



March 6, 2019

Mr. Gary Furger
5557 Whispering Pines Drive
West Bend, WI 53095

Subject: Off-site Liability Exemption for Property Located at 906 S. Main Street, West Bend, with
Soil and Groundwater Contamination from an Off-site Source
BRRTS #: 07-67-582920
Parcel #: 11192310022

Dear Mr. Furger:

Purpose

The Wisconsin Department of Natural Resources ("the Department") has recently reviewed your request for an off-site exemption letter for the property located at 906 S. Main Street, West Bend, which will be referred to in this letter as "the Property". Refer to Attachment 1 for a site map of the Property. The Department received a \$700 fee for providing this letter pursuant to Wis. Stats. §§ 292.13 (2) and (3), and Wis. Admin. Code ch. NR 749.

Summary Determination

The Department, based on the information made available to it, is confirming that Mr. Gary Furger qualifies for the off-site liability exemption, and Mr. Gary Furger is not responsible for investigation or cleanup of the contamination that originated on a neighboring property. The Property owner would have limited responsibility under Wis. Stats. §§ 292.12 and 292.13 for the soil and groundwater contamination that has migrated or is migrating onto the Property.

Request

You have requested that the Department determine if Mr. Gary Furger is exempt from Wis. Stats. §§ 292.11(3), (4) and (7)(b) and (c) (commonly known as the "Hazardous Substance Spill Law"), with respect to the existence of a hazardous substance in the soil and groundwater that you believe is migrating onto the Property from an off-site source.

Wis. Stats. § 292.13(2) requires the Department 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 source, when certain conditions are met. In order to make this determination, the Department has reviewed information about the Property including soil sampling data adjacent to the Property, and groundwater sampling data from on and off the Property, and other sites contained in the following documents:

- Off-Site Liability Exemption and Liability Clarification Form, December 21, 2018.
- Site Investigation Work Plan (SIWP) for Additional Work, October 1, 2018, Konicek Environmental Consulting LLC.

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- Path to Closure & Sample Notification 4400-249, May 15, 2018, Konicek Environmental Consulting LLC.
- Site Investigation Sample Results Notification, October 30, 2017, Konicek Environmental Consulting LLC.
- Phase II Environmental Site Assessment, August 25, 2015, Konicek Environmental Consulting LLC.

Background

The Department considered the documents listed above in making the determinations presented in this letter. The Property appears to have been agricultural land until the 1950s. Early site improvements appear to be residential in a 1950 air photo. A 1963 air photo shows what is presumed to be a drive-in restaurant. In the 1965 West Bend telephone directory, the Property is listed as Emley's Drive In. The telephone books also list the Property as a restaurant in the 1969, 1972, and 1977 listings, and the property is currently a Domino's Pizza restaurant. The contamination on the Property is thought to have come from the former Ol' Tyme Cleaners dry cleaners at 910 S. Main Street, which was listed as a cleaners or a laundry in the 1965, 1969, 1972, and 1977 West Bend telephone book listings.

Determination

Based upon the available information and in accordance with Wis. Stats. § 292.13, the Department makes the following determinations regarding the potential presence on the Property of perchloroethylene in the soil near monitoring well MW-2, and the presence of trans-1,2 dichloroethene, cis-1,2 dichloroethene, and vinyl chloride contamination in the groundwater at monitoring wells MW-6 and MW-8 on the Property (refer to the attached Figure B.1.b, Detailed Site Map, April 10, 2018).

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

- The hazardous substance discharge originated from a source on property that is not possessed or controlled by Mr. Gary Furger.
- Mr. Gary Furger did not possess or control the hazardous substance on the property on which the discharge originated.
- Mr. Gary Furger did not cause the discharge.
- Mr. Gary Furger will not have liability under the Hazardous Substance Spill Law for investigation or remediation of the soil, sediment or groundwater contamination originating from off-site onto the Property, provided that Mr. Gary Furger does not take possession or control of the property on which the discharge originated.

Exemption Conditions

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

- The facts upon which the Department based its determination are accurate and do not change.
- Mr. Gary Furger agrees to allow the following parties to enter the Property to take action to respond to the discharge: the Department 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.

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- Mr. Gary Furger agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.
- Mr. Gary Furger 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.
- With respect to soil or sediment contamination only, Mr. Gary Furger agrees to take one or more specified actions directed by the Department, if the Department determines that actions are necessary to prevent an imminent threat to human health, safety or welfare or to the environment. This would occur after the Department has 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.

Responsibilities for Continuing Obligations

In addition to the conditions above, after the contamination at the source property is remediated, the Department's approval of the clean-up may include continuing obligations at the source property as well as your Property. Often residual contamination remains after an approved environmental cleanup is completed. 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 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 for final approval of the clean-up.

Conclusion

The Department has granted Mr. Gary Furger an off-site exemption under Wis. Stats. § 292.13. Please note that the Department 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 Mr. Gary Furger, 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 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 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, the DNR Project Manager, at (920) 893-8523, or by email at johnm.feeney@wisconsin.gov.

Sincerely,

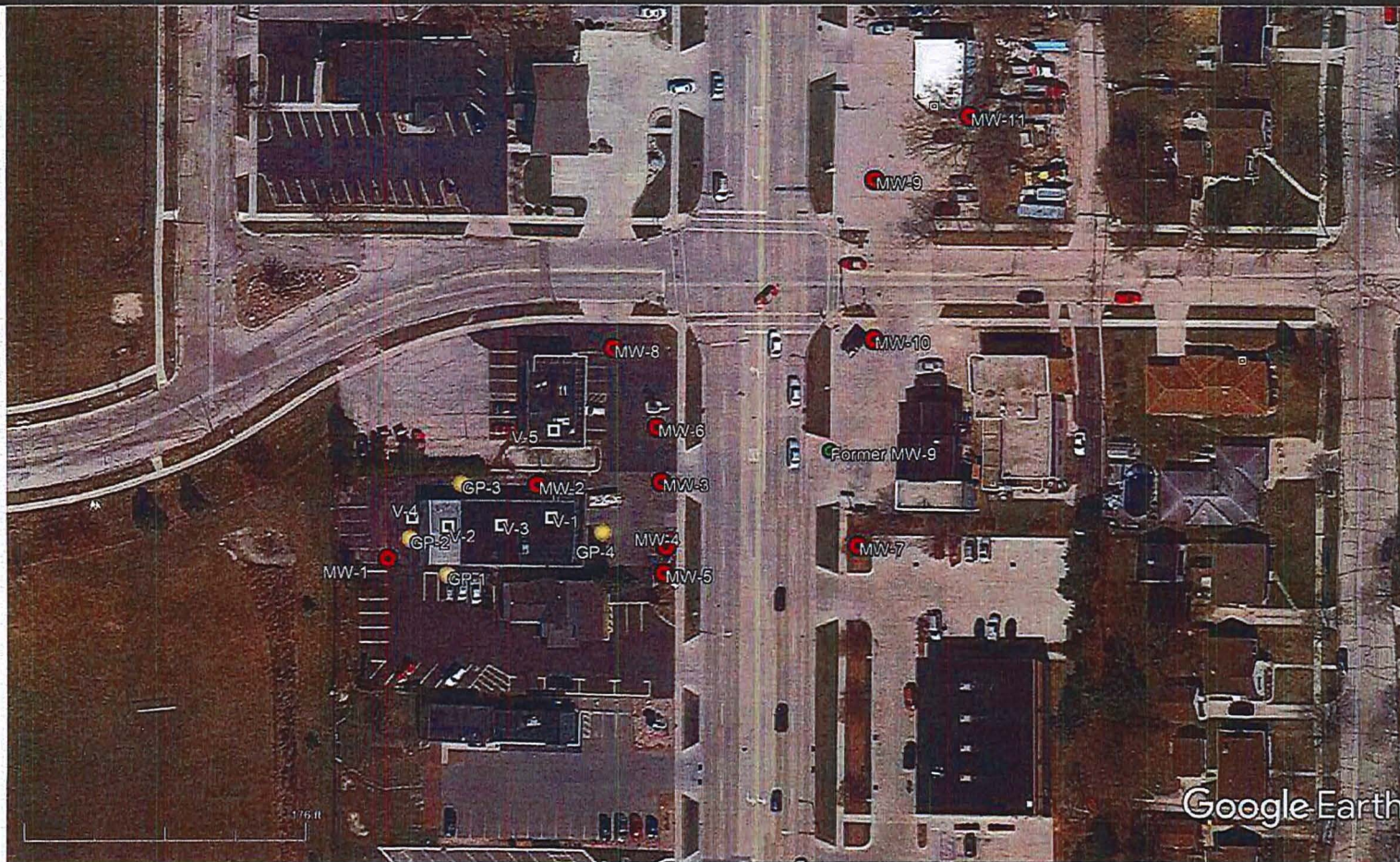


John Feeney, PG
Remediation & Redevelopment Program
Wisconsin Department of Natural Resources

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Attachments: Figure B.1.b., Detailed Site Map, April 18, 2018

cc: Mr. Aaron Lofberg, Konicek Environmental Consulting, LLC
Mr. Michael Prager, Wisconsin Department of Natural Resources (electronic)
Ms. Margaret Brunette, Wisconsin Department of Natural Resources (electronic)

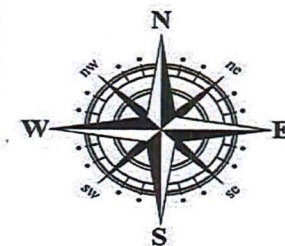


Scale: 1" = 105 feet (scale is approximate)

Legend

-  - Groundwater monitoring well location (MW)
-  - Former/Abandoned MW-9
-  - Soil probe location (GP)
-  - Vapor sample location (V)

*Note: V-1, V-2 and V-5 are sub-slab sample locations, and V-3 and V-4 are ambient air sample locations



**Konicek
Environmental
Consulting, LLC**

Created by: AL
Date: 4/10/2018

Figure B.1.b. Detailed Site Map
OI'Tyme Dry Cleaners
 BRRTS: 02-67-576350
 910 S. Main Street West Bend, WI