



May 15, 2014

KAREN HARKNESS
APPLETON REDEVELOPMENT AUTHORITY
100 N APPLETON ST
APPLETON WI 54911

Subject: Off-site liability exemption for property located at 935 E. John St., Appleton, WI with groundwater contamination from an off-site source
Parcel Identification Number: 311077200
Site Name: Foremost Farms (Former)
BRRTS # 07-45-552735 / 06-45-523605

Dear Ms. Harkness:

Purpose

On January 11, 2013, the Department of Natural Resources ("the Department") received your request for an off-site liability exemption and liability clarification letter for the property located at 935 East John Street, Appleton, Wisconsin, which will be referred to in this letter as "the Property." The Property is an 8.1 acre parcel with identification number 311077200. Refer to the **attached map** (*Current Site Layout with Parcel Boundaries*, Figure 2 by ARCADIS, received March 18, 2014) for a layout of the Property.

The Department reviewed this request under the Voluntary Party Liability Exemption (VPLE) Program (BRRTS # 06-45-523605) and applied the hourly rate for staff time pursuant to ss. 292.12, 292.13(2) and (3), and 292.15(5), Wis. Stats. Department review was placed on hold on January 24, 2013 upon notification that the Appleton Redevelopment Authority (ARA) was in the process of amending the Property parcel boundaries from the initial application. The Department received Quit Claim Deed #2002104 on November 12, 2013 and the revised Property boundary map and figures on March 18, 2014.

Summary Determination

Based on the information submitted to the Department, the Department is confirming that the ARA qualifies for the off-site liability exemption, and the ARA is not responsible for investigation or cleanup of the contamination that originated on a neighboring property. The Property owner would have limited responsibility under ss. 292.12 and 292.13, Wis. Stats, for the groundwater contamination that has migrated or is migrating onto the Property. The Property owner is responsible for any discharges of hazardous substances whose source originates on the Property.

Request

You have requested that the Department determine if the ARA is exempt from ss. 292.11(3), (4) and (7)(b) and (c), Wis. Stats. (commonly known as the "Hazardous Substance Spill Law"), with respect to the existence of a hazardous substance in the groundwater, that you believe is migrating onto the Property from an off-site source.

Section 292.13(2), Wis. Stats., requires the Department to issue upon request, a written determination regarding a liability exemption for a person who possesses or controls property that is contaminated by an off-site source, when certain conditions are met. In order to make this determination, the Department has reviewed information about the Property, including soil, sediment and groundwater sampling data for the Property and/or other sites contained in the following documents:

- The Off-Site Application form dated January 9, 2013;
- *Documentation of Construction, Waterloo Multi-level Sampling System at 935 East John Street, Appleton, WI for Kerwin Paper Company, 801 South Lawe Street, Appleton, WI, BRRTS #02-45-221348*, by STS Consultants, Ltd., dated January 16, 2003;
- *Phase I Environmental Site Assessment, Foremost Farms USA, 935 East John Street, Appleton, WI*, by Northern Environmental Technologies, Inc., dated October 30, 2003 (BRRTS #02-45-530084 / 06-45-523605);
- *Site Investigation Report, Kerwin Paper Company, 801 South Lawe Street, Appleton, WI, BRRTS #02-45-221348*, by STS Consultants, Ltd., dated November 18, 2003;
- *Phase II Environmental Site Assessment, Foremost Farms USA, 935 East John Street, Appleton, WI*, by Northern Environmental Technologies, Inc., dated December 17, 2004 (BRRTS #02-45-530084 / 06-45-523605);
- *Site Investigation Report, Foremost Farms USA, 935 East John Street, Appleton, WI, BRRTS #06-45-523605*, by Northern Environmental Technologies, Inc., dated October 25, 2005 with updated text, tables and appendices received December 6, 2005;
- *Phase I Environmental Site Assessment and Limited Subsurface Soil Assessment, Foremost Farms, Appleton, WI*, by ARCADIS, dated December 2006 (PHP Project Development, LLC) (BRRTS #02-45-530084);
- *December 3, 2007 Meeting Summary, Kerwin Paper Co. (Former), 801 South Lawe Street, Appleton, WI, WDNR ERP Case #02-45-221348*, by STS|AECOM, dated January 8, 2008;
- *Remedial Action Options Report, Former Kerwin Paper Company, Appleton, WI – WDNR ERP Case No. 02-45-221348*, by STS|AECOM, dated September 25, 2008;
- *Phase I Environmental Site Assessment, Foremost Farms Facility, 935 East John Street, Appleton, WI*, by ARCADIS, dated September 2011 (City of Appleton) (BRRTS #02-45-530084 / 06-45-523605);
- *Summary of Activities and Request for Case Closure, Former Foremost Farms, 935 East John Street, Appleton, Wisconsin, BRRTS #02-45-530084; VPLE # 06-45-523605*, by ARCADIS, dated November 13, 2012;
- *Case Closure Request, Former Foremost Farms, BRRTS #02-45-530084*, by ARCADIS, dated January 4, 2013;

- *Addendum to Summary of Activities and Request for Case Closure, Former Foremost Farms, 935 E. John Street, Appleton, Wisconsin, BRRTS #02-45-530084; VPLE #06-45-523605*, by ARCADIS, dated January 8, 2013;
- *2012 Groundwater Monitoring Report, Former Kerwin Paper Company, Appleton, WI*, by AECOM, dated May 2, 2013 (BRRTS #02-45-221348);
- *Response Case Closure Denial for Additional Investigation & Documentation, Foremost Farms (Former), 935 E. John St., Appleton, Wisconsin, WDNR BRRTS ERP #02-45-530084 / VPLE # 06-45-523605*, by ARCADIS, dated May 16, 2013;
- *2013 Groundwater Monitoring Report, Former Kerwin Paper Company, Appleton, WI*, by AECOM, dated April 10, 2014 (BRRTS #02-45-221348);

Background

The Department considered the documents listed above in making the determinations presented in this letter. The Property was formerly owned and operated by Foremost Farms USA as a whey processing plant from the 1950's until ceasing operations in 2003. Other historic uses based off Sanborn maps include:

- 1886 - a foundry, machine shop, woodworks, electric company and pulp mill;
- 1891 – a tannery, flour mill and pulp company;
- 1895 – a tannery, foundry, machine shop, flour mill and knitting company;
- 1901 – foundry and machine shop, paper company and knitting company;
- 1911 – foundry and machine shop, paper company, wrapping company and pulp mill;
- 1924 – a car mover company, pulp and paper company;
- 1950 – a wood plug company.

There was also a head race and transformer area. A Phase I ESA and Phase II ESA were performed in 2003 and 2004 identifying the release of metals, polycyclic aromatic hydrocarbons (PAHs) and non-chlorinated volatile organic compounds (VOCs). It should be noted that no chlorinated VOCs were present in soil or shallow groundwater with the exception of 102 micrograms per kilogram ($\mu\text{g}/\text{kg}$) of tetrachloroethylene (PCE) in soil from from 0-2 ft bgs at GP-30. Reference the **attached map** (*Locations of Soil Borings and Monitoring Wells*, Figure 4 by ARCADIS, 12/12/2013). ARA currently owns the Property and they have prepared the Property for residential and recreational use.

The suspected source property at 431, 480 and 500 Eagle Flats Parkway and 801 South Lawe Street, Appleton, Wisconsin (all four parcels formerly 801 South Lawe Street) make up the land owned and occupied by the former Kerwin Paper Co. that operated from the mid 1950's until 2005. Reference the **attached map** (*Monitoring Well Nest Locations, Former Kerwin Paper Company, Lawe Street, Appleton, Wisconsin*, Figure 2 by AECOM, 2014-04-03). Kerwin Paper Co. and the adjacent CBC Coating, Inc. (820 South Olde Oneida Street, Appleton, Wisconsin) operated under Riverside Paper Corp. until June 2007 when the corporation was dissolved and renamed to the surviving business, CBC Coating, Inc. CBC Coating, Inc. sold the suspected source property to Eagle Flats, LLC in December 2010 but maintained liability for the historical environmental contamination. Environmental contamination from releases of the CVOCs, PCE and trichloroethylene (TCE), at the suspected source property are on file with the Department. PCE and TCE were utilized at the suspected source property from the mid-1950's until 1982 to clean the wax from paper for recycling.

During the investigation of CVOCs from the suspected source property (Kerwin Paper Co.), a multi-level monitoring well, FF-1, was installed to a depth of approximately 430 feet below ground surface (bgs) at the Property (Foremost Farms). Reference the **attached map** (*Locations of Soil Borings and Monitoring Wells*, Figure 4 by ARCADIS, 12/12/2013) for the location of FF-1. CVOCs were detected in groundwater at monitoring ports between approximately 110 and 430 feet bgs. Reference the **attached map** (*Locations of Former Foremost Farms & Kerwin Paper Co*, by Outagamie Land Information, Author J. Borski, WDNR, 05/15/2014)

Determination

Based upon the available information and in accordance with s. 292.13, Wis. Stats., the Department makes the following determinations regarding the presence of CVOC contamination in the groundwater in bedrock on the Property found in the multi-level well, FF-1 located on the southern tip of the Property as indicated on the **attached maps** (*Locations of Soil Borings and Monitoring Wells*, Figure 4 by ARCADIS, 12/12/2013 and *Monitoring Well Nest Locations, Former Kerwin Paper Company, Lawe Street, Appleton, Wisconsin*, Figure 2 by AECOM, 2014-04-03).

Based on the information available, the Department has determined that the Property owner has met the conditions in s. 292.13, Wis. Stats., to qualify for the liability exemption, including but not limited to the following provisions:

1. The hazardous substance discharge originated from a source on property that is not possessed or controlled by the ARA.
2. The ARA did not possess or control the hazardous substance on the property on which the discharge originated.
3. The ARA did not cause the discharge.
4. The ARA will not have liability under the Hazardous Substance Spill Law for investigation or remediation of the groundwater contamination originating from off-site onto the Property, provided that the ARA does not take possession or control of the property on which the discharge originated.

Exemption Conditions

The Department's determination, as set forth in this letter, is subject to the following conditions being complied with, as specified in ss. 292.13(1) and (1m), Wis. Stats:

1. The facts upon which the Department based its determination are accurate and do not change.
2. The ARA agrees to allow the following parties to enter the Property to take action to respond to the discharge: the Department and its authorized representatives; any party that possessed or controlled the hazardous substance or caused the discharge; and any consultant or contractor of such a party.
3. The ARA agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.
4. The ARA agrees to inform all future property owners, developers, contractors and City of Appleton

Departments (Community and Economic Development, Facilities and Construction Management, Parks and Recreation and Utilities) of the presence of the multi-level monitoring well, FF-1, to ensure protection of the well during any maintenance, development or construction activities. If FF-1 is damaged or destroyed, the condition must be immediately reported to CBC Coating, Inc. (responsible party) and the Department and repaired or replaced within 60 days of reporting.

5. The ARA agrees to any other condition that the Department determines is reasonable and necessary to ensure that the Department and any other authorized party can adequately respond to the discharge.

Responsibilities for Continuing Obligations

In addition to the conditions above, after the contamination at the source property is remediated, the Department's approval of the clean-up may include continuing obligations at the source property as well as your Property, including entry on the GIS Registry for CVOCs in groundwater. Often residual contamination remains after an approved environmental cleanup is completed. This approval may include requirements to maintain engineering controls, such as a cap or soil cover, to reduce the impact of the contamination. In that event, you may also be required to obtain Department approval to construct a water supply well on your Property. If the request for cleanup approval includes requirements for your Property, the party conducting the cleanup is required to notify you before the Department reviews the proposal for final approval of the clean-up.

Conclusion

The Department has granted the ARA an off-site exemption under s. 292.13, Wis. Stats. Please note that the Department may revoke the determinations made in this letter if it determines that any of the requirements under s. 292.13, Wis. Stats., cease to be met.

Future Property owners are eligible for the exemption under s. 292.13, Wis. Stats., if they meet the requirements listed in that statute section. The determinations in this letter regarding a liability exemption, however, only apply to the ARA, and may not be transferred or assigned to other parties. The Department will provide a written determination to future owners of this Property, if such a determination is requested in accordance with the requirements of s. 292.13, Wis. Stats.

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification numbers for this activity are shown at the top of this letter. The Department tracks information on all determinations such as this in a Department database that is available on the Internet at <http://dnr.wi.gov/botw/SetUpBasicSearchForm.do>.

Please contact me in Oshkosh at 920-424-7887 or at Jennifer.borski@wisconsin.gov with any questions or concerns regarding this letter.

Sincerely,



Jennifer Borski
Hydrogeologist
Remediation and Redevelopment Program

Attachments:

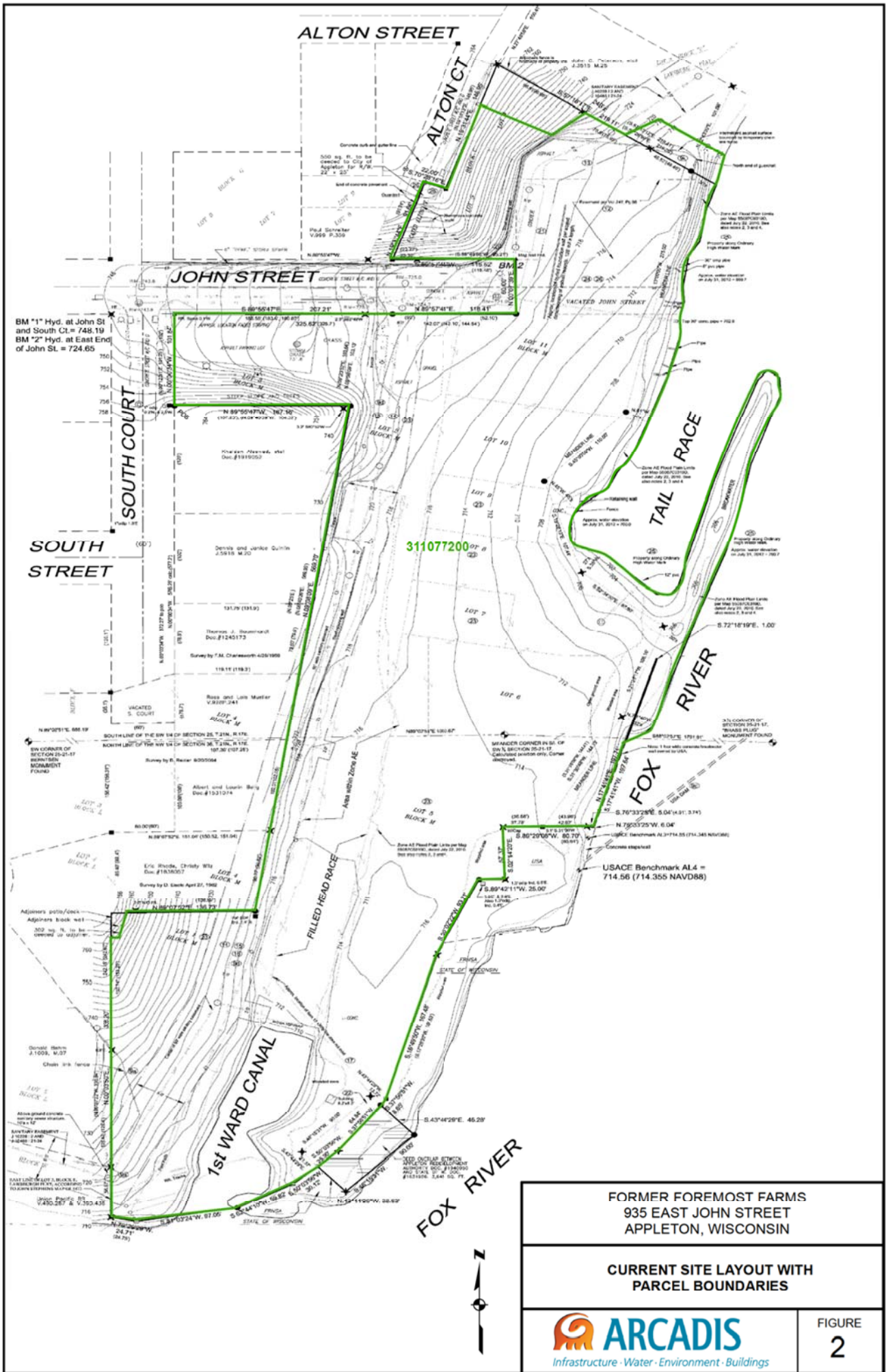
- Current Site Layout with Parcel Boundaries, Figure 2 by Arcadis, received March 18, 2014 (for BRRTS #02-45-530084 / 06-45-523605)
- Locations of Soil Borings and Monitoring Wells, Figure 4 by Arcadis, 12/12/2013 (for BRRTS #02-45-530084 / 06-45-523605)
- Monitoring Well Nest Locations, Former Kerwin Paper Company, Lawe Street, Appleton, Wisconsin, Figure 2 by AECOM, 2014-04-03 (for BRRTS #02-45-221348)
- Locations of Former Foremost Farms & Kerwin Paper Co, by Outagamie Land Information, Author J. Borski, WDNR, 05/15/2014

Paper Copy:

- Tom Metevier, CBC Coating Inc., 820 South Olde Oneida Street, Appleton, WI 54915
(for BRRTS #02-45-221348)
- File - Kerwin Paper Co (Former), BRRTS #02-45-221348
- File - Foremost Farms (Former), BRRTS #02-45-530084 / 06-45-523605

Electronic Copy:

- B. Maillet, ARCADIS
- R. Chronert, DNR – Green Bay
- D. Danelski, DNR – Green Bay
- M. Prager, DNR – Madison RR/5



BM 1" Hyd. at John St and South Ct. = 748.19
BM 2" Hyd. at East End of John St. = 724.65

SOUTH STREET

SOUTH COURT

1st WARD CANAL

FILLED HEAD RACE

FOX RIVER

TAIL RACE

FOX RIVER

ALTON CT

JOHN STREET

1st WARD CANAL

FILLED HEAD RACE

FOX RIVER

TAIL RACE

FOX RIVER

STATE OF WISCONSIN

USACE Benchmark AL4 = 714.56 (714.355 NAVD88)

311077200

FORMER FOREMOST FARMS
935 EAST JOHN STREET
APPLETON, WISCONSIN

CURRENT SITE LAYOUT WITH
PARCEL BOUNDARIES

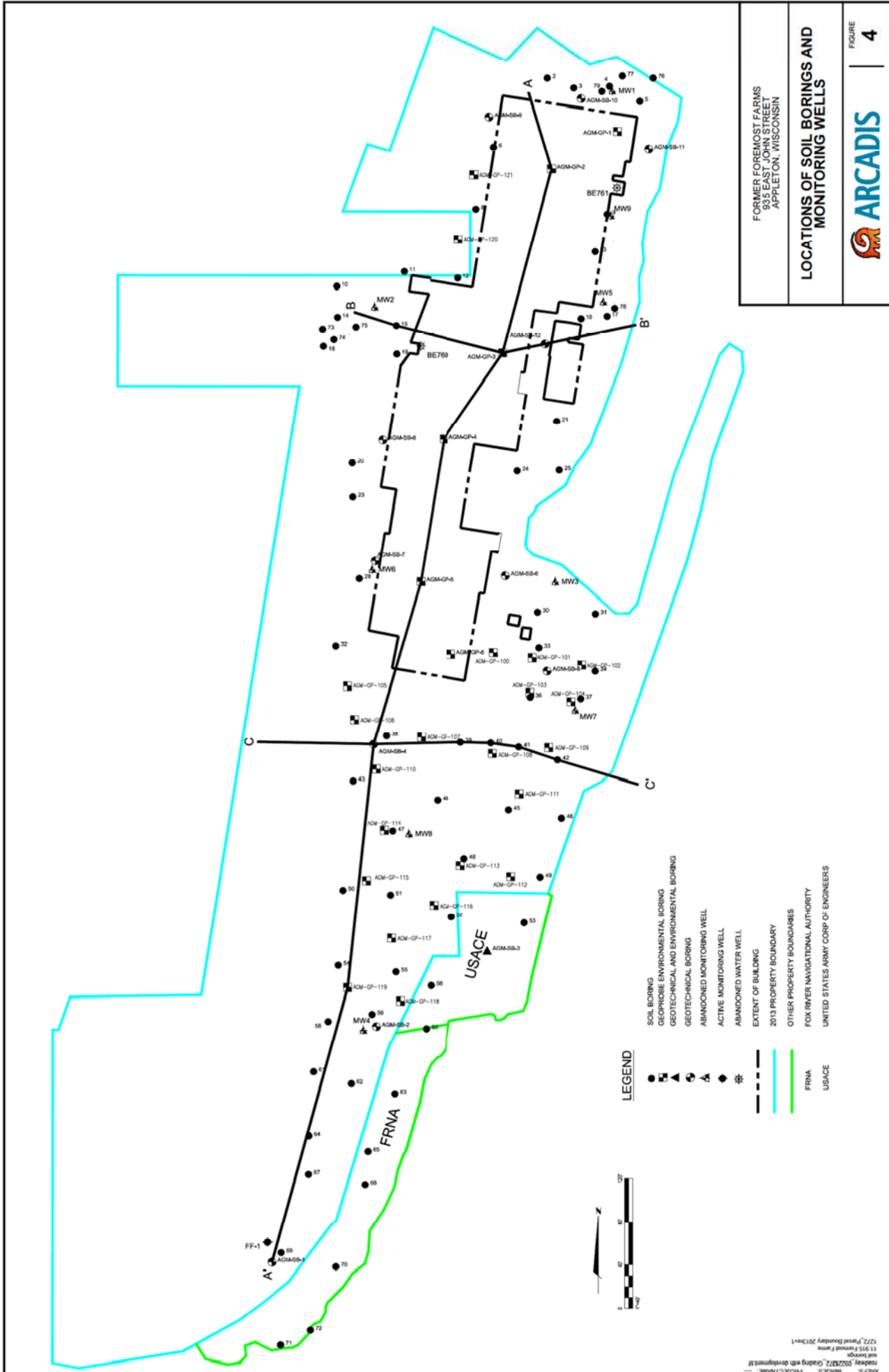
ARCADIS
Infrastructure · Water · Environment · Buildings

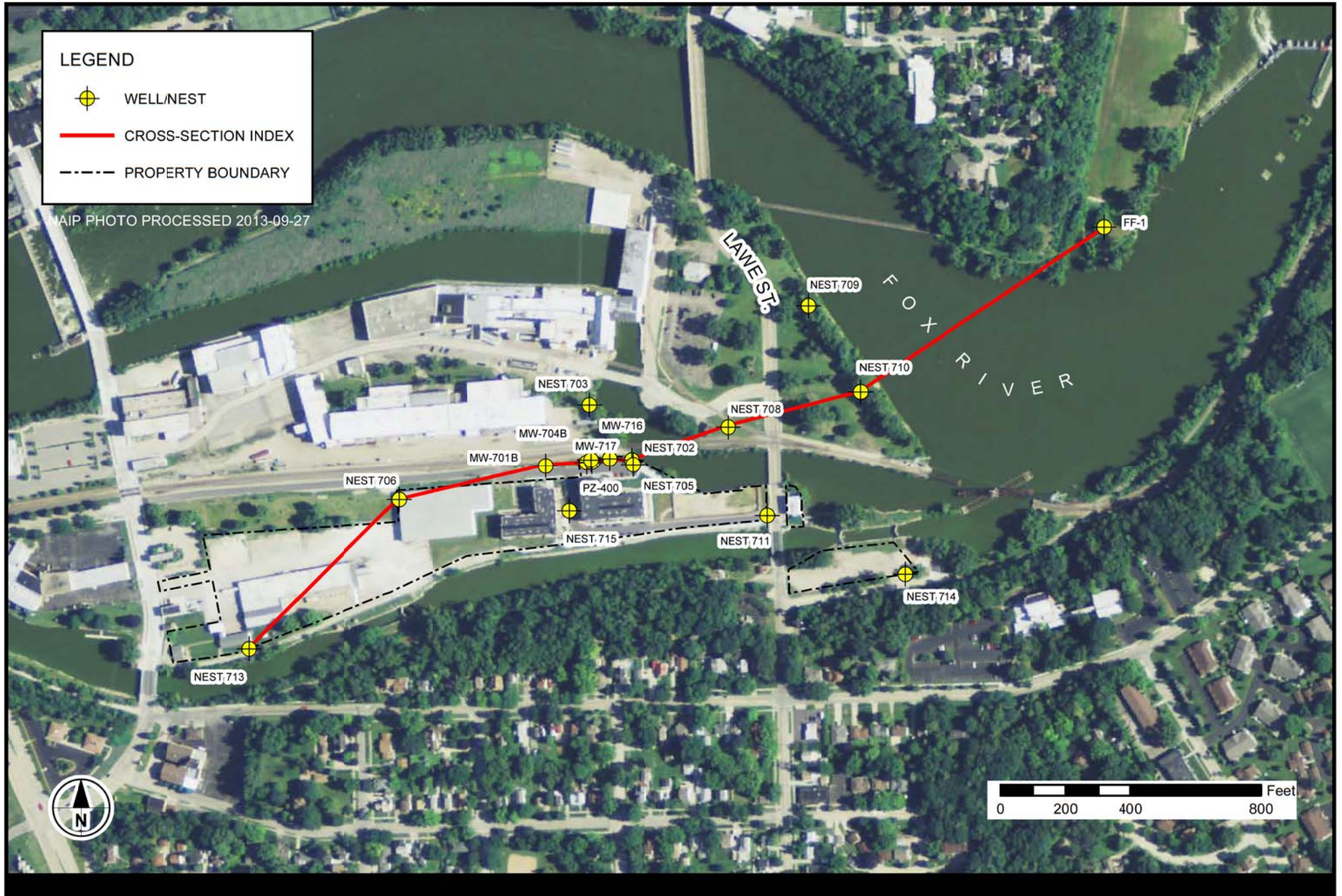
**FIGURE
2**

FORMER FOREMOST FARMS
 935 EAST JOHN STREET
 APPLETON, WISCONSIN

LOCATIONS OF SOIL BORINGS AND
 MONITORING WELLS

FIGURE
4







Locations of Former Foremost Farms & Kerwin Paper Co

Legend

- Parcel Lines
- Parcel Polygons
- Display Parcel Lines
- Monuments
- Tribal Status
 - Ojibwa Indians of Wisconsin
 - USA in Trust for Ojibwa Tribe
- Plat Boundary Lines
- Certified Survey Map
- Acreage
- Block
- Tax Key
- Lot Number
- Government Lot
- Parcel Notes
- Plat Names
- Private Claim
- Water Name
- 2010 Air Photos



DISCLAIMER: This map is not guaranteed to be accurate, correct, current, or complete and conclusions drawn are the responsibility of the user.

Author: J. Baski, MCHS	
Date Printed: 06/10/14 2:17 PM	
Source:	