

November 14, 2016

FID#: 471007130  
BRRTS#: 06-71-578231 & 02-71-555288

City of Menasha  
Kevin Englebert  
Associate Planner  
140 Main Street  
Menasha WI 54952

SUBJECT: **Approval to Proceed in the Voluntary Party Liability Exemption Process**  
06-71-578231 for the Realty Opus Property located at 867 Valley Rd, Menasha, WI  
County Tax Parcel # (s): 740075300

Dear Mr. Englebert:

The Department of Natural Resources (DNR) has received your application to proceed with an environmental investigation and cleanup under the Voluntary Party Liability Exemption (VPLE) process identified in Wis. Stat. § 292.15. This statute establishes environmental liability exemptions available to voluntary parties that successfully complete the VPLE process.

#### **DOCUMENTS AND PAYMENTS RECEIVED**

The DNR received the following documents and payments that you submitted:

- Voluntary Party Liability Exemption Application (DNR Form 4400-178);
- A non-refundable check for the \$250 VPLE application fee, made payable to DNR;
- A map of the Property identifying location and property boundaries;
- A copy of the Property deed and Winnebago County Certified Survey Map No. 3878
- Completed Phase I Environmental Site Assessment Report – January 9, 2015, by Key Engineering Group

#### **APPLICATION REVIEW AND APPROVAL TO PROCEED**

After reviewing your application, and other associated documents, the DNR approves your request to enroll the property identified in the subject line of this letter (the "Property") in the VPLE process for the property identified above and depicted on the attached map.

Based on the information you provided, DNR makes the following determinations:

- The discharge of a hazardous substance has occurred at the Property;
- You, the applicant, meet the definition of a "voluntary party", per Wis. Admin. §. NR 750; and
- The Property does not include any of the ineligible facilities or sites listed in Wis. Stat. §§ 292.15(7)(a) through (d).

## GETTING STARTED

The first step in the VPLE process is to conduct an environmental investigation of the entire Property. A VPLE investigation is more comprehensive than a basic investigation of known or suspected areas of contamination.

The VPLE environmental investigation includes Phase I and II environmental site assessments, as well as a Wis. Admin. § NR 716, site investigation of the whole Property. The investigation must assess all discharges of hazardous substances on the Property, discharges that have migrated from the Property, and solid waste disposed of on the Property

Previous environmental work done at the Property, if any, may satisfy some or all of the requirements for a VPLE investigation. Discuss these situations with your DNR project manager.

To obtain the Voluntary Party Liability Exemption, DNR project managers must review and approve all necessary environmental investigation and response actions at the Property to ensure compliance with Wis. Stats. §§ 292.11 and 292.15, and with the Wis. Admin. NR 700 rule series.

Please submit a Phase II environmental assessment for the Property to DNR to begin the VPLE investigation stage of the process. Once received, DNR will review the environmental reports you submit and let you know if additional work is necessary to complete the VPLE environmental investigation requirement.

## VPLE FEES

Thank you for submitting the VPLE application fee of \$250, which DNR received on October 24, 2016. All VPLE participants are responsible for paying the costs of DNR's review and oversight of their project.

In addition to the application fee, DNR requires an advance deposit before any DNR work occurs on a VPLE project. An advance deposit of \$2,000 for DNR oversight is required for VPLE properties less than one acre in size, and \$4,000 is required for properties one acre or larger.

**Please submit the appropriate advance deposit to DNR, based on the acreage of your Property, as soon as possible.** You can mail the check to Denise Danelski, at the address provided on this letterhead. No DNR work will occur on your VPLE project until this payment is received. DNR costs related to your project will be deducted from your advance deposit at the rate of \$105/hour. This hourly rate is evaluated every year, and is subject to change. DNR costs are deducted as they are incurred until the project is completed, or until the deposit is spent, whichever comes first.

If your VPLE project is completed before your advance deposit is exhausted, all remaining monies will be refunded to you. If, however, DNR review costs for your project exceed the deposit amount, you will receive quarterly invoices that must be paid within 30 days.

DNR review costs associated with your VPLE project will vary depending on the complexity and size of the property, as well as the completeness of the information that you submit. DNR costs for most VPLE projects range from \$2,000 to \$10,000, but higher and lower costs are possible.

If you decide to withdraw from the VPLE process, please notify the DNR in writing. Remaining deposit monies, if any, will be refunded to you.

### **VPLE PROPERTIES WITH SOLID WASTE DISPOSAL AREAS**

All VPLE properties must obtain site closure under Wis. Admin. Ch. NR 726, to receive liability protection. Achieving NR 726 closure at properties that include a solid waste facility can be technically challenging in general, and VPLE requirements impose an additional hurdle.

Wis. Stat. § 292.15(7)(e), specifies that a VPLE property with a solid waste facility or waste site must be able to be closed by DNR without an ongoing, post-closure, requirement to maintain an active remedial system. These types of systems include groundwater monitoring, leachate collection or treatment, or active gas extraction that is required as a condition of closure.

It is possible to achieve VPLE closure at a property with a solid waste facility, but a realistic upfront assessment of everything needed to get there is highly recommended. DNR staff is available to talk this through with you.

### **DUTIES OF APPLICANTS, PROPERTY OWNERS AND POTENTIALLY RESPONSIBLE PARTIES**

If a voluntary party in the VPLE process fails to make reasonable progress towards completing the investigation and remedial actions necessary, or fails to submit progress reports, the DNR may withdraw the party from the program.

If a voluntary party withdraws from the VPLE process, or discontinue clean-up efforts, the party may still have legal and financial responsibilities at the Property. Wisconsin law assigns responsibility for environmental cleanups in Wis. Stat. § 292.11(3). This statute declares, "a person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall 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 the state."

Anyone who currently owns or controls the Property, or caused the hazardous substance discharge, is required by state law to complete all necessary work to restore the environment and minimize effects of discharges on the Property and migrating from the Property.

Whether or not the Property is enrolled in the VPLE process, DNR will continue to work with individuals and entities that caused the hazardous substance discharge, and/or own or control the Property to respond to the discharge.

### **FUTURE CONDITIONS**

The approval to proceed in the VPLE process granted in this letter is based on information available to DNR at the time your application was reviewed. If, in the future, additional information becomes available which indicates that the Property is not eligible for the VPLE for some reason (e.g., it does not meet the conditions in s. 292.15(7)), DNR may remove the Property from the VPLE process.

## WELCOME TO THE VPLE PROCESS

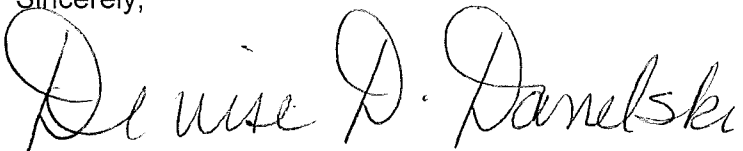
Thank you for entering the Voluntary Party Liability Exemption process. The liability exemptions available upon completion of the VPLE process are certainly a compelling objective.

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for the Property is listed at the top of this letter. Information about the Property and other cleanup sites can be found in the BRRTS database, which is at <http://dnr.wi.gov/botw/SetUpBasicSearchForm.do>.

**The DNR project manager assigned to your VPLE project is Kevin McKnight, located at 625 E County Rd Y, STE 700, Oshkosh WI 54901-9731. You can contact your project manager at 920-424-7890 or [kevin.mcknight@wisconsin.gov](mailto:kevin.mcknight@wisconsin.gov).** Please direct all future correspondence relating to the Property to your project manager.

The DNR looks forward to working with you, as you address contamination on and migrating from the Property and complete the VPLE process. We strive to provide prompt and outstanding service.

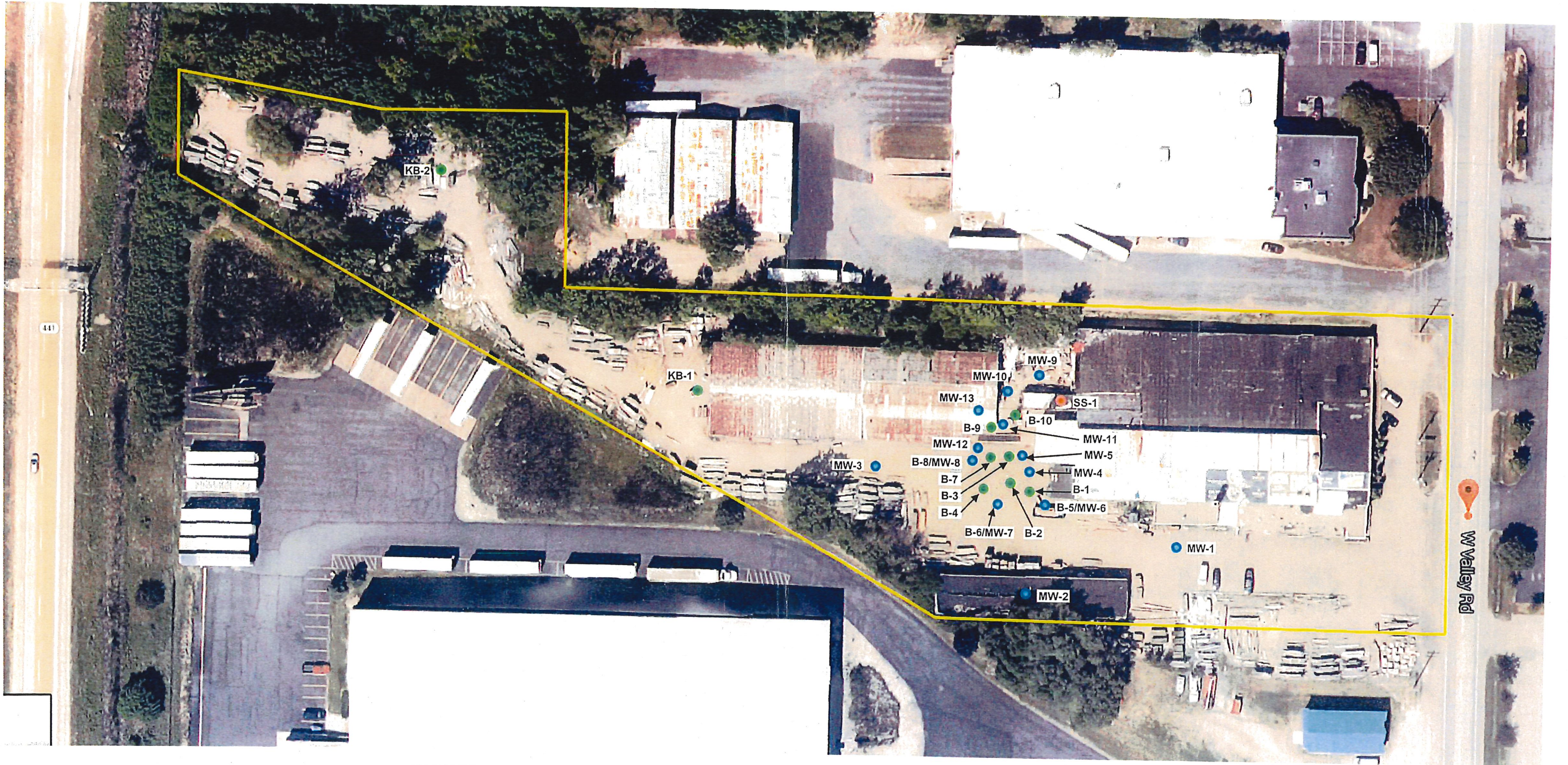
Sincerely,



Denise D. Danelski  
Outreach/Environmental Program Associate  
Remediation and Redevelopment Program  
Wisconsin Department of Natural Resources

Attachments: Map of the Property

cc: Kevin McKnight – Oshkosh  
D'Arcy Gravelle, Key Engineering Group Ltd, 735 N Water St, STE 510,  
Milwaukee WI 53202  
Michael Prager - RR/5



Location: Menasha, Wisconsin	Map Year:
Project: 2412018	Date: 2/24/2015

FIGURE 1  
 DETAILED SITE MAP  
 REALTY OPUS PROPERTY  
 867 W. VALLEY ROAD  
 MENASHA, WISCONSIN

