



March 22, 2021

MR CORY HART
HCI LP LLC
3121 MERCEDES DR
MONROE LA 71201

Subject: Liability Clarification Letter Concerning Environmental Liability
Vacant Property, 2903 Halvor Lane, Superior, Wisconsin
Part of Tax Parcel ID #06-806-00739-00
BRRTS #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 vacant property on the northwest corner of the intersection of Halvor Lane and Maryland Avenue, 2903 Halvor Lane, Superior, Wisconsin (Subject Property). According to Douglas County Land Records, the Subject Property is currently owned by Rosemont Investments LLC and has parcel identification number 06-806-00739-05. HCI LP, LLC (HCI) is intending to purchase approximately four (4) acres of the parcel owned by Rosemont Investments LLC. The Subject Property was part of the former Amoco Oil Terminal facility, a major petroleum storage and distribution facility that operated for approximately 100 years.

On March 4, 2021, HCI requested the Department of Natural Resources (DNR) to clarify the environmental liability that HCI, as a prospective owner of the Subject Property, may have related to any existing contamination at the Subject Property. The March 4, 2021 request included a completed request application form (DNR 4400-237) and the \$700 fee to provide assistance, as required by Wis. Admin. Code § NR 749.04(1). The DNR has agreed to provide you with a letter clarifying the environmental liability associated with contaminants detected at the Subject Property and respond to your specific concerns.

Additional information provided by HCI with the clarification of environmental liability request and fee included:

- Phase I Environmental Site Assessment (ESA), Portion of Parcels 06-806-00739-00 and 06-806-00739-05, prepared by BBJ Group LLC, dated January 26, 2021.
- Phase II ESA, Portion of Parcels 06-806-00739-00 and 06-806-00739-05, prepared by BBJ Group LLC, dated January 26, 2021.

HCI currently owns the property adjacent (west) of the Subject Property that is utilized as a distribution center for FedEx. HCI is intending to purchase the Subject Property to expand the vehicle parking lots of the FedEx facility.

Liability Clarification

This letter is intended to clarify the DNR position on environmental liability associated with the Subject Property in the following situations:

- Liability of a current owner of the Subject Property;
- Circumstances under which the DNR would “reopen” cases that were previously “closed,” and require further investigation or cleanup; and
- Liability for contaminated soil and groundwater during Subject Property development.

Hazardous substance discharges have occurred on the Subject Property. The DNR considers Atlantic Richfield Co., a BP Affiliated Co., (“BP”) as the causer of the discharges, and therefore is the responsible party for the contamination under Wis. Statute § 292.11.

Summary of Environmental Conditions

Based on information available to the DNR, the Subject Property was a portion of the Amoco Oil Terminal (“Terminal Site”). Amoco operated the Terminal Site from approximately 1910 until 2000. The portion of the former Terminal Site where the Subject Property is located, appears to have been occupied by aboveground storage tanks and associated piping.

Contamination from hazardous substance discharges on the Terminal Site was reported to the DNR on August 8, 1985. BP has conducted site investigation activities and interim remedial actions on the Terminal Site since 1985. The DNR tracks the Terminal Site as an open Environmental Repair case and has assigned Activity Number 02-16-000331 to the case. BP continues to take actions required under Wis. Stat. § 292 and Wis. Admin. Code § NR 700-754 to address the contamination associated with the site.

The *2017 Amoco Oil Terminal Site Investigation Report (SIR)* dated December 15, 2017 and prepared by the Antea Group, was also reviewed as part of development of this letter. In that SIR the following was noted:

- Three (3) wells associated with the Terminal Site (MW-3, MW-23, RW-06) are located on the Subject Property.
- Figure 13 from the SIR, *LNAPL Extent Map – June 2017*, displays the horizontal extent of light non-aqueous phase liquid at the Terminal Site, including areas of the northern portion the Subject Property.
- Figure 14 from the SIR, *Dissolved Phase Benzene Concentrations*, displays the horizontal extent of benzene in shallow groundwater at the Terminal Site, including most of the Subject Property.

The Phase II ESA provided by HCI focused on shallow soil on the Subject Property. Analytic results of several soil samples displayed results exceeding the Wis. Admin. Code ch. NR 720 industrial direct contact residual contaminant level (RCL) and the groundwater protection RCL.

The documentation reviewed indicates there is petroleum contaminated soil and groundwater at the Subject Property in exceedance of applicable regulatory standards established in Wis. Admin Code.

Site Development

The proposed development of the Subject Property by HCI is intended to expand parking lots for the adjacent FedEx distribution center. The proposed development will include excavation and grading the existing ground surface, installation of pavement for a parking area, installation of lighting and installation of security fencing. Figure 1, *Site and Vicinity Plan with Sample Locations*, dated January 7, 2021 in the Phase II ESA displays the proposed areas of parking lot expansion.

Liability after Cleanup Completion

The DNR issues what is commonly referred to as a case closure letter once the site investigation and cleanup have been completed. It indicates that the DNR has determined that no further environmental response action is

necessary at the site, based upon the information available to the DNR at that time. The DNR 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 a property owner has not complied with the continuing obligations applied in the closure approval (Wis. Admin. Code § NR 727.13). Approximately 17,000 clean-up cases have been closed by the DNR, but fewer than 50 have been reopened in the past 15 years.

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

Summary Determination

The known areas of contamination on the Subject Property appear to be from operation of the Terminal Site. BP is currently taking action as the responsible party to address the hazardous substance discharges associated with the Terminal Site. 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 DNR 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 a property is responsible for taking the appropriate actions. The DNR will take the steps available to it through state law to compel the person that the DNR believes to have caused the hazardous substance discharge on a property to take the response action necessary to protect human health and the environment. The DNR would only require the person in current possession or control of a property to address that threat if the DNR were unable to compel the person who caused the discharge to take the appropriate response action.

Regarding the Subject Property, the DNR agrees to exercise its enforcement discretion as long as BP, the responsible party for the Terminal Site, continues to respond to the environmental contamination on the Subject 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 DNR is not interested in seeking monetary contribution or action from a purchaser of the Property. Given the site-specific circumstances at the Subject Property, the DNR has agreed to exercise its enforcement discretion at this site. The DNR agrees not to require HCI to investigate or clean up the known contamination at the Subject Property if all the following are satisfied:

- HCI has not or will not exacerbate the discharge.
- HCI will comply with all applicable statutes and administrative codes in the development construction activities undertaken at the Subject Property. This includes any contaminated soil or groundwater encountered during development activities.
- HCI allows DNR personnel and BP, its consultants and contractors access to the Subject Property to conduct necessary environmental monitoring and remedial action to fulfill its obligation under Wis. Stat. § 292 and Wis. Admin. Code § NR 700-NR 754.
- BP completes all actions necessary under Wis. Stat. § 292 Stats and Wis. Admin. Code § NR 700-NR 754, within a reasonable period of time, and obtains case closure for the Terminal Site/Subject Property.
- HCI, as the Subject Property owner, complies with any conditions or obligations identified in the DNR's case closure letter and state law.

Conclusion

Please understand that this letter clarifies a new owner's liability related to residual contamination on the Subject Property based only on the information presently available to the DNR. The DNR 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 DNR becomes aware of new information concerning the contamination referenced above, or the presence of other contaminants on the Subject Property not previously identified, the DNR 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(s) 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, "BRRTS on the Web," that is available on the Internet at <http://dnr.wi.gov/topic/Brownfields/clean.html>.

The DNR hopes that this letter helps clarify what known areas of contamination on the Subject 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) 701-9383 or by email at johnt.hunt@wisconsin.gov.

Sincerely,



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

cc: Tarek Aboueid – BBJ Group (taboueid@bbjgroup.com)
John Hunt – DNR Antigo (via email)