



June 24, 2019

MR JAMES FARKAS
PRESIDENT AND COO
FRASER INDUSTRIES
1 CLOUGH AVE
SUPERIOR WI 54880

SUBJECT: Liability Clarification Letter Concerning Environmental Liability for
Howards Bay – Fraser Shipyards AOC #14
1 Clough Avenue, Superior, Wisconsin
BRRTS #02-16-120591 and 07-16-583534

Dear Mr. Farkas:

Purpose

The purpose of this letter is to provide clarifications regarding the environmental liability that Fraser Shipyards (“Fraser”) has related to the Howards Bay – Frasier Shipyards AOC #14 sediment contamination site. The Department of Natural Resources (“the DNR”) has agreed to provide you with a letter clarifying the environmental liability associated with contaminants on or originating from the Fraser Shipyards property and to respond to your specific concerns.

Request

On April 17, 2019, you requested that the DNR address the environmental liability that you may have related to any contamination at the Property. Fraser Shipyards, Inc. (“Fraser”) is a responsible party per Wis. Stat. § 292.11(3) and Wis. Admin. Code § 700.03(51) and the current owner (in the name of FSY R/E Group, LLC) of the Fraser Shipyards property located at 1 Clough Avenue in Superior including several tax parcels. The DNR received the \$700 fee for providing assistance on May 10, 2019, as required by Wis. Admin. Code § NR 749.04(1).

Summary of Environmental Conditions

Howards Bay is an industrial embayment located in the estuary of the St. Louis River/Duluth-Superior Harbor and is part of the St. Louis River Area of Concern (AOC) in Superior, Wisconsin. More than 100 years of industrial and commercial use has resulted in contaminated sediments in the bay. The cleanup of Howards Bay is one part of a larger state and federal initiative aimed at the restoration and cleanup of St. Louis River AOC. Fraser Shipyards has operated at the south end of Howards Bay for approximately 125 years constructing and servicing large ships. The operations of Fraser resulted in sediment contamination in Howards Bay and two slips used by Fraser, namely the Fraser Slip and Cummings Avenue Slip.

The United States Environmental Protection Agency (U.S. EPA), represented by the Great Lakes National Program Office (GLNPO), and the Wisconsin Department of Natural Resources (DNR), Fraser, and the City of Superior, Wisconsin (together, the Non-Federal Sponsors), entered into a Project Agreement for Remedial Action (RA) for Howards Bay (the Project). U.S. EPA, DNR, and Fraser entered into a Project Agreement on May 19, 2014 to conduct a Focused Feasibility Study and Remedial Design (FFS/RD) for Howards Bay. The Project Agreement for the FFS/RD was subsequently modified on March 15, 2016 and February 14, 2018, to increase the

Estimated Total Project Costs for the FFS/RD. U.S. EPA and the Non-Federal Sponsors modified the Project Agreement again on May 2, 2019 to complete an RA for Howards Bay. The agreement with its amendments is referred to in this letter as the "Project Agreement". On March 29, 2019 the Non-Federal Sponsors also signed a separate Funding Contribution Agreement for the Project.

The May 2019 Project Agreement will allow for completion of the Design Document Report for RA and ultimately implementation of the RA. The RA project scope includes dredging and disposal of contaminated sediments and enhanced natural recovery of sediments in Howards Bay and three slips on the south shore of the bay (Fraser Slip, Cummings Avenue Slip and Hughitt Slip). Sediments are contaminated with lead, mercury, polynuclear aromatic hydrocarbons and tributyltin. The RA is expected to achieve the remedial action objectives and cleanup goals established in the FFS/RD for the Project. The intent is to implement the RA during the 2020 construction season.

Liability Clarification

The Wisconsin Hazardous Substance Spill Law, Wis. Stat. § 292.11, commonly called the Spills Law, requires those who cause, possess or control a hazardous substance discharge to "take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state." 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 in the following situations. The questions in **bold** were included in the April 17 cover letter:

1. **"Can Fraser assume its current liability is defined by the existing knowledge of contamination in Howards Bay, and that the GLLA project, as designed, will be sufficient to allow Fraser to submit a closure package for WDNR review, without any additional environmental investigation or analysis other than accurately reporting the remediation work completed."**

Extensive investigation of the sediment contamination in Howards Bay has been conducted over the course of more than 10 years. DNR has determined that the requirements of Wis. Admin. Code ch. 716 have been satisfied and the degree and extent of hazardous substance discharges from Fraser Shipyards into the sediment of Howards Bay and the adjacent slips has been defined. Based on the information presented to the DNR, no additional investigation or analysis would be needed other than the action included within the Project Agreement to confirm that the remedial action was completed.

In addition, the Project Agreement and the Design Document Report describes the proposed dredging and other cleanup and monitoring activities that are designed to adequately clean up the contaminated sediment caused by the operations of Fraser and other parties adjacent to Howards Bay. As a result, if the cleanup actions undertaken by GLNPO as part of the Project Agreement and cost-shared by Fraser, the City of Superior, and DNR meet the agreed upon cleanup objectives, DNR expects that the requirements for closure under Wis. Admin. Code § 726.05 will have been satisfied. In order for Fraser to obtain closure, the environmental consultant working for Fraser will need to submit a case closure request to the DNR that includes all the required documentation, maps, and documents required under Wis. Admin. Code § 726.09 with the appropriate signatures and certifications as required by Wis. Admin. Code ch. 712. While significant data and documentation will be prepared by the contractors undertaking the GLNPO project, Fraser would be expected to use that information to put all the necessary documents together appropriately into a complete closure request.

The DNR issues a 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 the property owner has not complied with the continuing obligations applied in the closure approval (Wis. Admin. Code § NR 727.13).

2. “Will WDNR rely on the existing sampling results available at the time the design was prepared together with the sampling specifically defined in the design to be completed as part of the project as the entirety of the sampling to be conducted prior to site closure?”

Yes, as described above, the extensive sampling conducted over the course of many years is sufficient to implement the remedial action and meets the requirements of Wis. Admin. Code ch. 716. Based on the information available, DNR does not expect more sampling will be needed to complete the design report. More sampling will be conducted as part of the post-construction survey and sampling, but that sampling is part of the planned remedial action. DNR does not expect Fraser would need to conduct any additional sampling besides what is already planned in the GLNPO remedial plan.

As stated in the March 26, 2019 Howards Bay Funding Contribution Agreement between Fraser, the City of Superior and DNR, “Absent further information not presently available to the WDNR, the WDNR agrees that it will not require additional investigation and remediation by Fraser related to consideration of case closure for BRRTS Case # 02-16-120591 upon completion of the Project if the sediments included in the scope of the Project design are remediated consistent with the Project Agreement.”

3. “Will WDNR review and confirm appropriateness of a closure packages outline and description of proposed content as part of providing liability clarification, prior to preparation of the package by Fraser?”

DNR expects the consultant for Fraser to submit a complete closure packet with all required documentation and the applicable review fee. Generally, the consultant is expected to follow the requirements in Wis. Admin. Code ch. 726 and prepare the package with all the attached information listed on the form. If Fraser and their consultant have questions about any of the requirements, they can contact the DNR project manager and we can provide guidance. If you submit a closure request and there is information missing or more documents are needed, we will notify you and you can submit the information needed to have a complete submittal.

Also, as you might be aware, we provided an example of an approved case closure packet for another sediment site in the Superior area (BRRTS Case #02-16-550668 St. Louis River/Interlake/Duluth Tar Site) to your consultant on December 1, 2017. This link will allow you to access that example:
<https://dnr.wi.gov/botw/GetActivityDetail.do?adn=0216550668&siteId=19345900&crumb=1&search=b>.

4. “Fraser would like to receive closure on the entire portion of Howards Bay west of the John A. Blantik Bridge. Is this portion of Howards Bay consistent with what Fraser expects to receive closure for at the completion of this project and how would the legal bounds of the area be established?”

The contaminated sediment in Howards Bay resulted from hazardous substance discharges from Fraser and from other sources. The remediation of Howards Bay extends west of the John A. Blantik Bridge and east to the Fraser Shipyards area. When DNR issues a closure letter, it will be for BRRTS Case #02-16-120591. This case covers all known and investigated discharges of hazardous substances from Fraser’s operations into and around the two slips used by Fraser and other discharges on or from the Fraser property that caused sediment contamination. The sediment from Fraser appears substantially east of the bridge; however, the closure letter will not be defined specifically by the bridge.

5. How would liability of third parties from other sources of historic contamination to portions of Howards Bay be addressed by the GLLA project be affected by Fraser's application for case closure?

DNR does not expect that Fraser's application for closure would affect the liability of other parties that may have caused historic contamination in the Bay. DNR does not know if or when any of the other areas of Howards Bay will receive closure in part because the sediment contamination resulted from several historic sources. Our response to your case closure request will be specific to the data presented within that request. If third parties seek liability clarification and/or a closure determination, those parties will need to provide the appropriate application(s) themselves.

Please understand that this letter is based only on the information presently available to the DNR. In the future, if the situation changes or if the DNR becomes aware of additional information concerning the contamination referenced above, or the presence of other contaminants on the Property not previously identified, the DNR will need to evaluate the information to determine if response actions may be required.

In addition, this letter relates to the liability of Fraser for contaminated sediment resulting from hazardous substance discharges on or from the shipyards property and the operations of Fraser. This letter does not provide a determination regarding hazardous substances on the Fraser Shipyards property. While several areas on the Fraser Shipyards property were investigated and remedial actions were taken, there is still one open ERP case, BRRTS Case #02-16-562899 Fraser Shipyards - Punch Shed Building, where additional actions are needed and there may be other areas where hazardous substance discharges or environmental pollution may be present that have not been reported to the DNR. Also, this letter relates to the liability of Fraser under state cleanup laws, specifically Wis. Stat. § 292.11. The letter does not provide clarification of the potential federal liability related to this site.

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification numbers for this activity are 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/botw.html>.

The DNR hopes that this letter helps clarify your questions. If you have any questions, feel free to contact me at (715) 685-2920, by writing to the address at the top of this letter, or by email at Christopher.Saari@Wisconsin.gov.

Sincerely,



Christopher A. Saari
Northern Region Team Supervisor
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ec: Michael Erickson – Arcadis
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