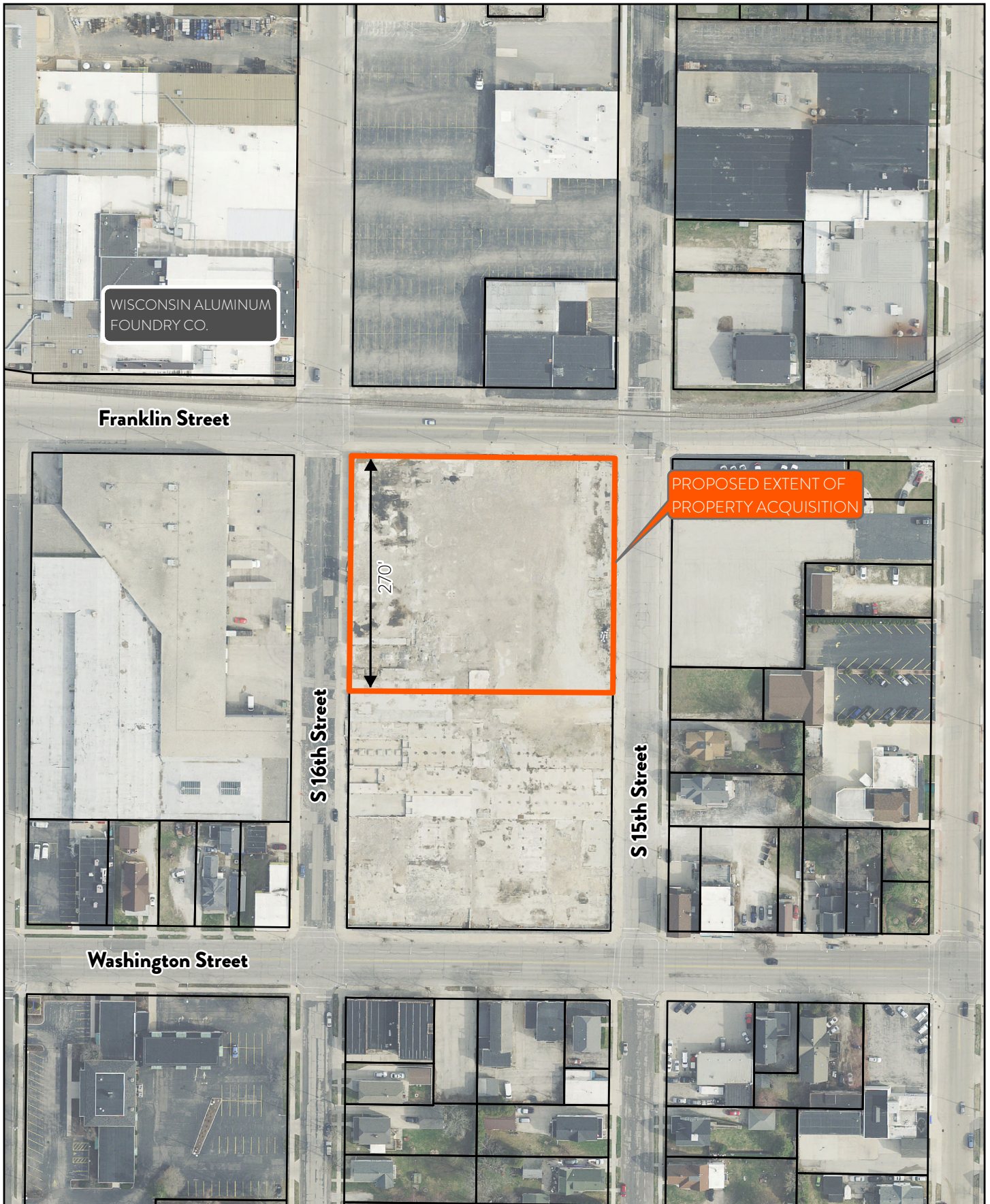
### Attachments:

- Figure 1, Proposed Property Acquisition, dated May 19, 2023
- Figure 2., PCB Focus Areas, dated December 20, 2016

cc: Bruce Olson, Short Elliott Hendrickson, Inc. ([bolson@sehinc.com](mailto:bolson@sehinc.com))  
Abby Reichling, Short Elliott Hendrickson, Inc. ([areichling@sehinc.com](mailto:areichling@sehinc.com))  
Adam Tegen, City of Manitowoc ([ategen@manitowoc.org](mailto:ategen@manitowoc.org))



Path: X:\UZ\W\WALU170479\5-final-dsgn\51-drawings\90-GIS\Maps\Fig1\_Site\_Layout.mxd



0 75 150 Feet

Project: WIALU 170479  
Print Date: 5/19/2023

Map by: msteuernagel  
Projection: Manitowoc County  
Coordinates  
Source: ESRI, GeoData WIS,  
Manitowoc County

**PROPOSED PROPERTY ACQUISITION**

Former Mirro Plant 9 (BRRTS No. 02-36-545108)  
1512 Washington Street, Manitowoc, Wisconsin

Figure  
1

This map is neither a legally recorded map nor a survey map and is not intended to be used as one. This map is a compilation of records, information, and data gathered from various sources listed on this map and is to be used for reference purposes only. SEH does not warrant that the Geographic Information System (GIS) Data used to prepare this map are error free, and SEH does not represent that the GIS Data can be used for navigational, tracking, or any other purpose requiring exacting measurement of distance or direction or precision in the depiction of geographic features. The user of this map acknowledges that SEH shall not be liable for any damages which arise out of the user's access or use of data provided.





Figure No.  
**2**  
 Title  
**Figure 2. PCB Focus Areas**

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Client/Project  
 City of Manitowoc  
 PCB Removal and Cleanup  
 1512 Washington Street

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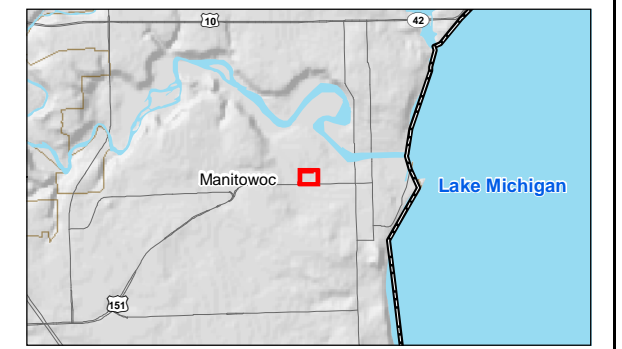
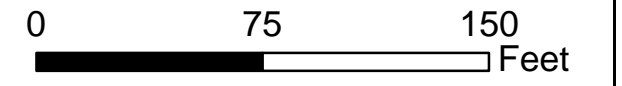
Project Location  
 T19N, R24E, S30  
 C. of Manitowoc,  
 Manitowoc Co., WI

193703931  
 Prepared by HLB on 2016-12-20

**Legend**

**PCB Areas**

- Area 14 (2nd Floor)
- Area 8 (Ground Floor)
- Loading Dock (Ground Floor)



**Notes**

Coordinate System: NAD 1983 StatePlane Wisconsin South FIPS 4803

1. Feet
2. Data Sources Include: Stantec, NADS



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