

FID# 246036780



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary

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RECEIVED

MAY - 5 2009

PLYMOUTH DNR

April 30, 2009

Dr. Steven Schultz
38951 N. Blue Spruce Ct.
Wadsworth, IL 60083-9573

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

Dear Mr. Schultz:

As you know from my letter to you dated December 19, 2008, the Wisconsin Department of Natural Resources ("DNR") 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. DNR staff (John Feeney of the Southeast Region) has concluded that groundwater flow direction is to the southeast, such that it flows toward the Grafton Dells River Park property ("Grafton Dells"), and that it is therefore necessary to install at least one groundwater monitoring well on the Grafton Dells property.

In your letter to me, dated January 2, 2009, you indicate that Grafton Dells (the property that you own) has never refused access to Earth Tech (the Village's consultant), but prefers that the Village use an alternative location for completion of the investigation of the West Plume contamination. You state that you were previously told that other properties were under consideration for the additional investigation. You also state that "Grafton Dells supports construction of a sampling well on our property if it brings scientific and public health benefit to the DNR." I am pleased to learn that Grafton Dells is willing to allow construction of a monitoring well on its property, because DNR's position (as previously stated in my December 19, 2008, letter) is that this is necessary.

You asked WDNR to address 6 specific points regarding the necessity for a monitoring well on the Grafton Dells property. The issues, and DNR's responses, are listed below:

1. Why does DNR require six sampling wells to be located within a few hundred feet of each other?

A network of monitoring wells must be installed for any contaminated site (such as the West Plume contamination) where "natural attenuation" is the planned remedy, in order to ensure that the remedy is working and the environment is restored to the extent practicable, according to DNR rules (s. NR 726.05, Wis. Adm. Code). In this particular case, the well planned for the Grafton Dells property is in the "B" zone. No nearby wells are at the "B" depth, and so the well on the Grafton Dells property at the

“B” depth is necessary. The well on the Grafton Dells property would be lined up near the center of the plume for the West Plume contamination, which is necessary to determine the degree and extent of the contamination. If the well were moved to the west or south, it would be too close to the edge of the contaminant plume for useful monitoring purposes. If the well were moved to the east, it would have to be placed in inaccessible marshland. The proposed location at the Grafton Dells property is the best location for monitoring the plume. In addition, this location is on level ground and provides good access for a large drill rig, which is necessary to drill the monitoring well.

2. Is DNR requiring all properties in possession of contamination from Milwaukee Sign Co. to install sampling wells?

As stated in the response to issue #1, a network of monitoring wells is required in order to ensure that natural attenuation is working. Not all properties potentially impacted by a contaminant plume are required to have a monitoring well installed on them if enough monitoring wells exist to make reasonable judgments regarding the probable extent and degree of contamination from the property that is the source of the contamination. As explained in the response to issue #1, DNR has determined that a monitoring well is required on the Grafton Dells property in order to complete an adequate monitoring well network. If Grafton Dells does not grant access to the Village to construct the monitoring well, DNR could require Grafton Dells to construct the well.

3. Please provide us with copies of contracts between Village Administration and other property owners.

John Feeney, project manager for the site, indicates that he is not aware of any such contracts. The DNR file regarding the Village of Grafton landfill and the West Plume contamination is an open record, however, and you are free to set up an appointment to inspect the file. If you would like to review the file, please call the Plymouth Service Center, at 920-892-8756, and ask for file reference number 246036780. In addition, you could contact the Village and request to review their file regarding the site.

4. Is DNR prepared to accept responsibility of the Village Contract when the Village removes itself from the Village's contractual obligations with Grafton Dells?

DNR's interest is in ensuring that the degree and extent of the West Plume contamination is determined and addressed. The only way to complete the investigation is for Grafton Dells to grant access to the Village for the construction of a monitoring well, or for Grafton Dells to construct a monitoring well itself. DNR will not be a party to any contract between the Village and Grafton Dells. If any such contract is not complied with, either party would have recourse against the other party to the contract. DNR would not be involved in any such contractual dispute.

5. Please have Village Administration provide Grafton Dells with material information proving Village Administration supports a sustainable Grafton Dells.

This request goes beyond DNR's responsibility and jurisdiction. DNR's interest is stated in the response to issue #4. This request would need to be submitted to the Village, not to DNR.

6. Please provide Grafton Dells with a copy of the DNR requirement to Village Administration for construction of the sampling wells.

DNR's legal authority to require the Village to construct a monitoring well network is s. 292.11(3), Wis. Stats., which requires a person responsible for a hazardous substance discharge to "take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state." Section NR 716.11(3)(a), Wis. Adm. Code, provides that the purpose of the field investigation portion of a site investigation is to "determine the nature, degree and extent, both areal and vertical, of the hazardous substances or environmental pollution in all affected media." Attached to this letter are several letters which Mr. Feeney sent to the Village, requiring the Village to adequately investigate the West Plume contamination (you are also free to inspect the DNR file for additional information). Mr. Feeney had discussions with B.J. Le Roy, the project manager for Earth Tech, regarding placement of a monitoring well on the Grafton Dells property. Mr. Feeney approved that location, for the reasons stated in the response to issue #1.

As previously explained in my December 19 letter, section 292.11(3), Wis. Stats., imposes liability on persons who are in possession or control of a hazardous substance that is discharged, even if the property owner (such as the owner of Grafton Dells) did not cause the contamination. The off-site liability exemption statute, s. 292.13, Wis. Stats., provides that a person is exempt from liability under s. 292.11(3) for hazardous substances on property possessed or controlled by the person if the discharge of the hazardous substance originated from a source on another property and if 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.

To be eligible for the liability exemption, Grafton Dells must grant access to Earth Tech to allow for completion of the investigation 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, and DNR may require Grafton Dells to conduct an investigation and clean up any contamination on their own property.

Please contact Mr. B.J. Le Roy 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 likely require you to conduct an investigation of the Grafton Dells property. Thank you for your cooperation with the Department in addressing the contamination.

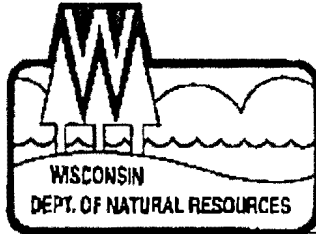
Sincerely,



Judy Mills Ohm
Attorney
(608)266-9972

c: John Feeney—SER

B.J. Le Roy, Earth Tech



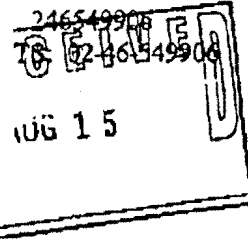
State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hasselt, Secretary
Gloria L. McCutcheon, Regional Director

Southeast Region Headquarters
2300 N. Dr. Martin Luther King, Jr. Drive
Milwaukee, Wisconsin 53212-0436
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FAX 414-263-8606
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August 6, 2007

Post-It* Fax Note 7671
Date # of pages 3
To Judy Ohm From John Feeney
Co./Dept. Co.
Phone # Phone #
Fax # Fax #



Village of Grafton
Darrel Hofland
1971 Washington St.
Grafton, WI 53024

Subject: Reported Contamination at Lime Kiln Park - West Plume, S. Green Bay Rd and Falls Rd., Grafton

Dear Mr. Hofland:

On July 3, 1998, Joan Underwood, Earth Tech on behalf of the Village of Grafton, notified the Department of Natural Resources (WDNR) groundwater contamination had been detected at the site described above.

Based on the information submitted to the WDNR, we believe the Village of Grafton is responsible for investigating and restoring the environment at the referenced site under Section 292, Wisconsin Stats., known as the hazardous substances spills law.

This letter describes your legal responsibilities as a person who is responsible under section 292.11, explains what you need to do to investigate, and clean up the contamination; provides you with information about cleanups, environmental consultants, and possible financial assistance; and working cooperatively with the Department of Natural Resources and Department of Commerce ("Commerce").

Legal Responsibilities:

Your legal responsibilities are defined both in statute and in administrative codes. The hazardous substances spill law, Section 292.11 (3) Wisconsin Statutes, states:

- RESPONSIBILITY. A person who possesses or controls a hazardous substance which is discharged or who causes the discharge of hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands, or waters of the state.

Wisconsin Administrative Code chapters NR 700 through NR 749 establish requirements for emergency and interim actions, public information, site investigations, design and operation of remedial action systems, and case closure. Chapter NR 708 includes provisions for immediate actions in response to limited contamination. Wisconsin Administrative Code chapter NR 140 establishes groundwater standards for contaminants that reach groundwater.



Steps to Take:

The longer contamination is left in the environment the farther it can spread and the more it may cost to clean up. Quick action may lessen damage to your property and neighboring properties and reduce your costs in investigating and cleaning up the contamination. To ensure that your cleanup complies with Wisconsin's laws and administrative codes, you should hire a professional environmental consultant who understands what needs to be done. These are the first three steps to take:

1. Within the next 30 days, you should submit written verification (such as a letter from the consultant) that you have hired an environmental consultant. If you do not take action within this time frame, the WDNR may initiate enforcement action against you.
2. Within the next 60 days, your consultant should submit a work plan and schedule for the investigation. The consultant must comply with the requirements in the NR 700 rule series and should refer to WDNR technical guidance documents. To facilitate prompt agency review of your reports, your consultant should use the site investigation and closure formats which are available on-line at www.dnr.state.wi.us.

Once an investigation has established the degree and extent of contamination involved at your site, your consultant will be able to determine whether Commerce or the Department of Natural Resources has authority over the case.

3. Within 30 days of completion of the site investigation, you or your consultant must provide a site investigation report per s. NR 716.15. As the remedial activities proceed, you or your consultant should also provide a brief progress report at least every 90 days as required by s. NR 724.13(3), Wis. Adm. Code. Quarterly reports need only include one or two pages of text, plus any relevant maps and tables. Should conditions at your site warrant, we may require more frequent contacts.
4. Sites where discharges to the environment have been reported are entered into the Bureau for Remediation and Redevelopment Tracking System ("BRRTS"), a version of which appears on the Department's Internet site. You may view the information related to your site at any time (<http://www.dnr.state.wi.us/org/aw/tr/brrts>) and use the feedback system to alert us to any errors in the data.

If you want a formal response from the Department on a specific submittal, please be aware that a review fee is required in accordance with ch. NR 749, Wis. Adm. Code. If a fee is not submitted with your reports, you should proceed under the advice of your consultant to complete the site investigation to maintain your compliance with the spills law and chs. NR 700 through NR 749. Do not delay the investigation of your site by waiting for a Department response. We have provided detailed technical guidance to environmental consultants. Your consultant is expected to know our technical procedures and administrative codes and should be able to answer your questions on meeting cleanup requirements.

All correspondence regarding this site should be sent to:

Victoria Stovall, Environmental Program Associate
Remediation and Redevelopment Program
Wisconsin Department of Natural Resources
2300 North Martin Luther King Drive
Milwaukee, WI 53212

Unless otherwise requested, please send only one copy of plans and reports. To speed processing, correspondence should reference the BRRTS and FID numbers (if assigned) shown at the top of this letter.

Additional Information for Site Owners:

Information to help you select a consultant, and materials on controlling costs, understanding the cleanup process, and choosing a site cleanup method are enclosed. In addition, *Fact Sheet 2, Voluntary Party Remediation and Exemption from Liability* provides information on obtaining the protection of limited liability under s. 292.15, Stats.

Financial Assistance:

Reimbursement from the Petroleum Environmental Cleanup Fund (PECFA) may be available for some of the costs of cleaning up contamination from eligible petroleum storage tanks. Please refer to the enclosed information sheet entitled "*Information about PECFA*" for more information on eligibility and regulations for this program. For more information on the PECFA program, please call the Department of Commerce at 608-266-2424 or visit their web site at: <http://www.commerce.state.wi.us/COM/Com-Petroleum.html>. Funding is also available for cleanup at some drycleaning sites.

Please call me at (414) 263-8688 for more information on eligibility or visit the RR web site. <http://www.dnr.state.wi.us/org/aw/rr>. You may also contact me for all other questions regarding this letter.

Thank you for your cooperation.

Sincerely,



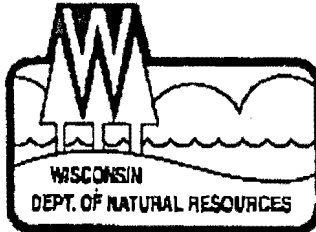
Victoria Stovall
Environmental Program Associate
Remediation & Redevelopment Program
Southeast Region

- Enclosures:
1. Selecting a consultant
 2. Fact Sheet 2, VPLE
 3. Env. Services Contractors List
 4. Inf. About PECFA Fact Sheet

cc: Joan Underwood - Earth Tech
WDNR SER Files



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State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
 Matthew J. Frank, Secretary
 Gloria L. McCutcheon, Regional Director

Plymouth Service Center
 1155 Pilgrim Rd.
 P.O. Box 408
 Plymouth, Wisconsin 53073-0408
 Telephone 920-892-8756
 FAX 920-892-6638

September 18, 2007

Darrell Hofland
 Village of Grafton
 1971 Washington Street
 Grafton, WI 53024

Dear Mr. Hofland:

Subject: Scope of Work for Village of Grafton West Plume, BRRTS #0246549906.

Thank you for submitting your scope of work for investigation and additional sampling having to do with the West Plume. I approve the work scope with the following caveats.

(1) Sample groundwater (if present before the bedrock) from at least three of the 12 borings at Milwaukee Sign (ORE). This can be done as temporary water-table wells or permanent wells at your discretion. If no groundwater is present above bedrock, complete and sample at least one water table well into the bedrock on the presumed downgradient side of this property.

(2) Please complete your proposed well, P10, to also sample the "C" level (Romeo Beds). (It may be helpful to also sample into Waukesha Dolomite):

- From your 1999 site investigation report, West Plume well PIC in the Romeo Beds had the highest concentration of Freon 113. TCE concentration was almost as high at the C depth as the B depth.
- At West Plume well PW760GB, the concentration of Freon 113 and TCE increased from near the base of the Racine Dolomite above the Romeo Beds, to where the sample was taken in the Waukesha Dolomite, which may indicate that a higher concentration was in the Romeo beds (C level) (no sample was taken at that interval).

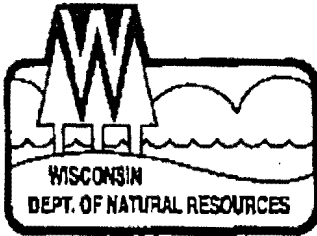
(3) The department can ask for additional investigation based on the results of this work.

I understand that you will submit a review fee with your actual workplan. If you have any questions about this letter, please call me at 920-892-8756 extension 3023.

Sincerely,

John Feeney
 Wisconsin Department of Natural Resources

Cc: SER File, Earth Tech



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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 Matthew J. Frank, Secretary
 Gloria L. McCutcheon, Regional Director

Plymouth Service Center
 1155 Pilgrim Rd.
 P.O. Box 408
 Plymouth, Wisconsin 53073-0408
 Telephone 920-892-8756
 FAX 920-892-8638

June 12, 2008

Darrel Hofland
 Village of Grafton
 1971 Washington Street
 Grafton, WI 53024

Dear Mr. Hofland:

Subject: Site Investigation Workplan Approval for Village of Grafton West Plume, file reference BRRTS #0246549906.

Thank you for having your consultant submit a site investigation workplan. I approve your site investigation workplan with the following caveats:

1. Regarding the soil probes/groundwater samples at the Milwaukee Sign property: wherever possible, site background/phase 1 information should be used to place soil borings in the places most likely to have soil impacts.
2. According to your groundwater data table, the vinyl chloride concentration at monitoring well P9B has gone way up, from less than 1 ppb to 240 ppb in 2006. If this concentration is confirmed to be rising in this well, action needs to be taken associated with that.
3. You should have a contingency plan to set an additional or nested well at the "A", or "C", or "D" zones in the deep well (proposed P-10B) if those zones turn out to have unexpectedly high concentrations of contaminants.

If you have any questions about this letter, please call me at 920-892-8756 extension 3023.

Sincerely

John Feeney
 Wisconsin Department of Natural Resources

Cc; Earth Tech, Inc.
 SER File

Post-it® Fax Note		7671	Date	# of pages
To	Judy Ohm		From	John Feeney
Co./Dept.			Co.	
Phone #			Phone #	
Fax #			Fax #	

