



November 14, 2012

Aunt Peg's Oakland Ave., LLC
Attn: Leonard P. Gartenberg
11315 West 121st Terrace
Overland Park, KS 66213

Subject: Liability Exemption for Soil and Groundwater Contamination by an Offsite Source of Contamination at 4312-4334 North Oakland Avenue Shorewood, WI

FID: 241094590
BRRTS: 07-41-559506

Dear Mr. Gartenberg:

Purpose

The Department of Natural Resources ("the Department") has recently reviewed your request for an off-site exemption letter for the property located at 4312-4334 North Oakland Avenue Shorewood, Wisconsin, which will be referred to in this letter as "the Property." You have requested that the Department determine Leonard P. Gartenberg and Aunt Peg's Oakland Avenue, LLC 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 soil and groundwater that you believe is migrating onto the Property from an off-site source.

As you are aware, s. 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 and groundwater sampling data for the Property contained in the following documents:

- *"Limited Soil Assessment North Oakland Avenue Village of Shorewood"*, March 14, 1995, by Cooper Environmental & Engineering Resources, Inc.
- *"Reported Contamination at Queen's-Way Dry Cleaner at 4300 North Oakland Avenue, Shorewood"*, April 26, 1995, Responsible Party Letter from WDNR to Owner
- *"Site Investigation Report Shorewood Queensway Dry Cleaners"*, May 8, 2009, Environmental Forensic Investigations, Inc.
- *"Vapor Intrusion Assessment Status Report Shirdon Corp. d/b/a Shorewood Queensway Dry Cleaners"*, June 14, 2011, Environmental Forensic Investigations, Inc.
- Offsite Liability Exemption and Liability Clarification Application Form 4400-201, received October 22, 2012

Background

The Department considered the documents listed above in making the determinations presented in this letter. Shorewood Queensway located adjacent to and south of Aunt Peg's property has been used as a dry cleaning operation since the 1970s. PCE has been historically and currently being used as a dry cleaning solvent at the site.

Initial site investigation (May 2009) soil sampling results beneath the onsite building at soil boring locations SB-4 and SB-5 indicated PCE concentrations at 3,500,000 ppb at eleven feet bgs (SB-4) and 300,000 ppb at six feet bgs (SB-5). Outside on the eastside of the building at soil boring location SB-3, the PCE concentration at three feet was 53,000 ppb. Trichloroethene (TCE) concentrations were at 620 ppb at SB-4 (11-feet bgs), 640 ppb at SB-5 (6-feet bgs), and 4.8 ppb at SB-3 (3-feet bgs). These concentration values, at the time of the site investigation (May 2009) were above the soil residual contaminant level for inhalation at non industrial sites and the soil to groundwater pathway.

Groundwater contamination at MW-3, (eastside of the building) contained PCE at 1,200 ppb which is above the Ch. NR 140, Wisconsin Administrative Code, enforcement standard for groundwater quality of 5.0 ppb.

For Aunt Peg's property (June 2011), soil boring location SB-11 at 6-8 feet bgs indicated PCE at 72,000 ppb and TCE at 347 ppb on the eastside of the building that is also known as the Salon Divine business that is part of a series of businesses within the Aunt Peg's property. Groundwater monitoring well MW-5 at this same location indicated PCE (747 ppb), TCE (31 ppb), and cis-1,2-dichloroethene (44.2 ppb) above the Ch. 140 enforcement standards in May 2011.

Determination

Based upon the available information and in accordance with s. 292.13(2), Wis. Stats., the Department makes the following determinations regarding the presence of tetrachloroethene, trichloroethene, and cis-1,2-dichloroethene in soil and groundwater as indicated in either groundwater monitoring well MW-5, soil boring locations SB-11, SB-12, and SB-4 (see enclosed maps Figure 1 and 3):

1. The hazardous substance discharge originated from a source on property that is not possessed or controlled by Leonard P. Gartenberg and Aunt Peg's Oakland Avenue, LLC.
2. Leonard P. Gartenberg and Aunt Peg's Oakland Avenue, LLC did not possess or control the hazardous substance on the property on which the discharge originated.
3. Leonard P. Gartenberg and Aunt Peg's Oakland Avenue, LLC did not cause the discharge.
4. Leonard P. Gartenberg and Aunt Peg's Oakland Avenue, LLC will not have liability under the Hazardous Substance Spill Law for investigation or remediation of the soil, sediment or groundwater contamination originating from off-site onto the Property, provided that Leonard P. Gartenberg and Aunt Peg's Oakland Avenue, LLC 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. Leonard P. Gartenberg and Aunt Peg's Oakland Avenue, LLC 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. With respect to soil or sediment contamination only, Leonard P. Gartenberg and Aunt Peg's Oakland Avenue, LLC agrees to take one or more specified actions directed by the Department, if the Department determines that the actions are necessary to prevent an imminent threat to human health, safety or welfare or to the environment. This would occur after the Department has made a reasonable attempt to notify the party who caused the hazardous substance discharge about that party's responsibilities to investigate and clean up the discharge.
4. Leonard P. Gartenberg and Aunt Peg's Oakland Avenue, LLC agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.
5. Leonard P. Gartenberg and Aunt Peg's Oakland Avenue, LLC 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.

The Department may revoke the determinations made in this letter if it determines that any of the requirements under ss. 292.13(1) or (1m), 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 Leonard P. Gartenberg and Aunt Peg's Oakland Avenue, LLC, 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(2), Wis. Stats.

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for this activity is included at the top of this letter. The Department tracks information on contaminated properties in a Department database that is available on the Internet at <http://dnr.wi.gov/org/aw/rr/>. (See "BRRTS on the web" under "Contaminated Land Databases".) If you have any questions or concerns regarding this letter, please contact me at (414) 263-8644, by email at john.hnat@dnr.state.wi.us.

Specific Liability Clarification Questions

Two questions were requested with the offsite liability exemption determination:

1. *"If Aunt Peg's allows Queensway to install a vapor mitigation system at Aunt Peg's property, will the presence of the vapor system cause the DNR to find Aunt Peg's in "possession or control" of a hazardous substance?"*

Answer: No. Owners of property affected by an off-site discharge are exempt (ss. 292.13(1) and (1m), Stats.) from liability for groundwater or soil contamination. Vapors are secondary

to the original discharge – that is vapors arise from the spill of a hazardous substance into the groundwater or soil. As an owner of a building affected by vapors from an off-site discharge, Aunt Peg is not liable for the discharge nor does Aunt Peg “possess or control” the hazardous substance discharged. The mitigation system is intended strictly to address health risk to users/occupants of the building. The presence of the mitigation system does not establish “possession or control”.

2. *“Are the conditions of the attached access agreement unreasonable, such that if Queensway refuses to sign the access agreement and is therefore not allowed to access Aunt Peg’s property, the DNR will find Aunt Peg’s responsible for the hazardous substances at Aunt Peg’s property?”*

Answer: The basic question is: what is Aunt Peg’s responsibility with regard to vapor intrusion at the Aunt Peg property?

If the operation of the mitigation system installed on Aunt Peg’s property is required as a condition of closure for the Queensway site, Aunt Peg (as the property owner) will be required to operate and maintain the vapor mitigation system unless an agreement is reached with Queensway for implementation of the statutory provisions (ss. 292.12(5)(b)). Aunt Peg will also be required to inform any occupants or future purchasers of the requirement to operate and maintain the system.

Aunt Peg is responsible to provide a safe building for tenants. If Aunt Peg refuses access to Queensway, Aunt Peg can choose to install a mitigation system. If a mitigation system is NOT installed, the DNR can request the assistance of local and state health departments to assess health risks at Aunt Peg’s building. The health departments can make a recommendation on whether the building is safe for occupancy.

If you have any questions or comments, please feel free to contact me at the above address or at (414) 263-8644. Please refer to the FID number at the top of this letter in any future correspondence. Future correspondence should be sent directly to me at the above address.

Sincerely,



John J. Hnat, P.G., C.P.G.
Project Manager/Hydrogeologist
Southeast Region
Remediation and Redevelopment

C: William Scott, Gonzales, Saggio & Harlan, LLP
WDNR SER Files