



February 28, 2019

MR CORY HART  
HCI LP LLC  
2910 RIVER OAKS DR  
MONROE LA 71201

Subject: Liability Clarification Letter Concerning Environmental Liability  
FedEx Facility, 2929 Halvor Lane, Superior, Wisconsin  
Tax Parcel ID #06-806-00739-05  
BRRTS #02-16-000331; 07-16-583046

Dear Mr. Hart:

The purpose of this letter is to provide you with clarifications regarding the environmental liability that a seller or purchaser may have for the property known as the FedEx Facility located at 2929 Halvor Lane, Superior, Wisconsin ("the Property"). According to Douglas County Land Records, the Property is approximately 7 acres and is owned by HCI Limited Partnership LLC ("HCI") and has parcel identification number 06-806-00739-05. The Department of Natural Resources ("Department") has agreed to provide you with a letter clarifying the environmental liability associated with contaminants detected at the Property and respond to your specific concerns.

### **Summary Determination**

Hazardous substance discharges have occurred on the Property. The Department believes Atlantic Richfield Co., a BP Affiliated Co., ("BP") caused the discharges, and therefore is responsible to address the contamination under Wis. Stat. § 292.11. The Property was once part of the Amoco Oil Terminal Site (BRRTS #02-16-000331). BP is currently conducting site investigations and remedial actions on properties adjacent to the Property. Given the site-specific circumstances at the Property, the Department has agreed to exercise its enforcement discretion at this site. The Department agrees not to require HCI to investigate or clean up the known contamination at the Property if all the following are satisfied:

- HCI has not or will not exacerbate the discharge.
- HCI allows Department personnel and BP, its consultants and contractors access to the property to conduct necessary environmental monitoring and remedial action to fulfill its obligation under Wis. Stat. ch. 292 and Wis. Admin. Code chs. NR 700-754.
- BP completes all actions necessary under Wis. Stat. ch. 292 and Wis. Admin. Code chs. NR 700-754, within a reasonable period of time, and obtains case closure for the Property.
- HCI, as the Property owner, complies with any conditions or obligations identified in the Department's case closure letter and state law.

### **Request**

On January 29, 2019 you requested the Department address the environmental liability that HCI may have related to any existing contamination at the Property. The Department has authority to issue a liability clarification letter

under Wis. Stat. § 292.55. Also on January 29, 2019, the Department received the \$700 fee to provide assistance, as required by Wis. Admin. Code § NR 749.04(1).

### **Site Development and Summary of Environmental Conditions**

Based on information available to the Department, it appears the Property was a portion of an Amoco Oil Terminal (“Terminal”). Amoco operated the Terminal from approximately 1917 until 2000. The portion of the former Terminal where the Property is located, was occupied by aboveground storage tanks and associated piping. It is the Department’s understanding that the FedEx Facility was originally developed about 2006. The Property has been used as a FedEx distribution center since development.

Contamination from hazardous substance discharges on the Terminal property was reported to the Department on August 8, 1985. BP has conducted site investigation activities and interim remedial actions on the Terminal property since 1985. The Department tracks the Terminal as an open, Environmental Repair site. BP continues to take actions required under Wis. Stat. ch. 292 and Wis. Admin. Code chs. NR 700-754 to address the contamination associated with the site.

In 2005 the Jones Development Company of Kansas City, Missouri oversaw initial development of the Property with the FedEx facility. Twin Ports Testing Inc. (“TPT”) of Superior, Wis. performed the geotechnical and environmental work associated with the site development. TPT submitted the following documents to the Department regarding the development of the Property:

- *Soil Management Work Plan* (SMWP) dated June 2, 2006
- *Initial Excavation Report* (IER) dated July 12, 2006
- *Follow-Up Excavation Report* (FER) dated March 6, 2007

TPT performed soil boring and soil sample analysis on the Property in 2005 and 2006 and determined there was both contaminated and uncontaminated surface soil on the Property that would require excavation and possible removal during development of the Property. In the SMWP, TPT proposed 7000 cubic yards of soil contaminated by polynuclear aromatic hydrocarbons (PAHs) be removed from the Property and disposed of at Moccasin Mike Landfill in Superior, Wisconsin during initial site development activities (Phase 1). The SMWP also proposed uncontaminated soil would be removed and disposed of at the Ruben Johnson and Son Inc. (RJS) quarry south of Superior, Wisconsin and other soil would be excavated and reused for landscaping on the Property during Phase 2 site development activities.

The IER documented the Phase 1 site development activities of June 2006. In Phase 1, 7326 cubic yards of contaminated soil was removed from the Property and disposed of at Moccasin Mike Landfill. Phase 2 site development occurred in October 2006 and was documented in the FER. During the Phase 2 activities, 2900 cubic yards of soil was stockpiled on the Property. The FER indicated some excavated soil was reported to have petroleum odors. There was no laboratory documentation of soil conditions. The FER indicated that no soil was removed from the Property during Phase 2 activities.

Additional excavation activities took place at the Property in 2012 associated with a building and parking lot expansion project. A February 7, 2012 correspondence from TPT to Atlantic Richfield (BP) (and copied to the Department) proposed excavation activities at the Property. A June 19, 2012 construction documentation letter report detailed excavation activities that took place in spring 2012. The June 12, 2012 letter report indicated that most of the soil that was stockpiled in 2006 was incorporated into the Property’s landscaping. Approximately 800 cubic yards of uncontaminated soil was also transported off-site as unregulated fill to a sand pit operated by Udeen Trucking of Superior, Wisconsin in 2012. Property owners should be aware that because there may be contaminated soil remaining on the Property, any impacted soil or fill material graded or excavated from the subsurface will need to be disposed of in accordance with local, state and federal laws.

The *2017 Amoco Oil Terminal Site Investigation Report* (SIR) dated December 15, 2017 prepared by the Antea Group was also reviewed as part of development of this letter. In the SIR, Figure 14, *Dissolved Phase Benzene Concentrations October 2016, Shallow Wells*, displays the horizontal extent of benzene (the primary chemical of concern in groundwater) above Wis. Admin. Code ch. NR 140 Enforcement Standards (ES). The extent of contamination does not include any area of the Property as displayed. It should be noted Figure 4 also displays 5 wells that were located on the Property. Two (2) of the wells, MW-18 and MW-21, contained exceedances of ES for benzene when last sampled between 2000 and 2007. Two (2) wells, MW-13 and MW-20, did not contain exceedances of the ES for benzene when last sampled between 2000 and 2007. Data for TWT-10 was not included in the 2017 SIR. The SIR indicates that monitoring wells MW-13, MW-18, MW-20 and MW-21 were filled and sealed (abandoned) between 2003 and 2007; information regarding TWT-10 was not included in the 2017 SIR.

Currently, BP is continuing further site investigation activities and has performed interim remedial activities at the Terminal site. Once the site investigation has fully defined the degree and extent of contamination, BP is required to submit a Remedial Action Options Report.

### **Liability Clarification**

This letter will clarify the Department's position on environmental liability associated with the Property in the following situations:

- Liability of a current owner of the Property; and
- Circumstances under which the Department would "reopen" cases that were previously "closed," and require further investigation or cleanup

### **Investigation and Remediation Liability**

The known areas of contamination on the Property appear to be from operation of the former Amoco Oil Terminal. BP is currently taking action as the responsible party to address the hazardous substance discharges associated with the Terminal. However, you should be aware that the State's hazardous substance spill law, Wis. Stat. § 292.11, imposes liability on anyone who possesses or controls contaminated property where hazardous substances were discharged to the environment. This liability exists even if another person, such as a prior owner or tenant caused the contamination.

Whenever possible, the Department requires the person who caused the hazardous substance discharge to take the appropriate response actions. However, if these persons cannot be located or are unable to conduct the required investigation and remedial action, the owner of the property is responsible for taking the appropriate actions. The Department will take the steps available to it through state law to compel the person that the Department believes to have caused the hazardous substance discharge on the property to take the response action necessary to protect human health and the environment. The Department would require the person in current possession or control of the property to address that threat if the Department were unable to compel the person who caused the discharge to take the appropriate response action.

For this particular Property, the Department agrees to exercise its enforcement discretion as long as BP, the responsible party, continues to respond to the environmental contamination on the Property in a timely and complete manner. As long as BP continues their progress towards finishing the soil and groundwater cleanup and obtaining case closure, the Department is not seeking monetary contribution or action from an owner of the Property.

### Liability after Cleanup Completion

The Department issues what is commonly referred to as a case closure letter once the site investigation and cleanup have been completed under the authority of Wis. Admin. Code ch. NR 726. It indicates that the Department has determined that no further environmental response action is necessary at the site, based upon the information available to the Department at that time. The Department can only require further action to address a previously closed case if certain criteria are met, including if information regarding the site or facility conditions indicates that contamination on or from the site or facility poses a threat to public health, safety, welfare or the environment, or if the property owner has not complied with the continuing obligations applied in the closure approval (Wis. Admin. Code § NR 727.13). Approximately 25,000 clean-up cases have been closed by the Department, but fewer than 100 have been reopened in the past 20 years.

Thus, before the Department can require further action to address residual contamination in existence at the time that the site (i.e., the area of contamination at the Property that was the subject of the closure letter) was closed, the Department must make a determination that information meets the reopening criteria and that further action is required. In this case, the Terminal case is not yet closed; however, it is anticipated that BP will complete the cleanup and qualify for case closure in the future.

### Conclusion

Please understand that this letter clarifies a new owner's liability related to residual contamination on the Property based only on the information presently available to the Department. The Department has made no determination concerning the presence or absence of hazardous substance discharges other than those identified in the reports provided. In the future, if the Department becomes aware of new information concerning the contamination referenced above, or the presence of other contaminants on the Property not previously identified, the Department will need to evaluate that data to determine if response actions may be required.

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, "BRRTS on the Web," that is available on the Internet at <http://dnr.wi.gov/topic/Brownfields/clean.html>.

The Department hopes that this letter helps clarify what known areas of contamination on the Property may require further environmental response action under Wisconsin law, and who is responsible for conducting these actions. If you have any questions, please contact John T. Hunt at (715) 623-4190 ext. 3115 or by email at [johnt.hunt@wisconsin.gov](mailto:johnt.hunt@wisconsin.gov).

Sincerely,



Christopher A. Saari  
Northern Region Team Supervisor  
Remediation and Redevelopment Program

### Attachment

- Figure 14, *Dissolved Phase Benzene Concentrations October 2016, Shallow Wells*, Antea Group, November 17, 2016

cc: John Hunt – DNR Antigo (via email)

