

Mylotta, Pamela A - DNR

From: Mylotta, Pamela A - DNR
Sent: Friday, October 2, 2020 1:20 PM
To: 'dseibel@seibelfalkner.com'
Cc: Kate Juno
Subject: Off-site Exemption, Hampton WFB, LLC, 245-261 E Hampton Avenue
Attachments: 20201002_640_Offsite_Ltr_Seibel.pdf

Dear Mr. Seibel,

Please find attached the offsite exemption determination provided by DNR for the property owned by Hampton WFB, LLC, located at 245-261 E Hampton Avenue, Milwaukee, regarding chlorinated solvent vapors which migrated from the adjacent One Hour Martinizing remediation site, located at 285 East Hampton Avenue, Milwaukee, Wisconsin, FID: 241176650, BRRTS: 02-41-543260. The DNR project manager for the One Hour Martinizing site, Mr. John Hnat, has retired and as his supervisor I have reviewed and finalized this letter for your property. If you have any questions about this letter or the One Hour Martinizing site, please contact me. Thank you.

Pam

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Pamela A. Mylotta

Southeast Region Team Supervisor – Remediation & Redevelopment Program
Wisconsin Department of Natural Resources

Cell Phone: (414) 374-2423
pamela.mylotta@wisconsin.gov





October 2, 2020

Mr. Daniel Seibel
2060 North Humboldt Blvd., Suite 225
Milwaukee, WI 53212

Subject: Off-site Liability Exemption for the Property Located at
245-261 East Hampton Avenue (AKA 249 East Hampton Ave.), Milwaukee, WI,
with Vapor Contamination from An Offsite Source
Parcel #: 2420223100, FID: 341301950, BRRTS: 07-41-582152

Dear Mr. Seibel:

Purpose

The Department of Natural Resources ("DNR") recently reviewed your request for an off-site exemption letter for the property located at 245-261 East Hampton Avenue, Milwaukee, Wisconsin, which will be referred to in this letter as "the Property." Refer to the attached "Milwaukee County Land Information Report, Tax Key: 2420223100", for a map of the Property. The DNR received a \$700 fee for providing this letter pursuant to Wis. Stat. §§ 292.13 (2) and (3), and Wis. Admin. Code ch NR 749.

Summary Determination

The DNR, based on the information made available to it, confirms that Daniel Seibel (Hampton WFB, LLC) qualifies for the off-site liability exemption, and Daniel Seibel (Hampton WFB, LLC) is not responsible for investigation or cleanup of the contamination that originated on a neighboring property, if they continue to satisfy all conditions as described in this letter. The Property owner may be responsible for limited actions that are described in this letter, under Wis. Stat. §§ 292.12 and 292.13, for vapor contamination that migrated onto the Property.

Request

You have requested that the DNR determine if Daniel Seibel (Hampton WFB, LLC) is exempt from Wis. Stats. §§ 292.11(3), (4) and (7)(b) and (c), (commonly known as the "Spill Law"), with respect to the existence of a hazardous substance discharge detected in the vapor, that you believe is migrating onto the Property from an off-site source.

Wis. Stats. § 292.13(2) requires the DNR to issue, upon request, a written determination regarding a liability exemption for a person who possesses or controls property that is contaminated by an off-site discharge when certain conditions are met. To make this determination, the DNR reviewed information about the Property, including soil, groundwater, and vapor sampling data for the Property and other sites contained in the following documents:

- Off-Site Liability Exemption and Liability Clarification Application form (Form 4400-201) dated July 15, 2020
- “Off-Site Liability Exemption and Liability Clarification, 245-261 E. Hampton Avenue, Milwaukee, Wisconsin”, July 14, 2020, L F Green Development, LLC
- Milwaukee County Land Parcel Report, Tax Key: 2420223100, July 13, 2020
- “Phase I Environmental Site Assessment, 245-261 East Hampton Avenue Milwaukee, Wisconsin”, August 16, 2018, Friess Environmental Consulting, Inc.
- Off-Site Liability Exemption and Liability Clarification Application form (Form 4400-201) dated September 4, 2018
- Letter to John Aliota, “Off-Site Liability Exemption for the Property Located at 249 East Hampton Avenue Milwaukee, WI, with Soil, and/or Groundwater Contamination from an Off-Site Source, FID: 341301950, BRRTS: 07-41-582152
- Case File: One Hour Martinizing, 285 East Hampton Avenue, Milwaukee, Wisconsin, FID: 241176650, BRRTS: 02-41-543260

Background

The DNR considered the documents listed above in making the determinations presented in this letter. The Property has been affected by chlorinated solvents from another property, One Hour Marinizing, east of the Property and located at 285 East Hampton Avenue, Milwaukee, Wisconsin. The Property includes a four-unit strip mall currently occupied by Upper Crust Pizza, Wisco Vapes, Hampton Self-Serve Laundry, Aliota’s Restaurant, and a Dairy Queen in a separate building on the westside of the Property. To investigate the potential of contamination coming onto the Property from off-site, soil, groundwater, and sub-slab vapor sampling was conducted on the Property (see attached Figures B.2.a, B.3.b, and B.4.a). Soil boring samples SB-17, SB-21, and SB-22 indicated no detects for volatile organic compounds (VOCs). Groundwater monitoring well MW-15, indicated no detects for VOCs. Chlorinated VOC (CVOC) detects were indicated in sub-slab vapor samples for tetrachloroethylene (PCE) and trichloroethylene (TCE) including SSV-7 (PCE = 1,520 ug/m³ and TCE = 30.1 ug/m³), SSV-8 (PCE = 73.3 ug/m³), and SSV-10 (PCE = 1,050 ug/m³ and TCE = 12.4 ug/m³). Sub-slab vapor sample SSV-9 had no detects. The sub-slab sample results were below the small commercial vapor risk screening levels (VRSLs). There is no known source of the CVOCs on the Property. The Property has detected vapor contamination. Based on the information provided to the DNR, the Property is not the source of the detected contamination.

Determination

Based upon the available information and in accordance with Wis. Stat. § 292.13, the DNR makes the following determinations regarding the presence of PCE and TCE in the sub-slab vapor sample locations SSV-7, SSV-8, and SSV-10, included on the attached maps:

- Soil Contamination, One Hour Martinizing, Enviroforensics, May 7, 2020
- Groundwater Contamination, One Hour Martinizing, Enviroforensics, June 1, 2020
- Vapor Analytical Results for Detected Drycleaner Related Chlorinated Compounds, One Hour Martinizing, Enviroforensics, May 7, 2020

The DNR, based on the information available, determined that the Property owner met the conditions in Wis. Stats. § 292.13 to qualify for the liability exemption, including but not limited to the following provisions:

1. The hazardous substance discharge originated from a source on property that is not possessed or controlled by Daniel Seibel (Hampton WFB, LLC).
2. Daniel Seibel (Hampton WFB, LLC) did not possess or control the hazardous substance on the property on which the discharge originated.
3. Daniel Seibel (Hampton WFB, LLC) did not cause the discharge.
4. Daniel Seibel (Hampton WFB, LLC) will not have liability under the Spill Law for investigation or remediation of the soil, groundwater, and vapor contamination originating from off-site onto the Property, provided that Daniel Seibel (Hampton WFB, LLC) does not take possession or control of the property on which the discharge originated.

Exemption Conditions

The DNR's determination, as set forth in this letter, is subject to compliance with the following conditions, as specified in Wis. Stats. §§ 292.13(1) and (1m).

1. The facts upon which the DNR based its determination are accurate and do not change.
2. Daniel Seibel (Hampton WFB, LLC) agrees to allow the following parties to enter the Property to take action to respond to the discharge: the DNR and its authorized representatives; any party that possessed or controlled the hazardous substance or caused the discharge; and any consultant or contractor of such a party.
3. Daniel Seibel (Hampton WFB, LLC) agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.
4. Daniel Seibel (Hampton WFB, LLC) agrees to any other condition that the DNR determines is reasonable and necessary to ensure that the DNR and any other authorized party can adequately respond to the discharge
5. With respect to potential soil and vapor contamination only, Daniel Seibel (Hampton WFB, LLC) agrees to take one or more specified actions directed by the DNR, if the DNR determines that the actions are necessary to prevent an imminent threat to human health, safety or welfare or to the environment. This would occur after the DNR made a reasonable attempt to notify the party who caused the hazardous substance discharge about that party's responsibilities to investigate and clean up the discharge.

Consideration for Future Redevelopment

As described above, sub-slab vapor testing found chlorinated solvent contamination in vapors under the existing building, however, the levels are below the small commercial vapor risk screening levels. Based on these vapor levels and other information about the contamination and site conditions, no further testing or mitigation is needed given the current property conditions and use. If additional building, redevelopment, or change in use of the Property is planned in the future, the Property owner should work with an environmental consultant to evaluate whether chlorinated solvent contamination from soil, groundwater, or vapor may pose a risk. Guidance regarding evaluating potential vapor intrusion can be found in RR-800 "Addressing Vapor Intrusion at Remediation & Redevelopment Sites in Wisconsin" available on the DNR webpage at <https://dnr.wi.gov/files/PDF/pubs/rr/RR800.pdf>.

Responsibilities for Continuing Obligations

In addition to the conditions above, after the contamination at the source property is remediated, the DNR's approval of the cleanup may include continuing obligations at the source property as well as your Property. Often residual contamination remains after an approved environmental cleanup is complete.

This approval may include requirements to maintain engineering controls, such as a cap or soil cover, to reduce the impact of the contamination. In that event, you may also be required to notify the DNR prior to constructing a water supply well on your Property. If the neighboring property owners 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 for final approval of the clean-up.

Conclusion

The DNR granted Daniel Seibel (Hampton WFB, LLC) an off-site exemption under Wis. Stats. § 292.13. Please note that the DNR may revoke the determinations made in this letter if it determines that any of the requirements under Wis. Stats. § 292.13, cease to be met.

Future Property owners are eligible for the exemption under Wis. Stats. § 292.13, if they meet the requirements listed in that statute section. The determinations in this letter regarding a liability exemption, however, only apply to Daniel Seibel (Hampton WFB, LLC), and may not be transferred or assigned to other parties. The DNR will provide a written determination to future owners of this Property, if such a determination is requested in accordance with the requirements of Wis. Stats. § 292.13.

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for this activity is shown at the top of this letter. The DNR tracks information on all determinations such as this in a DNR database available online at dnr.wi.gov and search: "BOTW".

If you have any questions or concerns regarding this letter, please contact me at 414-374-2423 or email: Pamela.Mylotta@wisconsin.gov.

Sincerely,



Pamela A. Mylotta, Team Supervisor
Remediation & Redevelopment Program
Southeast Region

Attachments:

- "Milwaukee County Land Information Report, Tax Key: 2420223100", July 11, 2020
- Soil Contamination, One Hour Martinizing, Enviroforensics, May 7, 2020
- Groundwater Contamination, One Hour Martinizing, Enviroforensics, June 1, 2020
- Vapor Analytical Results for Detected Drycleaner Related Chlorinated Compounds, One Hour Martinizing, Enviroforensics, May 7, 2020

cc:

- Katherine Juno, LF Green Development, LLC, email: lfellenz@lfgreendevlopment.com
- Brian Cass, OHM Holdings, email: brian@ohmholdings.com
- Wayne Fassbender, Enviroforensics, email: wfassbender@enviroforensics.com

Milwaukee County Land Information Parcel Report

TAXKEY: 2420223100

Report generated 7/13/2020 9:14:54 AM



Parcel location within Milwaukee County



Selected parcel highlighted

Parcel Information

TAXKEY: 2420223100
Record Date:
Owner(s): HAMPTON WFB, LLC

Address:	249 E HAMPTON AVE	Assessed Value:	\$895,700
Municipality:	Milwaukee	Land Value:	\$154,700
Acres:	0.59	Improvement Value:	\$741,000

Parcel Description: COMMERCIAL
Zoning Description: Commercial or Business Park
Legal Description: COMSTOCK & WILLIAMS SUBD OF LOTS 1 TO 5 SEC 5 & SE 1/4 SEC 5 & NW 1/4 SEC 4-7-22 PART LOT 133 COM 216.15' W & 57' S OF NE COR SD LOT-TH S 100'-TH E 30'-TH S 90'-TH W 10'-TH S 27.37' TO NELY LI OF ROW-TH NWLY ALG SD ROW 328'M/L TO S LI E HAMPTON AVE-TH E 227.40' TO BEG
School District: MILWAUKEE SCHOOL DISTRICT

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.





