

November 3, 2017

BRRTS: 07-49-579980

Jared Lehman
1900 Riley Road
Sparta, Wisconsin 54656

Subject: Liability Clarification for a Prospective Purchaser of Property Located at St. Croix Valley Hardwoods, 230 South Duncan Street, Luck, Wisconsin, impacted by suspected contamination from another property, parcel #: 146-00493-0000

Dear Mr. Lehman:

Purpose

The Department of Natural Resources ("the Department") has reviewed your request for an off-site exemption letter for St. Croix Valley Hardwoods, 230 South Duncan Street, Luck, Wisconsin, referred to in this letter as "the Property." Please refer to the attached Figure 3 for a site map of the Property. The purpose of this letter is to determine what provisions of the off-site exemption you presently satisfy as a potential purchaser of the Property and the conditions under which you ("the Applicant") would satisfy all the requirements of the off-site exemption in s. 292.13, Wis. Stats. Currently, Emerald Hardwood Services LLC is the potential purchaser of the Property. The Department received a \$700 fee for providing this letter pursuant to s. 292.13 (2) and (3), Stats, and ch. NR 749, Wis. Admin. Code,

Summary Determination

Other than owning the Property, the provisions in the off-site exemption statute are satisfied by Emerald Hardwood Services LLC for this Property and Emerald Hardwood Services LLC will not be held responsible for investigation or cleanup of the substances migrating from another property, if they continue to satisfy all conditions as described in this letter. When you acquire the Property, you would have limited responsibility under ss. 292.12 and 292.13, Stats, for the groundwater contamination that has migrated or is migrating onto the Property. The conditions for the off-site exemption would be fully satisfied when you acquire title to the Property.

Request

On November 2, 2017, you requested that the Department determine whether you are exempt from s. 292.11(3), (4) and (7)(b) and (c), Wis. Stats., commonly known as the "Spill Law," with respect to the existence of hazardous substances in groundwater that you believe are migrating onto the Property from a source on another property. Wisconsin's Spill Law includes an "off-site exemption," in s. 292.13, Wis. Stats., that limits the liability of a property owner. In particular, you have requested clarification as to whether or not you are eligible for the off-site liability exemption.

The following documents were submitted to, or reviewed by the Department with the request:

- The off-site application form dated November 2, 2017;
- Phase I Environmental Site Assessment, St. Croix Valley Hardwoods, Inc., 230 Duncan Street, Luck Wisconsin, Braun Intertec, March 31, 2014;
- Phase II Environmental Site Assessment, St. Croix Valley Hardwoods, Inc., 230 Duncan Street, Luck Wisconsin, Braun Intertec, May 2, 2014;
- Initial Site Investigation Report, St. Croix Valley Hardwoods, Inc., 230 Duncan Street, Luck Wisconsin, Braun Intertec, August 29, 2014;
- Summary of Groundwater Data Related to St. Croix Valley Hardwoods, Inc., Property at 230 Duncan Street, and Two Upgradient Sites, Landmark Environmental, December 30, 2014;
- Additional Phase II Environmental Investigation, 230 Duncan Street, Luck Wisconsin, Landmark Environmental, April 21, 2016;
- Groundwater Investigation Report, 230 Duncan Street, Luck Wisconsin, Landmark Environmental, July 2017.

Background

The Department considered the documents listed above in making the determinations presented in this letter. The Property is owned by SCVH Luck Properties LLC which uses it for lumber manufacturing. No releases of hazardous substances are currently documented for the site. Based on the available information it appears contaminated groundwater has migrated onto the Property from the Laundry Basket property to the east. A site investigation, overseen by the Wisconsin Department of Natural Resources is currently ongoing at the Laundry Basket under BRRTS # 02-49-544893.

The determinations listed below state which provisions in the off-site exemption statute you presently satisfy for this Property, and whether or not, upon taking title to the Property, the conditions for the off-site exemption would be fully satisfied.

The off-site exemption in s. 292.13, Wis. Stats., limits the environmental liability of a person in possession, (i.e., who owns a property) or control of a property affected by the discharge of a hazardous substance, when the discharge originates from another source not on the Property. At the present time, you do not possess or control the Property, but it is the Department's understanding that you intend to purchase the Property. Because you do not currently possess or own the Property, the Department cannot issue a written determination that all the provisions in s. 292.13, Wis. Stats., have been satisfied. However, the Department does have the ability under s. 292.55, Wis. Stats., to clarify a person's present or future liability for the environmental pollution of a property.

Liability Determinations

Based upon the available information and in accordance with s. 292.13, Stats., the Department makes the following determinations regarding the presence of tetrachloroethene, trichloroethene, and cis-1,2-dichloroethene contamination in the groundwater on the Property found in monitoring wells MW-13D, MW-15S, MW-15D, MW-16S, and MW-16D which are shown on the attached Figure 3, Property Layout Map and Monitoring Well Locations prepared by Landmark Environmental LLC.

1. The hazardous substance discharge originated from a source on property that is not possessed or controlled by Emerald Hardwood Services LLC.

2. Emerald Hardwood Services LLC did not possess or control the hazardous substances on the property on which the discharge originated.
3. Emerald Hardwood Services LLC did not cause the discharge.
3. Emerald Hardwood Services LLC will not have liability under the Hazardous Substance Spill Law for investigation or remediation of the soil or groundwater contamination originating from another site onto the Property, provided that Emerald Hardwood Services LLC does not take possession or control of the property on which the discharges originated.

Because you do not currently own the Property, the Department is not able at this time to issue you a letter determining that you qualify for all the provisions of the off-site liability exemption. However, when you acquire title to the Property, and the conditions in s. 292.13, Stats, are followed, you will fully qualify for the off-site liability exemption.

Exemption Conditions

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

1. The facts upon which the Department based its determination are accurate and do not change.
2. Emerald Hardwood Services LLC agrees to allow the following parties to enter the Property 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. Emerald Hardwood Services LLC agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharges.
4. Emerald Hardwood Services 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.

Responsibilities for Continuing Obligations

In addition to the conditions above, after the contamination at the source property is remediated, the approval may include continuing obligations at the source property as well as your Property. Often residual contamination remains after an approved environmental cleanup is completed and sometimes that approval includes requirements to maintain engineering controls, such as a cap or soil cover, to reduce the impact of the contamination. You may also be required to obtain DNR approval to construct a water supply well on your Property. If the request for cleanup approval includes requirements for your Property, the party conducting the cleanup is required to notify you before the DNR reviews the proposal.

Conclusion

The Department may revoke the determinations made in this letter if it determines that any of the requirements under sections 292.13(1) or (1m), Wis. Stats., cease to be met.

With the exception of owning the Property, the provisions in the off-site exemption statute are satisfied by Emerald Hardwood Services LLC for this Property. The conditions for the off-site exemption would be fully satisfied if Emerald Hardwood Services LLC takes title to the Property. 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 her or his property from a neighboring property, with certain limitations, if the statutory conditions are met.

Also, future Property owners are eligible for the exemption under section 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 the Applicant, 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 section 292.13(2), Wis. Stats.

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) 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 me at 715 762 1352, or by email at Philip.richard@wisconsin.gov.

Sincerely,



Philip E. Richard
Hydrogeologist
Remediation & Redevelopment Program

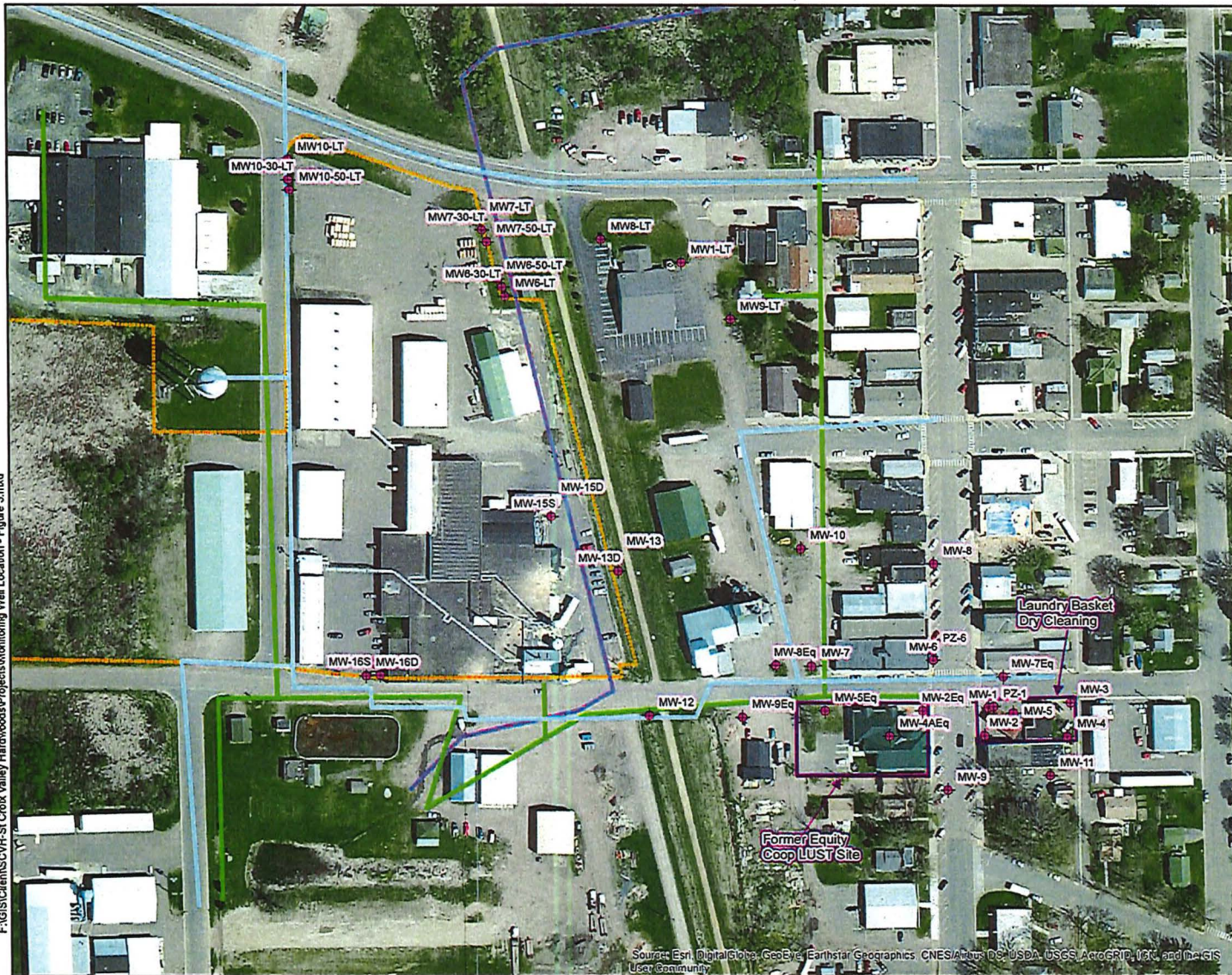
Attachment: Figure 3, Property Layout Map and Monitoring Well Locations

cc: John Wyciskalla
Braun Intertec
2309 Palace Street
La Crosse, Wisconsin 54603

Michael Prager WDNR (electronic)
Carrie Stoltz, WDNR (electronic)

File

FIGISClient\SVH-St Croix Valley Hardwoods\Projects\Monitoring Well Location - Figure 3.mxd



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

FIGURE 3
PROPERTY LAYOUT MAP AND
MONITORING WELL LOCATIONS
230 Duncan Street
Luck, Wisconsin
LANDMARK ENVIRONMENTAL, LLC

- Legend**
- Well Location
 - Nearby Properties
 - Approximate Location of Water Main
 - Approximate Sewer (Gravity Mains)
 - Approximate Sewer (Pressurized Mains)
 - Property Boundary

