



January 23, 2014

WDNR BRRTS # 07-45-561157  
WDNR Site Name: Fox Valley Steel & Wire  
FID #: 445031620

Mr. James Monroe  
Fox Valley Steel & Wire  
111 N. Douglas St.  
Hortonville, WI 54944

**Subject:** Clarification of Environmental Liability at the Property Located at  
111 N. Douglas St., Hortonville, Outagamie County, Wisconsin  
Tax Parcel Number: 240031100

Dear Mr. Monroe:

### **Purpose**

The purpose of this letter is to provide Fox Valley Steel and Wire Co. with clarification as to the environmental liability for contamination present at 111 North Douglas Street, Hortonville, Outagamie County, Wisconsin, hereafter referred to as the "Property." The purpose of this letter is to clarify responsibility under s. 292.11, Wis. Stats., based on information provided to the Wisconsin Department of Natural Resources, hereafter referred to as the "WDNR."

The Property is 6.64 acres, currently zoned industrial, leased to Fox Valley Steel and Wire Co. and owned by Keystone Consolidated Industries, Inc. (a.k.a. Wire Products, Inc.) (Warranty Deed in Vol. 354, Page 117 in Register of Deeds for Outagamie County, Wisconsin), with parcel number 240031100. The Property is located in the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 35, Township 22 North, Range 15 East. Please refer to the **attached Figure B.1.b. Detailed Site Map – 2/12**, for a layout of the Property.

### **Request**

On October 31, 2013, the WDNR received a request for General Liability Clarification (GLC) pursuant to s. 292.55, Wis. Stats., on Form 4400-237 (R 06/13), hereafter referred to as the "GLC Request." The GLC Request included a list of 15 specific questions for WDNR response. The WDNR received the appropriate fee for the GLC Request pursuant to ch. NR 749, Wis. Adm. Code.

The WDNR received a revised GLC request on December 19, 2013 that included 6 of the original list of 15 questions, hereafter referred to as the "Revised GLC Request." The GLC Requests included information regarding the operational history at the Property that was not known to the WDNR's Remediation and Redevelopment (RR) Program prior to the investigation being completed in October 2012. In addition to review of the information included with the GLC Requests, the WDNR also reviewed the Fox Valley Steel & Wire file (Bureau for Remediation and Redevelopment Tracking System (BRRTS) #02-45-553699).

**Clarification of Environmental Liability**

The Wisconsin Hazardous Substance Spills Law, s. 292.11, Wis. Stats., commonly called the Spill Law, requires those who cause, possess or control 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.” This liability exists even if another person, such as a prior owner or tenant, caused the contamination. Section 292.55, Wis. Stats., authorizes the WDNR to issue letters concerning liability for environmental pollution.

The questions listed in the Revised GLC Request are included below along with the WDNR’s response:

- 1) *Is it possible that since June 2009, when the original RP designation was made, that all of the information relative to Responsible Party designation had not yet been made available, thus the RP designation may need to be revisited for accuracy?*

**WDNR Response to Q1** – Yes. Responsible party determinations are made based on the information available to the WDNR’s RR Program at the time a discharge to the environment is confirmed with laboratory data. In general, it is WDNR policy to work with the party who caused the discharge of a hazardous substance if they are known and able to conduct the investigation and remedial action needed.

**FOX VALLEY STEEL & WIRE – Metals case**

An initial letter of responsibility for the environmental contamination at the Property was issued to Fox Valley Steel and Wire Co. on June 5, 2009 under BRRTS #02-45-553699 because WDNR discovered evidence of a discharge to the environment by Fox Valley Steel and Wire Co. The WDNR did not have information about historical operations of the companies who operated at the Property and whether they had caused additional discharges. At that time, this included responsibility for releases of metals (zinc oxide sludge), volatile organic compounds (VOCs) and polynuclear aromatic hydrocarbons (PAHs) discovered in the soil and groundwater.

Upon receipt of additional site investigation information in early 2013, the WDNR split the responsibility for VOC and PAH contamination from responsibility for the metals contamination for two reasons:

- A. The VOC and PAH contamination did not appear to be related to the release of zinc oxide sludge that caused the metals contamination, and
- B. A causer for the VOC and PAH contamination could not be determined.

The WDNR acknowledges that Fox Valley Steel and Wire Co. collected environmental data in soil and groundwater up to this point.

The WDNR closed the metals contamination case, BRRTS #02-45-553699, on December 20, 2013 as Fox Valley Steel and Wire Co. had sufficiently addressed the case per the requirements of s. 292.11, Wis. Stats., and the ch. NR 700 series, Wis. Adm. rule series.

**KEYSTONE CONSOLIDATED INDUSTRIES INC – VOC and PAH case**

On April 10, 2013, the WDNR issued a letter of responsibility to the Property owner, Keystone Consolidated Industries, Inc. as the “possessor” or “controller” (per s. 292.11, Wis. Stats.) of the VOC and PAH contamination and assigned a separate tracking number, BRRTS #02-45-560221.

At that time, the WDNR also clarified that Fox Valley Steel and Wire Co. maintained responsibility for the metals contamination under BRRTS #02-45-553699.

- 2) *Is it possible to have multiple Responsible Parties designated in an investigation? Is it common?*

**WDNR Response to Q2** – Yes. As done at this Property, Fox Valley Steel and Wire Co. was named responsible for the metals contamination as a known causer (BRRTS #02-45-553699) and Keystone Consolidated Industries, Inc. was named responsible for the VOC and PAH contamination as property owner (BRRTS #02-45-560221).

- 3) *Is the land owner generally the RP?*

**WDNR Response to Q3** – As described above, under the Spill law, a property owner who possess and controls a discharge of hazardous substance is a responsible party. The land owner can be the primary responsible party; however, WDNR focus is first with the party who caused the hazardous substance discharge.

- 4) *If Keystone Consolidated Industries is named a Co-Responsible Party, based on FVS&W's submitted request, what documentation, if any, would be sent to Keystone representatives based on this change?*

**WDNR Response to Q4** – As described above, Keystone Consolidated Industries, Inc. is a Responsible Party under the Spill law because they possess and control the hazardous substances on the Property. In this instance, the WDNR was working with Fox Valley Steel and Wire Co. to conduct necessary actions under the Spill law because they caused a discharge at the site. The WDNR generally does not name a co-responsible party after the environmental investigation and cleanup work is complete.

- 5) *Given that Keystone has owned the property since 1986, installed the galvanizer (with less engineering controls than other galvanizers it had previously installed) and ran it for a longer period than FVS&W, is there any basis to name Keystone as the sole RP for the portion of the BRRTS activity #02-45-553699 relating to soil and water impact?*

**WDNR Response to Q5** – No. The WDNR issues letters of responsibility to causers based on laboratory data, visual observations and direct evidence that a party has caused the hazardous substance discharge. WDNR was informed about releases of zinc oxide sludge, observed visual evidence of overflows and collected environmental data to confirm the release to the environment by Fox Valley Steel and Wire Co. resulting in issuing a letter of responsibility to Fox Valley Steel and Wire Co. in June 2009. While Keystone Consolidated Industries, Inc. may have also caused a discharge at the site from their operations, WDNR does not have direct evidence of a discharge caused by Keystone Consolidated Industries, Inc.

- 6) *The WDNR designated Keystone as the sole RP for VOCs and PAHs. I have outlined the historical installation and use of the most-recent galvanizing process. As per my calculations, I believe Keystone is responsible for at least 64% of the additional portions of the investigation related to soil and water impact. If RP designation were to include both Keystone and FVS&W, would any numerical percentage be assigned by the WDNR or would both names be listed, allowing the companies to "work out the split details" themselves?*

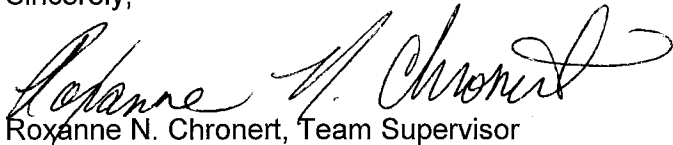
**WDNR Response to Q6** – It is not the WDNR's role to be involved in assigning percent responsibility or to assist in third party cost recovery efforts. There are currently no state laws on

cost recovery for third parties. Fox Valley Steel and Wire Co. can pursue its own cost recovery under federal law against Keystone Consolidated Industries, Inc., but it has the burden of proof regarding what the other party should contribute to any such settlement.

The tracking number for this Revised GLC Request is included at the top of this letter. The WDNR tracks information on all determinations such as this in a database that is available on the Internet at <http://dnr.wi.gov/botw/SetUpBasicSearchForm.do>. See "BRRTS on the web".

Please contact Jennifer Borski in Oshkosh at 920-424-7887 or at [Jennifer.borski@wisconsin.gov](mailto:Jennifer.borski@wisconsin.gov) with any questions. Thank you for your cooperation.

Sincerely,



Roxanne N. Chronert, Team Supervisor  
Northeast Region Remediation & Redevelopment Program

Attachment

Figure B.1.b. Detailed Site Map – 2/12

Copy:

File: FOX VALLEY STEEL & WIRE, BRRTS #02-45-553699

File: KEYSTONE CONSOLIDATED INDUSTRIES INC, BRRTS #02-45-560221

Electronic Copy:

Jennifer Borski, DNR

Annette Weissbach, DNR

Michael Prager, DNR

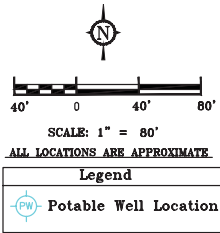
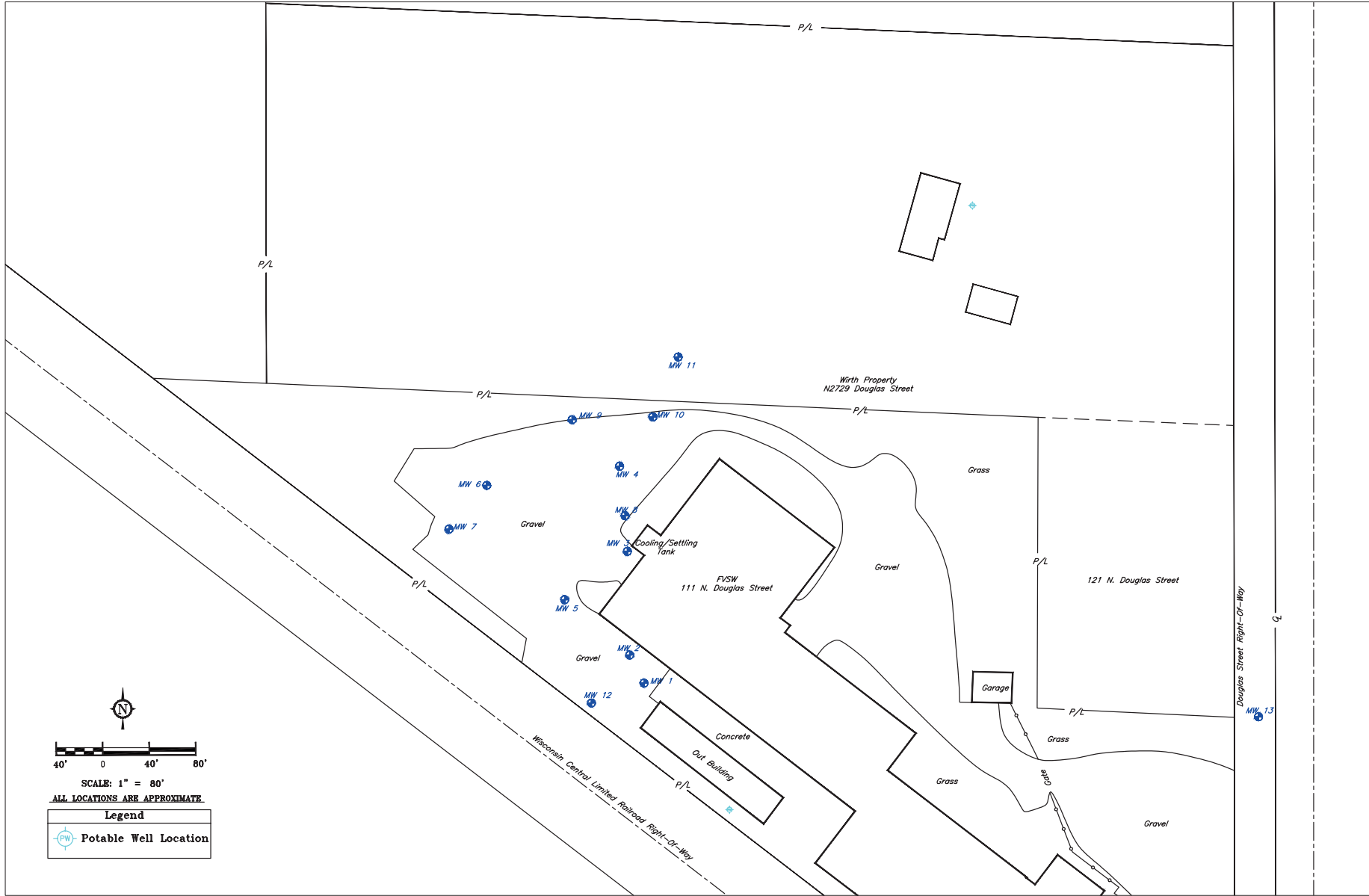


Figure B.1.b. Detailed Site Map