

# HUSCH BLACKWELL

Richard J. Lewandowski  
Senior Counsel

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January 18, 2023

## VIA U.S. MAIL AND EMAIL

Ms. Jill Zalesny  
Environmental Enforcement Supervisor  
Wisconsin Department of Natural Resources  
625 E. County Rd. Y, Ste 700  
Oshkosh, WI 54901

Re: Rhinelander / Oneida County Airport, BRRTS # 02-44-584094  
Response to December 15, 2022 Notice of Violation

Dear Ms. Zalesny:

I am writing on behalf of the Rhinelander/Oneida County Airport, Oneida County and the City of Rhinelander in response to your Enforcement Conference Summary Letter dated December 15, 2022. Both the County and the City have separate counsel, who are copied below. Both have asked me to send this consolidated response to your letter on behalf of all three entities.

**Alleged Violation 1:** We have previously documented in correspondence to the Department the difficulties we encountered when Mead & Hunt unilaterally advised the three entities that they were no longer willing to serve as consultants for the group. All three are public entities, and when Mead & Hunt abandoned us, we solicited proposals for qualified environmental consultants and ultimately chose AECOM.

The sampling program undertaken by the group is discussed in more detail under Alleged Violation 2, below. In doing the first round of private well sampling, AECOM and the group identified private wells around the perimeter of the airport that might reasonably be thought to have potential PFAS exposure. AECOM adopted a phased approach, sampling wells closest to the perimeter of the airport and extending approximately two miles to the South. Groundwater flows roughly eastward in this area terminating at the Wisconsin River to the east. Based on the results obtained in the initial round of well samples, it is AECOM's professional opinion that the scope of wells chosen for sampling is appropriate and consistent with generally accepted engineering practice.

Ms. Jill Zalesny  
January 18, 2023  
Page 2

**Alleged Violation 2:** AECOM did upload of the private well sampling results within 10 business days of receiving results, including necessary QA/QC data, from the laboratory. Because April 15 was Good Friday, a designated state holiday, that date is statutorily excluded as a business day. Wis. Stat. § 801.15(1)(a). AECOM uploaded the results to the DNR portal on the 10<sup>th</sup> business day after receipt. We acknowledge that the notification letters to the well owners did not occur within the same time 10 business day timeframe, and we apologize for that. Both the City and County are small municipalities with limited staff and correspondingly limited personnel and financial resources. The Airport is jointly owned and governed by the City and County via a statutorily authorized commission appointed by both bodies. The 2020 Census shows a population for the City of Rhinelander of 8,285. The County's population in the 2020 Census is 37,843, which includes the City of Rhinelander. The April 2022 sampling was the first time the municipalities had attempted to sample private wells. They will make extra effort to meet the 10 business day timeline in future sampling rounds.

**Alleged Violation 3:** Your write up of alleged Violation 3 acknowledges that the three public entities provided bottled water, and later Zero Water pitchers and filter supplies to the two homes on South Fox Ranch Road with well results over the NR Board's 70 PPT private drinking water standard. The City of Wausau is utilizing Zero Water pitchers for their own residents who are affected by PFAS in the municipal water supply system there.

We respectfully submit that the Department of Health Services ("DHS") recommended groundwater standard of 20 PPT is only that -- a recommendation. Wisconsin law has been clear for nearly half a century that if an administrative agency adopts a policy or procedure that is intended to set standards or cover in the policy or procedure of the agency, it must be promulgated as an administrative rule in accordance with Wis. Stat. ch. 227. The Wisconsin Supreme Court has consistently held that in order to be enforceable, a policy must be promulgated. The Natural Resources Board enacted the 70 ppt standard, it specifically declined to adopt the DHS suggestion of 20.

In addition, you should be aware that the City of Rhinelander has offered to annex the two private residences on South Fox Ranch Road into city limits. This would entitle them to connect to city water and sewer. Neither homeowner wants to do that and declined to be annexed.

**Alleged Violation 4:** DNR first recommended deeper monitoring wells after the group submitted its April workplan and submitted that plan to the Federal Aviation Administration ("FAA") for approval. FAA requires that before any kind of surface disturbance occurs on an airport, a proposed workplan must be submitted to FAA for prior review and approval. This would apply to digging soil samples and the installation of monitoring wells, whether temporary or permanent. The purpose is to avoid jeopardizing sensitive airport infrastructure that is critical to flight safety. The FAA approval process typically takes 90 days, but in this instance has run longer. The AECOM site investigation proposal was submitted to the FAA on August 29, 2022

# HUSCH BLACKWELL

Ms. Jill Zalesny  
January 18, 2023  
Page 3

and the Airport has still not received a response. Changing the depth of monitoring wells would require a new submittal to the FAA and a new approval. This will restart the review clock.

AECOM is following a phased approach, looking at shallow groundwater first because if the AFFF found in nearby wells originated from the Airport, the source would be surface spills or releases. The phased approach is generally accepted environmental engineering practice in Wisconsin, and starting with shallower wells first is consistent with commonly followed consulting practice. The wells that have been proposed would identify shallow groundwater flow direction (absent the drawdown effect when City wells #7 and #8 are pumping). This initial data, in concert with the potable well data, will drive the next phases of the investigation.

AECOM anticipates future phases may include more shallow water table wells, installation of deeper piezometer wells, investigating surface water impacts, and incorporating the potable well results into a Conceptual Site Model that will describe the full picture of impacts at the site. All of these future phases are dependent upon will be guided by the initial results.

The investigation is in the initial phase. AECOM is looking for near surface source areas. As such, good engineering practice calls for installing water table wells (i.e., shallow wells that intercept the shallow groundwater surface) and test them as indications of 'surface' spills/source areas. After careful discussions, AECOM settled on monitoring well and hand-auger soil sample locations that were compatible with the needs of airport operations and air safety, while still being representative for investigating the possible source areas AECOM identified during its scoping activities for the work plan.

Based on AECOM's knowledge of area geology and access to the logs for the wells previously installed on Airport property, the site is reasonably believed to be in a 'single' aquifer situation. City wells #7 and #8 are screened above the bedrock at a depth of approximately 80 ft below ground surface. The entire aquifer above the bedrock appears to be one continuous unit of sands and gravel. Therefore, the near surface and the deeper groundwater 'communicate' with each other, depending upon vertical and horizontal gradients. Starting near the ground surface with shallow wells and understanding potential source areas, seems to make more sense than starting at the depths of City wells #7 and #8 and working backwards/upwards towards the potential source – especially since the City wells are not currently pumping, meaning that AECOM cannot measure the 'pumping gradients' to accurately determine the direction of groundwater flow towards the wells.

Getting down to details, it has not been explained to us how Department has interpreted the data from recent sampling of Wells #7 and #8 and how the sample purge pumping may have impacted the sampling results; DNR may not have remembered our inclusion of the Well Head Protection Plan information and how interpreting that information will help to guide the investigation, nor reviewed our potable well results in light of one or more possible 'upgradient' sources for some of the compounds.

# HUSCH BLACKWELL

Ms. Jill Zalesny  
January 18, 2023  
Page 4

It is not practical in this setting to conduct a multiple phase investigation all at once. To this end, DNR seems to want us to conduct a deep groundwater investigation at the same time AECOM conducts the shallow, source area, investigation. Discussions among the three entities and the DNR take time; mandatory FAA approvals take time; potable well sampling takes time and money, and perhaps most challenging of all, three entities have to find money to undertake this work. To that point, the City and County have asked the Department for help in finding resources, but so far have heard nothing.

In addition, we have the following responses to your lettered paragraphs A through F at the bottom of page 3 of your letter:

- A. For the reasons discussed above and by the Supreme Court in numerous Wis. Stat. ch. 227 cases, we respectfully disagree that the DHS recommendations are valid or binding. Please see discussion above.
- B. The two municipalities have attempted to contact well owners to resample their wells. As noted in previous correspondence with the Department, many of them are seasonal owners and are not around in the winter months. Correspondence was sent to the official property tax address on file for each property, meaning that seasonal or second home owners would have received this correspondence.
- C. We will promptly notify well owners of future sampling results within the 10 business day time frame called for by the administrative rules. We will notify those owners of the DHS recommendations at such time as the Natural Resources Board promulgates those recommendations into the appropriate administrative codes. Until then, they remain nonbinding recommendations. Please see above.
- D. The City and County wrote to each of the nearby well owners and asked for permission to visit and sample their wells. This was described in prior correspondence with the Department, and if that is no longer available to you, we can send it again. In general, the two municipalities wrote to each property owner of record and asked permission to sample their private well(s). These were sent to the property owner's address of record based on County tax records, meaning that the letter would have been sent to each owner's preferred address. For year round residents, that would have been the property where the well is located. For the many seasonal owners, the notice letter went to the same address where they receive their property tax bills. Since non-resident property owners receive and pay their annual property tax bills at this address, the address is considered reliable for other correspondence, such as the well letters. The two municipalities sent a follow up letter when no response was received. The municipalities did not send people to go door to door because this would have been futile in March for the many seasonal occupants (out of town owners). There is also concern about the potential risk to

# HUSCH BLACKWELL

Ms. Jill Zalesny  
January 18, 2023  
Page 5

municipal employees by sending them out to knock on doors uninvited and unexpected in a rural area.

E. Copies of FAA correspondence are attached hereto as Appendix A.

While we acknowledge that notice to the property owners of their sampling results did not occur within the 10 business day time frame, we will take steps to meet that timeframe for future rounds of sampling. We respectfully disagree that the group is out of the compliance with other applicable requirements.

We have analyzed the PFAS results from the various wells with particular attention to the mix of various chemicals. We found striking variations in the mix of results in the various wells where deductions were found. This is inconsistent with the assumption that AFFF is the sole cause of these results. We will provide a separate analysis to the Department.

The two smaller municipalities who own the airport and manage it via the Airport Commission, want to cooperate with the DNR in this matter, we ask that DNR, in turn, understand the very limited resources and very real constraints that all three public entities face.

We have sent copies of this letter to the three entities, and ask that you distribute this within DNR as you find appropriate.

Very truly yours,

*/s/ original signed by:*

Richard J. Lewandowski

RJL/pc  
Attachment

cc (via email):

Michael Fugle, Oneida County Corporation Counsel  
Steven Sorenson, Acting City Attorney, Rhinelander  
Matthew Leitner, Rhinelander / Oneida County Airport Director

**From:** [Matthew Leitner](#)  
**To:** ["Henderson, David"](#); ["Mott, Andrew"](#); ["Steven R. Sorenson"](#); ["Michael Fugle"](#); [Lewandowski, Richard](#)  
**Subject:** FW: RHI OE/AAA project/points entry  
**Date:** Thursday, September 29, 2022 9:56:01 AM  
**Attachments:** [image003.png](#)  
[Case Submission Success.pdf](#)  
[Fig5\\_SI\\_Proposed\\_050322.pdf](#)  
[RHI\\_ProposedCoordinates.pdf](#)  
**Importance:** High

---

[EXTERNAL EMAIL]

Matthew J. Leitner – Airport Director  
Rhineland/Oneida County Airport  
3375 Airport Road  
Rhineland WI 54501  
715-365-3418  
[www.flyrhineland.com](http://www.flyrhineland.com)

---

**From:** Kevin Sielaff [mailto:kevin.sielaff@meadhunt.com]  
**Sent:** Friday, August 19, 2022 1:45 PM  
**To:** Christina Sullivan (christina.sullivan@faa.gov) <christina.sullivan@faa.gov>  
**Cc:** Matthew Leitner (mleitner@flyrhineland.com) <mleitner@flyrhineland.com>; Joshua Cothren - WI Bureau of Aeronautics (joshua.cothren@dot.wi.gov) <joshua.cothren@dot.wi.gov>  
**Subject:** RHI OE/AAA project/points entry

Christina,

FYI – we have submitted points for some exploratory work (borings and soil sampling) up at RHI:

**Project Rhin-548425499-22 has been submitted successfully to the FAA.**

Your filing is assigned Aeronautical Study Number (ASN):

**2022-AGL-9391-NRA**  
**2022-AGL-9392-NRA**  
**2022-AGL-9393-NRA**  
**2022-AGL-9394-NRA**  
**2022-AGL-9395-NRA**  
**2022-AGL-9396-NRA**  
**2022-AGL-9397-NRA**  
**2022-AGL-9398-NRA**  
**2022-AGL-9399-NRA**  
**2022-AGL-9400-NRA**

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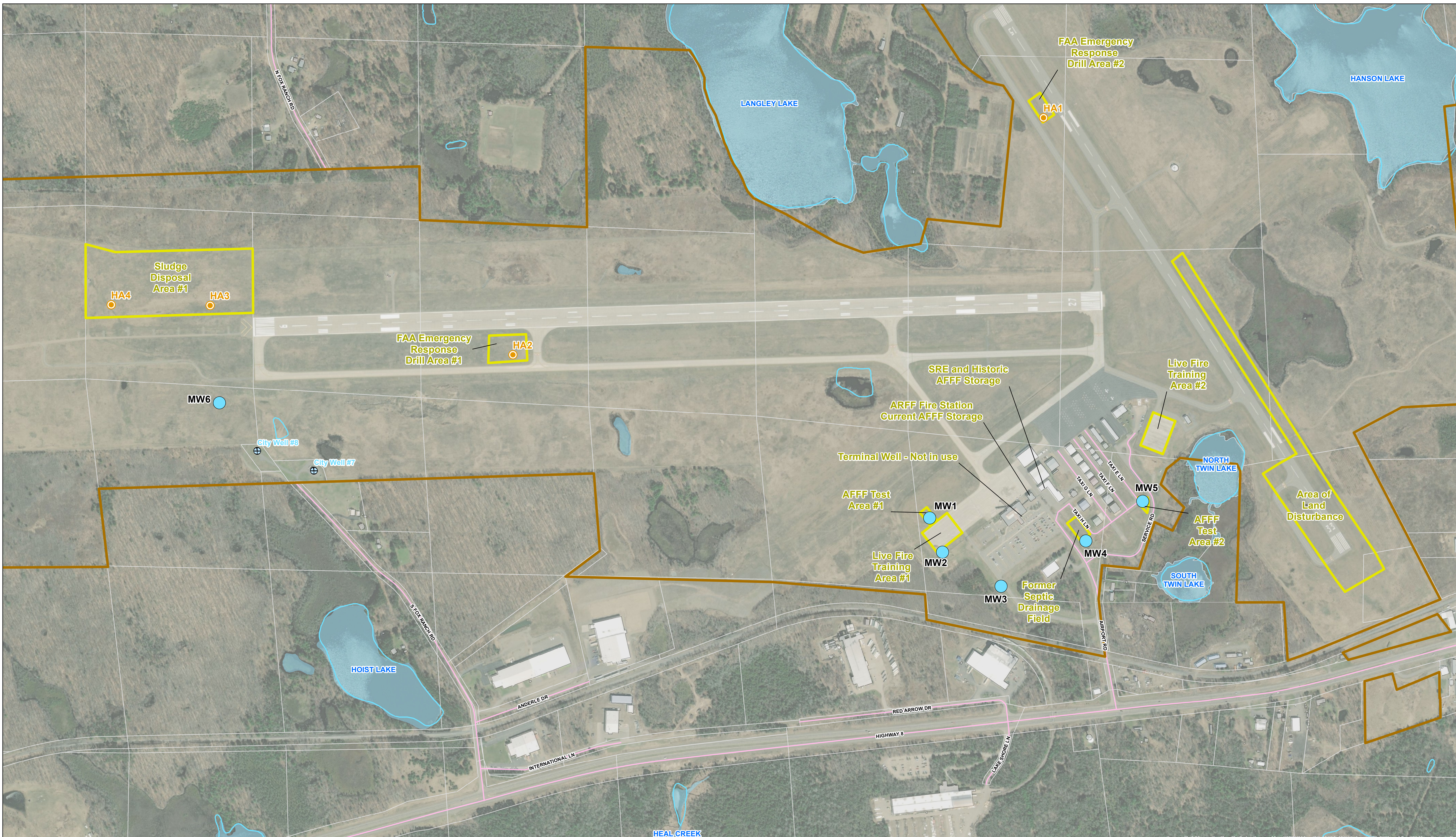
**KEVIN SIELAFF, PE**  
SUPERVISOR, AVIATION ENGINEERING, PRINCIPAL  
Mead & Hunt

ATTACHMENT A

Direct: 920-593-6849 | Cell: 920-619-3014 | [Transfer Files](#)  
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**Legend**

- Proposed Hand Auger Location
- Proposed Boring/Monitoring Well
- ⊕ City Wells/Town of Crescent Spring
- Airport Property Line
- PFAS Potential Areas Of Concern
- Water Bank
- Water Body
- Oneida County Parcels

N  

S

0   175   350   700   Feet

AECOM  
 Milwaukee Office  
 1555 River Center Dr  
 Milwaukee WI

AECOM

RHINELANDER AIRPORT INVESTIGATION

OVERVIEW OF PROPOSED BORINGS AND MONITORING WELLS BY ENVIRONMENTAL POINTS

Project No. 60668389	Date: May 2022	FIGURE 5
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C:\data\Projects\Rhinelander\Map\Map\Fig5\_SLP\_Proposed.mxd





## Case Submission Success

Project Rhin-548425499-22 has been submitted successfully to the FAA.

Your filing is assigned Aeronautical Study Number (ASN):

**2022-AGL-9391-NRA**  
**2022-AGL-9392-NRA**  
**2022-AGL-9393-NRA**  
**2022-AGL-9394-NRA**  
**2022-AGL-9395-NRA**  
**2022-AGL-9396-NRA**  
**2022-AGL-9397-NRA**  
**2022-AGL-9398-NRA**  
**2022-AGL-9399-NRA**  
**2022-AGL-9400-NRA**

Please refer to the assigned ASN on all future inquiries regarding this filing.

Please return to the system at a later date for status updates.

*To ensure e-mail notifications are delivered to your inbox please add [noreply@faa.gov](mailto:noreply@faa.gov) to your address book. Notifications sent from this address are system generated FAA e-mails and replies to this address will NOT be read or forwarded for review. Each system generated e-mail will contain specific FAA contact information in the text of the message.*

Name	Latitude/Longitude		Estimated Ground Elev (ft)	Equipment Height (Ft)	Notes
	POINT_Y	POINT_X			
HA1	45.634887	-89.461909	1594	6	height of person
HA2	45.629693	-89.478519	1612	6	height of person
HA3	45.630782	-89.487998	1622	6	height of person
HA4	45.630797	-89.491092	1635	6	height of person
MW1	45.626104	-89.465483	1595	20	15 ft for Geoprobe; 20 ft for mini Sonic
MW2	45.62535	-89.465082	1598	20	15 ft for Geoprobe; 20 ft for mini Sonic
MW3	45.624602	-89.463249	1593	20	15 ft for Geoprobe; 20 ft for mini Sonic
MW4	45.625595	-89.460593	1596	20	15 ft for Geoprobe; 20 ft for mini Sonic
MW5	45.626462	-89.458812	1598	20	15 ft for Geoprobe; 20 ft for mini Sonic
MW6	45.628643	-89.487707	1614	20	15 ft for Geoprobe; 20 ft for mini Sonic

## Section 333 – Protection of NAVAIDS

(a) Construction

No facilities shall be constructed on the airport that have been determined by the FAA to derogate the operation of an electronic or visual NAVAID or air traffic control facilities. Airport personnel shall notify the FAA if aware of any changes in construction plans or equipment. Airport personnel are responsible for monitoring construction activity on the airport to prevent the interruption of visual and electronic signals of NAVAIDS.

(b) Protection Against Vandalism

Protect--or if the owner is other than the certificate holder, assist in protecting--all NAVAIDS on its airport against vandalism and theft

(c) Interruption of Visual and Electronic Signals of NAVAIDS

Interruption of visual and electronic signals of NAVAIDS is prevented, when within the Airport's authority. Operations personnel maintain the grass height and snow in ILS critical areas below levels that may affect electronic signals of NAVAIDS. This effort is coordinated with FAA technicians.



Overview

2022 AIP Grants

AIP Buy American Preferences

AIP Glossary

AIP Grant / Apportionment Data

AIP Grant Histories >

AIP Grant Payments

AIP Handbook

Airports Capital Improvement Plan

AIP Program Guidance Letters (PGLs) >

AIP Supplemental Appropriation >

Benefit-Cost Analysis (BCA)

Economically Distressed Areas

Grant Assurances

Letters of Intent (LOI)

Military Airport Program

Procurement & Contracting Under AIP >

State Block Grant Program

What is AIP & What is Eligible?

## Grant Assurances (Obligations)

### What are Grant Assurances?

When airport owners or sponsors, planning agencies, or other organizations accept funds from FAA-administered airport financial assistance programs, they must agree to certain obligations (or assurances). These obligations require the recipients to maintain and operate their facilities safely and efficiently and in accordance with specified conditions. The assurances may be attached to the application or the grant for Federal assistance and become part of the final grant offer or in restrictive covenants to property deeds. The duration of these obligations depends on the type of recipient, the useful life of the facility being developed, and other conditions stipulated in the assurances.

### AIP Grant Assurances

- [Airport Sponsors \(5/2022\)](#). (PDF)
- [Planning Agency Sponsors \(5/2022\)](#). (PDF) (editorially updated 5/24/2022).
- [Non-Airport Sponsors Undertaking Noise Compatibility Program Projects \(5/2022\)](#). (PDF)
- [Aviation State Block Grant Program \(5/2022\)](#). (PDF)

### Historical Grant Assurances

Date	Source	Assurances
May 2, 2022	Amended in <a href="#">87 FR 25691</a> (PDF)	See current assurances above.
February 28, 2020	Amended in <a href="#">85 FR 12048</a> (PDF)	<ul style="list-style-type: none"> <li>• <a href="#">Airport Sponsors (2/2020)</a>. (PDF) (editorially updated 6/4/2020)</li> <li>• <a href="#">Planning Agency Sponsors (3/2014)</a>. (PDF)</li> <li>• <a href="#">Non-Airport Sponsors Undertaking Noise Compatibility Program Projects (3/2014)</a>. (PDF)</li> <li>• <a href="#">Aviation State Block Grant Program (9/2006)</a>. (PDF)</li> </ul>
April 3, 2014	Amended in <a href="#">79 FR 18755</a> (PDF)	<ul style="list-style-type: none"> <li>• <a href="#">Airport Sponsors (3/2014)</a>. (PDF)</li> </ul>

Date	Source	Assurances
April 13, 2012	Amended in <a href="#">77 FR 22376</a> (PDF)	<ul style="list-style-type: none"> <li>• <a href="#">Airport Sponsors (2012)</a> (PDF)</li> <li>• <a href="#">Planning Agency Sponsors (1999)</a> (PDF)</li> <li>• <a href="#">Non-airport Sponsors Undertaking Noise Compatibility Program Projects (2005)</a> (PDF)</li> </ul>
March 18, 2011	Amended in <a href="#">76 FR 15028</a> (PDF)	<ul style="list-style-type: none"> <li>• <a href="#">Airport Sponsors (2011)</a> (PDF)</li> <li>• <a href="#">Planning Agency Sponsors (1999)</a> (PDF)</li> <li>• <a href="#">Non-airport Sponsors Undertaking Noise Compatibility Program Projects (2005)</a> (PDF)</li> </ul>
March 29, 2005	Amended in <a href="#">70 FR 15980</a> (PDF)	<ul style="list-style-type: none"> <li>• <a href="#">Airport Sponsors (2005)</a> (PDF)</li> <li>• <a href="#">Planning Agency Sponsors (1999)</a> (PDF)</li> <li>• <a href="#">Non-airport Sponsors Undertaking Noise Compatibility Program Projects (2005)</a> (PDF)</li> </ul>
August 18, 1999	Amended in <a href="#">64 FR 45008</a> (PDF)	<ul style="list-style-type: none"> <li>• <a href="#">Airport Sponsors (1999)</a> (PDF)</li> <li>• <a href="#">Planning Agency Sponsors (1999)</a> (PDF)</li> <li>• <a href="#">Non-airport Sponsors Undertaking Noise Compatibility Program Projects (1999)</a> (PDF)</li> </ul>
June 2, 1997	Amended in <a href="#">62 FR 29761</a> (PDF)	
January 4, 1995	Amended in <a href="#">60 FR 521</a> (PDF)	
June 10, 1994	Amended in <a href="#">59 FR 30076</a>	
August 29, 1989	Amended in at <a href="#">54 FR 35748</a> (PDF)	
September 6, 1988	Amended in <a href="#">53 FR 34361</a> (PDF)	
February 3, 1988	Published in <a href="#">53 FR 3104</a> (PDF)	

Date	Source	Assurances
September 6, 1984	Published in <a href="#">49 FR 35282</a> (PDF)	<ul style="list-style-type: none"> <li>• <a href="#">Airport and Planning Agency Sponsors (1984)</a> (PDF)</li> <li>• <a href="#">Noise Program Projects by Non-airport Sponsors (1984)</a> (PDF)</li> </ul>
Prior to 1984	Grant assurances were included in FAA Form 5100-100	

## Related Guidance

- [Airport Compliance](#)

## Popular Information

- [AIP Handbook](#)
- [2022 AIP Grants](#)
- [AIP Buy American Requirements](#)

## Contact Us

- [Airports AIP Program Branch](#)

Last updated: Tuesday, August 2, 2022

### U.S. DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration  
800 Independence Avenue, SW  
Washington, DC 20591  
866.835.5322 (866-TELL-FAA)  
Contact Us

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[No FEAR Act](#)  
[Office of Inspector General](#)  
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[USA.gov](#)  
[Web Policies and Notices](#)  
[Web Standards](#)



**From:** [Matthew Leitner](#)  
**To:** [Lewandowski, Richard](#)  
**Subject:** FW: RHI OE/AAA project/points entry  
**Date:** Monday, December 19, 2022 3:41:06 PM  
**Attachments:** [image001.png](#)

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[EXTERNAL EMAIL]

Fyi...

Matthew J. Leitner – Airport Director  
Rhineland/Oneida County Airport  
3375 Airport Road  
Rhineland WI 54501  
715-365-3418  
[www.flyrhineland.com](http://www.flyrhineland.com)

---

**From:** Kevin Sielaff [mailto:[kevin.sielaff@meadhunt.com](mailto:kevin.sielaff@meadhunt.com)]  
**Sent:** Monday, December 19, 2022 3:39 PM  
**To:** Matthew Leitner <[mleitner@flyrhineland.com](mailto:mleitner@flyrhineland.com)>  
**Subject:** RE: RHI OE/AAA project/points entry

Matthew,

I had Tammy from our Middleton office check on the status of the points because she is the one who entered them and can find them in the OE/AAA portal. She got back to me and said they are showing up as “Work in Progress”.

**Kevin Sielaff, PE**

Direct: 920-593-6849 | Cell: 920-619-3014 | [Transfer Files](#)  
**[meadhunt.com](http://meadhunt.com) | Experience Exceptional**

---

**From:** Matthew Leitner <[mleitner@flyrhineland.com](mailto:mleitner@flyrhineland.com)>  
**Sent:** Monday, December 19, 2022 11:53 AM  
**To:** Kevin Sielaff <[kevin.sielaff@meadhunt.com](mailto:kevin.sielaff@meadhunt.com)>  
**Subject:** RE: RHI OE/AAA project/points entry

Good morning, Kevin:

Might you know if these have been approved?

Thanks,

Matthew J. Leitner – Airport Director



Rhineland/Oneida County Airport  
3375 Airport Road  
Rhineland WI 54501  
715-365-3418  
[www.flyrhineland.com](http://www.flyrhineland.com)

---

**From:** Kevin Sielaff [<mailto:kevin.sielaff@meadhunt.com>]  
**Sent:** Friday, August 19, 2022 1:45 PM  
**To:** Christina Sullivan ([christina.sullivan@faa.gov](mailto:christina.sullivan@faa.gov)) <[christina.sullivan@faa.gov](mailto:christina.sullivan@faa.gov)>  
**Cc:** Matthew Leitner ([mleitner@flyrhineland.com](mailto:mleitner@flyrhineland.com)) <[mleitner@flyrhineland.com](mailto:mleitner@flyrhineland.com)>; Joshua Cothren - WI Bureau of Aeronautics ([joshua.cothren@dot.wi.gov](mailto:joshua.cothren@dot.wi.gov)) <[joshua.cothren@dot.wi.gov](mailto:joshua.cothren@dot.wi.gov)>  
**Subject:** RHI OE/AAA project/points entry

Christina,

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**2022-AGL-9397-NRA**  
**2022-AGL-9398-NRA**  
**2022-AGL-9399-NRA**  
**2022-AGL-9400-NRA**

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**KEVIN SIELAFF, PE**

SUPERVISOR, AVIATION ENGINEERING, PRINCIPAL

Mead & Hunt

Direct: 920-593-6849 | Cell: 920-619-3014 | [Transfer Files](#)

[meadhunt.com](http://meadhunt.com) | [LinkedIn](#) | [Twitter](#) | [Facebook](#) | [Instagram](#)



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