



June 11, 2019

1001 Perry Street Algoma, LLC
c/o Mr. Tim McCoy
200 South Washington Street, Suite 100
Green Bay, WI 54301

Subject: Liability Clarification Letter Concerning Environmental Liability for the Former
Algoma Hardwoods Property, 1001 Perry Street, Algoma, Wisconsin
BRRTS # 07-31-583524

Dear Mr. McCoy:

Purpose

The purpose of this letter is to provide you with clarifications regarding the environmental liability that a prospective purchaser may have for the Algoma Hardwoods Property located at 1001 Perry Street, Algoma, Wisconsin (the Property). The Property, with Parcel #s 3120127.023, 3120127.0138, 31201MCH34, and 3120127.041, consists of approximately 30 acres of land. This letter herein refers to the environmental liability associated with the Property and your specific questions. A map of the Property is attached to this letter.

The Wisconsin Department of Natural Resources (DNR) 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.

Request

On May 9, 2019, you requested that the DNR address the environmental liability that a prospective purchaser of the Property may have related to any existing contamination at the Property that was previously addressed in the environmental cases associated with the Property. The Technical Assistance and Environmental Liability Clarification or Post-Closure Modification Request (Form 4400-237) and Attachments, prepared by Tim McCoy, dated May 9, 2019; was submitted for this request.

The request also references the following environmental cases:

- Closed Environmental Repair Program (ERP) case: Algoma Hardwoods, BRRTS # 02-31-000448
- Closed ERP case: Algoma Hardwoods Inc – Lot 1, BRRTS # 02-31-507477
- Closed ERP case: Algoma Hardwoods Inc (AHI LLC), BRRTS # 02-31-525950
- Closed Leaking Underground Storage Tank (LUST) case: Algoma Hardwoods, BRRTS # 03-31-000257
- Closed Spill case: Algoma Hardwoods Inc, BRRTS # 04-31-231446
- Closed VPLE case: Algoma Hardwoods Inc (VPLE), BRRTS # 06-31-528894

The DNR received the fee for providing assistance, as required by Wis. Admin. § NR 749.04(1).

It is the DNR's understanding that you are considering acquiring the Property. The following question is typically asked as part of this kind of property acquisition and will be answered later in this letter:

- 1) What assurances does a party receive from the DNR once a cleanup is complete?

On your behalf, your attorney also asked the following questions:

- 2) The Property has a certificate of completion from the VPLE program. Has the Property complied with any requirements of the VPLE and is it transferable to the new ownership group?
- 3) If environmental contamination is detected in the future will the new ownership group assume any liability for impacts?
- 4) If the new ownership group plans to remove portions of the existing building(s) on site are there any requirements to perform environmental sampling?
- 5) Should there be any concern over PFAS/PFOS compounds for a new buyer? Does the VPLE cover these compounds?
- 6) If any of the buildings are removed are there any continuing obligations the new owner must adhere to? There are some portions of the structure that have collapsed over the winter. If the building areas are removed the ground surface will be left as a gravel surface or seeded with grass.

Summary of Environmental Conditions

In addition to the documentation provided as part of this request, the DNR has also evaluated the above referenced environmental case files associated with the Property. These environmental cases are summarized below along with a summary of the most recent environmental assessment submitted to the DNR.

Algoma Hardwoods, BRRTS # 03-31-000257

In November 1989, two leaded gasoline, one diesel, and one No. 6 fuel oil (four total) underground storage tanks (USTs) were removed from the Property and approximately 20 cubic yards of petroleum-contaminated soil was excavated. Post-excavation sampling showed minimal contamination remaining. Follow-up between the DNR and the consultant was conducted to get complete documentation of the soil excavation. The case was closed on June 1, 1993 with no continuing obligations.

Algoma Hardwoods, BRRTS # 02-31-000448

In late June 1993 a spill was reported for No. 5 Bunker "C" oil discovered while Algoma Hardwoods was removing a fuel oil pump house north of their manufacturing buildings. The source of the oil was a leaking drip pan under a transfer pump. A Documentation Report submitted to the DNR in January 1994 documented the investigation and remedial action completed. An initial investigation was completed to define the outer boundaries of petroleum-impacted soil and to determine if groundwater was impacted. Approximately 35 cubic yards of petroleum-contaminated soil was excavated. Post-excavation sidewall and bottom soil samples and test pits with grab groundwater samples were collected to determine if residual contamination was present. Low concentrations of Diesel Range Organics (DRO) and no quantifiable concentrations of Polycyclic Aromatic Hydrocarbons (PAHs) were detected in soil and groundwater pre- and post-excavation. The case was closed on February 17, 1994 with no continuing obligations.

Algoma Hardwoods Inc, BRRTS # 04-31-231446

A spill of 10 gallons of waste oil occurred on August 16, 1999. A small excavation was conducted by on-site personnel to recover all the waste oil. The spill was closed on August 17, 1999.

*Algoma Hardwoods Inc – Lot 1, BRRTS # 02-31-507477

*This environmental case is associated with Parcel # 3120127.041.1, which is currently owned by the City of Algoma. Algoma Hardwoods, Inc. and AHI Properties, LLC were former owners of this parcel. Therefore, this case is not associated with the four parcels included in this request.

A Phase I Environmental Site Assessment (ESA) completed in July 1999 indicated a former City of Algoma dump located on the adjacent City of Algoma Wastewater Treatment Plant property may have extended onto the eastern portion of the site. Therefore, a Phase II ESA was conducted in June 2003. Soil and groundwater samples were collected along the property boundary to determine if waste materials were present on-site. There was no field evidence of waste materials, but soil and groundwater samples detected volatile organic compounds (VOCs), PAHs, and/or Resource Conservation & Recovery Act (RCRA) Metals. The soil samples with detections were collected below the water table, so could not be compared to soil standards. The groundwater samples with preventive action limit (PAL) and/or enforcement standard (ES) exceedances were collected from temporary wells. A responsible party letter was issued on May 18, 2004 to address the contamination. A permanent monitoring well was installed near the temporary well locations for confirmation sampling. The sample did not confirm the previous standard exceedances. The case was closed on August 1, 2005 with no continuing obligations.

Algoma Hardwoods Inc (AHI LLC), BRRTS # 02-31-525950 and Algoma Hardwoods Inc (VPLE), BRRTS # 06-31-528894

Three Phase I ESAs were completed between 1990 and 1999 that identified several recognized environmental conditions (RECs). A Phase II ESA completed in 2003 to 2004 confirmed environmental contamination was found. A responsible party letter was issued on May 18, 2004 to address the contamination. The responsible party entered into the Voluntary Party Liability Exemption (VPLE) program soon after in July 2004. The investigation at the Property consisted of soil and/or groundwater sampling for VOCs, Gasoline Range Organics (GRO), DRO, PAHs, Polychlorinated Biphenyls (PCBs), Phenol, Formaldehyde, and/or RCRA Metals.

Lead above non-industrial direct contact residual contaminant levels (RCLs) and benzo(a)pyrene above industrial direct contact RCLs were detected adjacent to the boiler house. Benzene above the RCL was detected adjacent to the storage building in the southwest corner of the Property and near the eastern Property boundary at soil boring location GP-18. PAHs were also detected above non-industrial direct contact RCLs in various other locations across the Property (These exceedances are based on previously established soil standards). The site investigation was approved by DNR on December 7, 2005.

A deed restriction, recorded March 1, 2006, documents residual soil contamination, an industrial land use restriction, and pavement, building foundation and/or soil/gravel cover maintenance for areas with soil contamination exceeding industrial direct contact RCLs for benzo(a)pyrene and benzene exceeding the RCL. The deed restriction states that the property must be maintained in compliance with the January 2006 "Pavement Cover and Building Barrier Maintenance Plan".

A PAL exemption for groundwater was issued for Temp-3 for benzene, MW-2 for benzo(a)pyrene, chrysene, and formaldehyde, and MW-7 for benzo(a)pyrene and chrysene as documented in the Conditional Closure letter dated March 16, 2006.

The case was closed on April 6, 2006 with the following continuing obligations:

- Residual soil contamination exists that must be properly managed should it be excavated or removed.
- A pavement, building foundation, and/or soil/gravel cover must be maintained over contaminated soil and the DNR must be notified and approve any changes to this barrier in accordance with the January 2006 "Pavement Cover and Building Barrier Maintenance Plan".
- Industrial soil standards were applied for closure, and industrial zoning is required. Before the land use may be changed from industrial to non-industrial, additional environmental work must be completed.

The VPLE Certificate of Completion (COC) was issued by the DNR on May 16, 2006.

September 2017 Phase I ESA

A Phase I ESA was completed in September 2017 by Zephyr Environmental Corporation on behalf of the Masonite International Corporation (Masonite). Masonite leased the Property from the current owner, AHI Properties, LLC, since 2012. Masonite ceased all operations at the Property by June 28, 2017. The Phase I ESA outlines the various actions Masonite completed to properly manage and dispose solid and/or hazardous waste and tanks used for their operations at the Property. The Phase I ESA also summarized the environmental compliance status of the facility. The Phase I ESA concluded that no new contamination was observed or indicated at the time of the August 2017 site reconnaissance. Existing contamination at the Property was thoroughly documented as part of the VPLE process, which resulted in an approved COC in May 2006.

Liability Clarification

Wis. Stat. § 292.55 authorizes the DNR to issue clarification letters concerning liability for environmental pollution. This letter will clarify the DNR's position on environmental liability associated with the Property and answers the following questions:

1. What assurances does a party receive from the DNR once a cleanup is complete?

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. In this case, as discussed above, closure letters were issued for the discharges on the Property and a COC was issued in 2006. The COC indicates that the requirements of the VPLE program have been met.

Once the COC is issued, the party proceeding under the VPLE program (the voluntary party) and any subsequent Property owners will have an exemption from future liability for hazardous releases that occurred prior to the date the site investigation was approved by the DNR. This exemption would apply even if, in the future, environmental standards change, the cleanup action fails or the contamination that was subject of the VPLE investigation is discovered to be more extensive than originally thought. If any discharges of hazardous substances occur on the property after the site investigation is approved by the DNR, those discharges would not be covered by the exemption. Any person who causes, controls or possesses future discharges would be responsible for taking appropriate actions under the Spill law and any other applicable law. The site investigation for the Property was approved by the DNR on December 7, 2005.

2. The Property has a certificate of completion from the VPLE program. Has the Property complied with any requirements of the VPLE and is it transferable to the new ownership group?

Based on the information available to the DNR, the Property appears to be in compliance with the requirements of the VPLE COC and the associated continuing obligations established at the time of case closure. The DNR conducted an audit and site visit at the Property in 2012 to confirm that the continuing obligations were being met and found that those obligations were being met. Also, based on information in the Phase I report, it appears that the owner is in compliance with the cap maintenance plan.

Under Wis. Stat. § 292.15(3), the liability exemption conveyed by a VPLE COC runs with the land, is transferrable, and applies to any successor or assignee of the voluntary party. If someone purchases a VPLE property after a COC is issued, they are a successor and will be protected by the liability exemption for discharges that occurred prior to the date the VPLE site investigation was approved.

The VPLE is statutory, so no specific action or documentation is needed to transfer this exemption to successors and assigns. Purchasers of the VPLE property may download a copy of the VPLE COC from BRRTS on the Web. DNR does not reissue a COC to a new owner. The COC applies to future owners of the Property, provided that such parties continue to comply with all the continuing obligations.

3. If environmental contamination is detected in the future will the new ownership group assume any liability for impacts?

The VPLE under Wis. Stat. § 292.15, exempts liability for discharges of hazardous substances that occurred prior to the date the VPLE site investigation was approved. The new owner would have to comply with applicable continuing obligations associated with the closed environmental cases at the Property that are specified in DNR closure letter(s) and the VPLE COC.

If some contamination was missed during the site investigation and cleanup during the VPLE process, the new owner would have the liability exemption and would not be responsible to investigate or remediate the contamination. The DNR would evaluate the public health and environmental impacts from the contamination missed during the VPLE process to determine if the state should conduct remediation. The Property owner may choose to conduct additional cleanup on a voluntary basis but is not required to do so.

The new owner would not be exempt from any discharges of hazardous substances that may have occurred after the date the VPLE site investigation was approved or if the new owner causes a new discharge of hazardous substances. 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 the property is responsible for taking the appropriate actions. The DNR would require the person in current possession or control of the property to address that threat if the DNR were unable to compel the person who caused the discharge to take the appropriate response action.

4. If the new ownership group plans to remove portions of the existing building(s) on site are there any requirements to perform environmental sampling?

For demolition or renovation of a building, steps need to be taken to identify and quantify any harmful materials (such as lead and asbestos) and to manage and dispose of those materials in accordance with all applicable requirements. DNR notification is required for most building renovation or demolition projects in accordance with Wis. Admin. Code ch. NR 447. Based on what is found in the building(s), abatement may need to occur prior to demolition or renovation. Please refer to the DNR guidance document [Planning Your Demolition or Renovation Project](#) (WA-651) for more information.

Complete or partial removal of existing building(s) may be conducted at the Property without requirements to perform environmental sampling of subsurface soil. However, if soil plans to be excavated in addition to removing portions of an existing building, the generator must make a waste determination to determine if the material being excavated is subject to certain provisions of the solid waste laws. If soil is planned to be excavated from an area that has known contamination, the Property owner at the time of excavation must sample and analyze the excavated soil to determine if contamination remains. If sampling confirms that contamination is present, the property owner at the time of excavation will need to determine whether the material is considered solid or hazardous waste and ensure that any storage, treatment or disposal is in compliance with applicable standards and rules. Contaminated soil may be managed in accordance with ch. NR 718, Wis. Adm. Code, with prior DNR approval.

5. Should there be any concern over PFAS/PFOS compounds for a new buyer? Does the VPLE cover these compounds?

The VPLE COC provides a liability exemption for historic contamination from hazardous substances that may have been discharged on the Property prior to the date the site investigation was approved. The exemption applies to possible historic contamination of Per- and polyfluoroalkyl substances (PFAS) (which includes perfluorooctanesulfonic acid or PFOS). The DNR is not aware of discharges of PFAS on the Property and has not conducted an evaluation to determine if PFAS may have been used or discharged into the environment at the Property. The DNR generally recommends prospective purchasers to conduct appropriate due diligence prior to acquiring any industrial or commercial property.

6. If any of the buildings are removed are there any continuing obligations the new owner must adhere to? There are some portions of the structure that have collapsed over the winter. If the building areas are removed the ground surface will be left as a gravel surface or seeded with grass.

The continuing obligations in the DNR closure letter(s) and the VPLE COC for the Property do include some of the building(s). The *Pavement Cover and Building Barrier Maintenance Plan*, dated January 30, 2006, requires the existing building foundations to be maintained as a cover over residual soil contamination. If the foundation of the boiler house building, storage building, or portions of the main building as indicated in Areas 1 and 2 of residual contamination in the maintenance plan are planned to be removed, a Continuing Obligation Modification Request would need to be submitted with applicable fees for DNR approval prior to removal. Please refer to the DNR guidance document [Post-Closure Modifications: Changes to Property Conditions after a State-Approved Cleanup](#) (RR-987) for further information.

An alternative approach you may consider is to reevaluate the areas of the Property where a cover is required. This evaluation could potentially be based on additional soil sampling and/or evaluation with current Wis. Admin. Code ch. NR 720 RCLs. PAH soil standards for direct contact have changed significantly and are generally less restrictive than the standards at the time the final case closure and VPLE COC were issued in 2006. Depending on the result of the evaluation, a Property owner may request a change to the continuing obligations, including the requirements to maintain a cover in certain areas.

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 BRRTS on the Web online at dnr.wi.gov and search "BOTW."

The DNR hopes that this letter helps clarify the known environmental conditions at the Property and your specific questions. If you have any questions, please contact Tauren Beggs at (920) 662-5178 or by email at Tauren.Beggs@wisconsin.gov.

Sincerely,



Roxanne N. Chronert
Team Supervisor, Northeast Region
Remediation and Redevelopment Program

Attachment: Figure 1 – Property Location, 5/15/2019

cc: Wendell Ellsworth, AHI Properties, LLC (white-ellsworth@new.rr.com)
Tauren Beggs, DNR (Tauren.Beggs@wisconsin.gov)
Michael Prager, DNR RR/5 (Michael.Prager@wisconsin.gov)



Figure 1 - Property Location

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SCALE: 1" = 200 '



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