

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
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SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

December 18, 2017

Estate of Gerald Kuehl
c/o Susan Kuehl, Representative for the Estate of Gerald Kuehl
121 Ashland Court
Sheboygan Falls, WI 53085

Christopher G. Sitzmann, Esq.
Sitzmann Law Firm, LTD.
231 W. Franklin Street
Appleton, WI 54911

Subject: Responsibility for Contamination – Estate of Gerald Kuehl
Quality Cleaners, 1226 11th Avenue, Grafton, WI
Tax Parcel Number: 10-060-10-09-001
WDNR BRRTS Activity # 02-46-560212 FID #: 246166470

Dear Ms. Kuehl and Mr. Sitzmann,

The purpose of this letter is to reconfirm that the Estate of Gerald Kuehl (“the Estate”) - represented by Christopher Sitzmann as legal counsel and Susan Kuehl as representative of the Estate - remains responsible for continuing to comply with Wis. Stat. § 292 and Wis. Admin. Code § NR 700 rule series, regarding the environmental contamination at the Quality Cleaners site (the Site), located at 1226 11th Avenue, Grafton, Wisconsin. As the Wisconsin Department of Natural Resources (“WDNR”) has discussed with you over the last several years, the Estate is responsible to “take the actions necessary to restore the environment to the extent practicable” pursuant to Wis. Stats. §292.11(3).

Further, Wis. Stats. § 292.21(2)(c), entitled “Responsibility of Lenders and Representatives”, states: “[t]his subsection does not limit the responsibility of any trust, estate or similar entity to take the actions required under s. 292.11 (2), (3), (4) or (7) (c) or any other provision of this chapter or to reimburse the department under s. 292.11 (7) (b).” A “representative” is “any person acting in the capacity of a conservator, guardian, court-appointed receiver, personal representative, testamentary trustee of a deceased person, trustee of a living trust, or fiduciary of real or personal property. For reasons described in the enclosed WDNR letter, Ms. Kuehl is not eligible for the representative exemption in Wis. Stats. § 292.21(2). But even if she was, the Estate is remains responsible for complying with Wis. Stats. § 292.11.

As you are aware, on March 15, 2013, Tom Sweet from Moraine Environmental, Inc., on behalf of Barbara & Gerald Kuehl notified the WDNR that groundwater and soil contamination had been detected at the Site described above. Following this notice, on March 18, 2013, WDNR issued a letter notifying Barbara & Gerald Kuehl of their responsibility for investigating and restoring the environment at the above-described Site under Wis. Stats. § 292.11.

Gerald Kuehl initiated investigation and other response action efforts, which continued until his death in April 2015. On December 28, 2015, at the request of attorney Sitzmann, WDNR issued a letter stating that WDNR would exercise enforcement discretion to not take enforcement action against the Estate “as long as environmental progress occurs at a reasonable rate.” This letter stated that this progress “includes the

advancement on completion of the site investigation, as well as a vapor assessment of neighboring buildings, if needed.”

From January 2016 to August 2016, the Estate’s environmental consultant continued to conduct limited response actions and submit documentation to WDNR. In a letter dated December 20, 2016, Christopher Sitzmann stated that: (1) the Estate no longer had the financial capacity to sign and pay for the work at the Site; (2) the heirs intended to disclaim any interest in the Site; and (3) it was likely that the cost to investigate and remediate the site would exceed the tax assessed value of the property.

In response to Attorney Sitzmann’s December 2016 letter, WDNR re-evaluated the response actions being proposed by the Estate, and WDNR proposed a more phased approach to the Estate for complying with its legal obligations. On March 24, 2017, WDNR notified attorney Sitzmann and the consultant, given the funds available, a “bare minimum investigation” focusing on occupied buildings downgradient of the Site could be a feasible next step, with the potential for more investigation work in the future. The WDNR remains willing to work with the Estate to move this project forward given the assets in the Estate and the income being generated from the rental units at the Site.

Since November of 2016, the WDNR has no records of the Estate spending any additional funds to comply with its legal obligations under Wis. Stats. §292. For the last year, WDNR asserts that the Estate has not made reasonable efforts to comply with state law over this period of time. According to Mr. Sitzmann’s letter of December 20, 2016, the Estate has at least \$45,000 in its checking account, with monthly rental income of \$875 from the Site. The Estate, based on county records and the Estate’s own admission, has ceased paying property taxes in 2016 and 2017, with intent to disclaim the Site and abandon it. The Estate and its representatives have not disclosed other personal or real property assets that could assist the Estate in fulfilling its obligations.

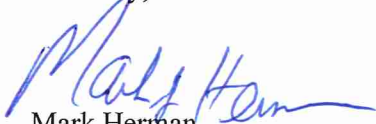
The proposed “disclaimer” of the site will not terminate the Estate’s environmental cleanup responsibilities. If the Estate cannot find a successor-in-interest to own the real estate, ownership and hence responsibility for environmental response will remain in the estate. The estate cannot be closed until it disposes of its assets. The Estate cannot dispose of the real estate by escheating it into state ownership.

The Estate must propose a response effort that is acceptable to DNR.

We await your response. Absent an acceptable proposal, we will refer this matter to the Wisconsin Department of Justice for further enforcement.

Thank you.

Sincerely,



Mark Herman
Attorney Supervisor

Cc:

Christopher Sitzmann, Sitzmann Law Firm Ltd.
Clerk of Circuit Court, Washington County (Case No. 15PR87)
Joshua Morrison, Treasurer, Ozaukee County