



March 28, 2016

North Shore Bank  
Mr. Darrel Eisenhardt  
15700 W. Bluemound Rd  
Brookfield, WI 53005

Subject: No Action Required Determination and Off-Site Liability Clarification for  
Proposed Lot 1, Main St, Green Bay, Wisconsin  
Portion of Parcel #: 21-1323-1  
BRRTS # 07-05-576376

Dear Mr. Eisenhardt,

### Purpose

The Department of Natural Resources (the Department) has reviewed your request for a liability clarification and off-site liability clarification letter for Proposed Lot 1 located on Main St, Green Bay, Wisconsin. Parcel # 21-1323-1, consisting of address points 1923 – 1935 Main St, is proposed to be divided into three lots for redevelopment purposes, herein referred to as PLOT 1, PLOT 2, and PLOT 3. North Shore Bank intends to acquire PLOT 1 from GB Real Estate Investments, LLC for a proposed redevelopment into a bank, so this request focuses on PLOT 1. Please refer to the attached Figure 2: Detailed Site Plan for a site map of the proposed lot divisions.

The purpose of this letter is to provide North Shore Bank (the Applicant) with clarifications as to environmental liabilities related to current environmental conditions on the property, and to determine what provisions of the off-site exemption North Shore Bank presently satisfies and the conditions under which North Shore Bank would satisfy all the requirements of the off-site exemption in Wis. Stat. § 292.13 for chlorinated solvent contamination that may potentially be migrating from PLOT 3. Currently, North Shore Bank is the prospective purchaser of PLOT 1. The Department received a \$700 fee for providing this letter pursuant to Wis. Stat. §§ 292.13(2) and (3), and Wis. Admin. ch. NR 749.

### Summary Determination

**Plot 1 No Response Actions Required:** There were minimal hazardous substance discharges on Plot 1 initially detected in soil that were not confirmed with follow-up sampling and minimal contaminants detected in groundwater below standards. Therefore, the Department determined that no response actions were required. The Department made the determination based on the data made available to the Department and the criteria in Wis. Admin. § NR 716.05.

**Plot 1 Off-site Liability Clarification:** Once parcel # 21-1323-1 is divided, North Shore Bank acquires Plot 1 from GB Real Estate Investments, LLC, if soil and/or groundwater contamination that was originally discharged from the One Hour Martinizing property (Plot 3) migrated to Plot 1, then North Shore Bank would qualify for the off-site liability exemption (as long as the owner continues to meet the off-site exemption conditions described below).

### **Waste Generator and Redevelopment Information**

The letter also further clarifies responsibility of the future owner of PLOT 1 and explains how the owner should make a waste determination and appropriately handle soil that may be excavated in the future as part of the redevelopment and construction. As a precautionary measure for construction of new buildings near known chlorinated solvent contamination, installing a passive vapor mitigation system (which can be designed to allow for conversion to an active system if needed) is recommended.

### **Request**

On March 2, 2016, General Engineering Company requested on behalf of North Shore Bank that the Department determine whether response actions are required for PLOT 1 under the Wis. Admin. ch. NR 700 rule series and whether North Shore Bank is exempt from Wis. Stat. §§ 292.11(3), (4) and (7)(b) and (c), commonly known as the "Spill Law," with respect to the existence of hazardous substances that North Shore Bank believes may be migrating onto PLOT 1 from the off-site chlorinated solvent source on PLOT 3. Wisconsin's Spill Law includes an "off-site exemption," in Wis. Stat. § 292.13 that limits the liability of a property owner. In particular, North Shore Bank has requested clarification as to whether or not North Shore Bank is eligible for the off-site liability exemption.

The following documents were submitted to the Department with the request:

- Technical Assistance, Environmental Liability Clarification or Post-Closure Modification Request (Form 4400-237) with requests for No Action Required, Off-site Liability Clarification, and Specific Liability Questions, General Engineering Company, October 21, 2015;
- Phase I Environmental Site Assessment, General Engineering Company, August 17, 2015; and
- Limited Phase II Environmental Site Assessment, General Engineering Company, October 20, 2015.

### **Background**

The Department considered the information listed above, the previous liability clarification letter issued to GB Real Estate Investments, LLC on December 15, 2015, and the information received for the open Bureau for Remediation and Redevelopment Tracking System (BRRTS) case One Hour Martinizing, BRRTS # 02-05-217276, to make the determinations presented in this letter.

The One Hour Martinizing case was opened on March 31, 1999 due to the presence of chlorinated solvent contamination (primarily tetrachloroethylene or PCE) from former dry cleaner operations at 1923 Main St, Green Bay, Wisconsin (parcel # 21-1323-1). This site has been investigated utilizing Dry Cleaner Environmental Response Fund (DERF) monies for soil and groundwater contamination from 1999 to present. No vapor investigation has been completed to date. The former dry cleaner building was demolished in 2013 and the concrete floor and footings remained in place. Recent soil excavations were conducted in 2015 within the areas of elevated chlorinated solvent concentrations; however, no formal documentation has been received by the Department as of the date of this letter.

As a planned redevelopment, GB Real Estate Investments, LLC has proposed to divide parcel # 21-1323-1 into three lots, as shown in the attached Figure 2: Detailed Site Plan. PLOT 3 would contain the known chlorinated solvent contaminant source, leaving PLOTS 1 and 2 to be redeveloped. In order to determine if there was undiscovered contamination on PLOTS 1 and 2 and chlorinated solvent contamination migrating from PLOT 3, General Engineering Company conducted a Phase I Environmental Site Assessment (ESA) and Limited Phase II ESA in August and October 2015, respectively.

The Phase I ESA concluded two Recognized Environmental Conditions (RECs): 1) contamination associated with the open BRRTS case One Hour Martinizing and 2) former operation of a service garage/repair facility on the west/northwest portion of parcel # 21-1323-1.

The Limited Phase II ESA was conducted concurrently with a geotechnical evaluation. Soil fill is present and a former service garage was operated on-site. Soil was analyzed for VOCs on PLOTS 1, 2 and 3, groundwater for VOCs and PAHs on PLOT 1, and groundwater for VOCs on PLOTS 2 and 3. Other common contaminants associated with the above conditions were not investigated as part of the Limited Phase II ESA. On PLOT 1, minimal petroleum contamination initially detected below state standards in soil was not confirmed with follow up sampling. No chlorinated solvents were detected. In groundwater, minimal PAHs were detected below state standards and VOCs were not detected. On PLOT 2, VOCs were not detected in soil or groundwater. On PLOT 3, the samples, collected beyond the area of known soil and groundwater contamination for the One Hour Martinizing case, had no VOC detections in soil or groundwater. Vapor sampling was not conducted during the Limited Phase II ESA.

### **Liability Determinations**

The Wisconsin Hazardous Substance Spill Law, Wis. Stat. § 292.11 commonly called the Spills 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." Wis. Stat. § 292.55 authorizes the Department to issue clarification letters concerning liability for environmental pollution.

#### **Plot 1 No Response Actions Required:**

Based on information submitted to the Department, minimal petroleum and polycyclic aromatic hydrocarbon (PAH) contamination below state standards has occurred on PLOT 1. Therefore, based on the criteria in Wis. Admin. § NR 716.05(2)(a) and the criteria in Wis. Admin. §§ NR 708.09(1) and (2), the Department has determined that no response actions, including further site investigation activities, is required under the Wis. Admin. ch. NR 700 rule series to respond to these discharges.

The Department does not approve Phase I or Phase II ESAs because rules have not been established in Wisconsin to define what constitutes an adequate Phase I ESA or Phase II ESA. The Department does use as guidance the American Society for Testing and Materials (ASTM) International Standard Guide for Environmental Site Assessments: Phase I Environmental Site Assessment Process (E1527-13) and Phase II Environmental Site Assessment Process (E1903-11).

The number and location of monitoring points, the types of media sampled, the number of samples collected, and the laboratory analysis performed are a matter of professional opinion. All areas of PLOTS 1, 2, and 3 were not assessed, the numbers of samples collected were limited based on professional judgment and financial considerations, and samples were not analyzed for all parameters. Therefore, the Department can only respond to the information and data as presented in the reports and cannot predict what might be discovered in the future and the consequences of those discoveries.

**Plot 1 Off-Site Liability Clarification:** Based on the Department's review of technical information, including the Technical Assistance, Environmental Liability Clarification or Post-Closure Modification Request (Form 4400-237) with additional requests for off-site liability clarification submitted in accordance with Wis. Stat. § 292.13(2), as well as the case file for the One Hour Martinizing site, the

Department makes the following determinations under Wis. Stat. §§ 292.13(3) and 292.55 if the presence of chlorinated solvents in soil, groundwater, and/or vapor were to be detected at PLOT 1 in the future:

1. The hazardous substance discharge originated from a source on property that is not possessed or controlled by North Shore Bank.
2. North Shore Bank did not possess or control the hazardous substances on the property on which the discharge originated.
3. North Shore Bank did not cause the discharge.
4. North Shore Bank will not have liability under the Hazardous Substance Spill Law for investigation or remediation of the hazardous substance discharges, provided that North Shore Bank does not take possession or control of PLOT 3 on which the discharges originated.

Because North Shore Bank does not currently own PLOT 1 and there is no confirmed chlorinated solvent contamination identified on PLOT 1, the Department is not able at this time to issue North Shore Bank a letter determining that North Shore Bank qualifies for all the provisions of the off-site liability exemption. However, when North Shore Bank acquires title to PLOT 1, if sampling is conducted in the future that confirms there is contamination on PLOT 1 that migrated from Plot 3, and the conditions in Wis. Stat. § 292.13 are satisfied, North Shore Bank would qualify for the off-site liability exemption.

A person who meets all the conditions of the off-site exemption is not responsible for investigating and cleaning up environmental contamination that migrates onto his or her property from a neighboring property, with certain limitations, if the statutory conditions are met.

#### **Exemption Conditions For Off-Site Liability Clarification**

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

1. The facts upon which the Department based its determination are accurate and do not change.
2. North Shore Bank agrees to allow the following parties to enter PLOT 1 to take action to respond to the discharges: the Department and its authorized representatives; any party that possessed or controlled the hazardous substances or caused the discharge; and any consultant or contractor of such a party.
3. North Shore Bank agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharges.
4. North Shore Bank 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.

#### **Waste Generator and Redevelopment Information**

If soil or other fill material is excavated, it is the responsibility of the person generating the material to make a waste determination. Clean soil and other materials from PLOT 1 can be re-used on PLOT 1 without additional DNR approval; however, the generator of the soil would need to follow the placement requirements in Wis. Admin. § 500.08 that apply to disposal of "clean soil" and other materials. If the generator of the soil discovers contamination in the soil on PLOT 1, the generator would need to follow Wis. Admin. § NR 718.

Since there is known chlorinated solvent contamination near PLOT 1 and a vapor investigation has not been completed yet, it is recommended as a precautionary measure in construction of new buildings to install passive vapor mitigation systems (which can be designed to allow for conversion to an active system if needed). Another precautionary measure that could be conducted in this case is installation of clay plugs for utilities that will connect to the future buildings that could further reduce any potential vapor migration.

### **Conclusion**

This letter relates and refers only to those conditions described above and to information and data submitted to the Department in the request for this letter. The Department makes no determination concerning the presence or absence of hazardous substances, other than those identified in the documents and reports listed above, which General Engineering Company submitted to the Department on behalf of North Shore Bank. In the future, if the Department becomes aware of new information concerning the contaminants referenced above, or the presence of other contaminants on PLOT 1, the Department will evaluate that data at that time to determine if any response actions are required. Whenever possible, the Department requires the person who caused the discharge to take the appropriate response actions.

Also, future property owners are eligible for the exemption under Wis. Stat. § 292.13, if they meet the requirements listed in that statutory section. The determinations in this letter regarding a liability exemption, however, only apply to the Applicant, and may not be transferred or assigned to other parties. The Department can provide a written determination to future owners, if such a determination is requested in accordance with the requirements of Wis. Stat. § 292.13(2) and Wis. Admin. § NR 749.

The Bureau for Remediation and Redevelopment Tracking System identification number for this activity is 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/topic/brownfields/botw.html>.

If you have any questions or concerns regarding this letter, please contact Tauren Beggs at (920) 662-5178, by email at [Tauren.Beggs@wisconsin.gov](mailto:Tauren.Beggs@wisconsin.gov) or at the address listed in the letterhead.

Sincerely,



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

Attachments: Figure 2: Detailed Site Plan

cc: Brian Youngwirth, General Engineering Company (electronic)  
Kristen Dufresne, DNR (electronic)  
Tauren Beggs, DNR (electronic)  
Michael Prager – RR/5 (electronic)

