



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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December 11, 2008

Steve Schultz
Grafton Dells River Park
622 Green Bay Road
Cedarburg, WI 53012

SUBJECT: Potential Liability of Grafton Dells River Park for Contamination from Off-site, File Reference BRRTS #0246549906.

Dear Mr. Schultz:

The Wisconsin Department of Natural Resources ("WDNR") has reviewed the results of an investigation, conducted by Earth Tech, Inc. on behalf of the Village of Grafton ("Village"), which identified contamination at the Milwaukee Sign Property (the "West Plume" contamination) and recommended additional investigation to determine the degree and extent of groundwater contamination. WDNR staff (John Feeney of the Southeast Region) agrees with Earth Tech that groundwater flow direction is to the southeast, such that it flows toward the Grafton Dells River Park property ("Grafton Dells"). Part of the additional investigation that is required, therefore, is to install at least one groundwater monitoring well on the Grafton Dells property.

The Village has been identified as the party responsible to investigate and clean up the West Plume contamination that originates at the Milwaukee Sign property. WDNR has requested the Village to further define the degree and extent of the groundwater contamination by conducting an investigation on the Grafton Dells property. The Village attempted to gain access to the Grafton Dells property by sending a letter to you on June 18, 2008, from B.J. Le Roy, Project Manager for Earth Tech. As noted in that letter, Earth Tech had previously discussed the request for access with you and the letter contained certain clarifications regarding questions you had raised. Included with the letter were plans, photos and maps to address your concerns about granting access. Grafton Dells refused to grant access to Earth Tech.

Section 292.11(3), Wis. Stats., imposes liability on persons who cause a discharge of a hazardous substance and persons who are in possession or control of a hazardous substance that is discharged. The Wisconsin Supreme Court held, in State v. Mauthe, 123 Wis.2d 288 (1985), that the owner of property with contamination that is continuing to discharge to the environment is "in possession or control" of those contaminants even if the property owner did not cause the contamination.

However, after the Mauthe decision was handed down, the State Legislature enacted the off-site liability exemption statute, s. 292.13, Wis. Stats. This statute provides that a person is exempt from liability

under s. 292.11(3), (4) and (7)(b) and (c) (certain provisions of the Hazardous Substance Discharge statute) with respect to hazardous substances on property possessed or controlled by the person if the discharge of the hazardous substance originated from a source on property that is not possessed or controlled by the person and if certain other conditions are met. One of these conditions is that the person agrees to allow WDNR, its authorized representatives and any party that is responsible for the discharge, including the party's consultants or contractors, to enter the property to take action to respond to the discharge.

WDNR will expect the party or parties who caused the contamination to clean it up, and will not hold "innocent landowners" responsible for contamination that has migrated onto their properties, unless the landowners refuse to grant access to their property to the responsible party or to WDNR when access is required in order to investigate or remediate the contamination.

It is important, therefore, for Grafton Dells to grant access to Earth Tech to allow for completion of the investigation of the degree and extent of contamination that originates from the source property and to allow the Village to conduct any necessary remediation. If Grafton Dells does not grant access to Earth Tech, then Grafton Dells is not eligible for the off-site liability exemption under s. 292.13, Stats., and WDNR may require Grafton Dells to conduct an investigation and to clean up any contamination that is found on their own property.

Please contact Mr. B.J. Le Roy, the project manager for Earth Tech, at (920) 912-0191 (cell) or (920) 451-2589 (office), as soon as practicable, to arrange for Earth Tech to gain access to the Grafton Dells property. If this issue is not resolved expeditiously, WDNR will need to consider initiating enforcement action against Grafton Dells. Thank you for your cooperation.

Sincerely,



Judy Mills Ohm
Attorney
(608)266-9972

c: John Feeney—SER

B.J. Le Roy, Earth Tech