

August 11, 2020

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SENT BY E-MAIL

Stephen Ales
Hydrogeologist Program Coordinator
Wisconsin Department of Natural Resources
PO Box 7921
Madison, WI 53703

Dear Mr. Ales:

Re: Preferred Development Madison, LLC's
Proposed FedEx Development at the Dane
County Regional Airport

I represent Preferred Development Madison, LLC ("PDM") in its development of a FedEx shipping and distribution center ("Development") at the Dane County Airport ("Airport") property in Madison, Wisconsin. As you are aware, PDM possesses Phase I and Phase II Environmental Assessments ("EAs") of the proposed Development property. The Phase II EA included groundwater tests that confirmed the existence of both perfluorooctanoic acid ("PFOA") and perfluorooctanesulfonic ("PFOS"). These two compounds are known to exist on the Airport and surrounding properties because of the historic use of PFOS- and PFOA-containing firefighting foams.¹

At the outset, it is important to note that although there is known PFOA- and PFOS-contamination on and around the Airport property, PDM never used, possessed, or controlled firefighting foam or any other PFOA- or PFOS-containing substance on the Development property. Moreover, neither PDM nor its environmental consultants found any numerical standards in Wisconsin law relating to PFOA or PFOS in water or soil. There is no formal determination of the level of PFOA or PFOS that constitutes a "hazardous substances" under Wis. Stat. § 292.01(5). The only information regarding the safe levels of PFOA and PFOS are from a recommendation made by the Department of Health Services (DHS) under Wis. Admin. Code NR 160.07(3), which pertains to groundwater standards and not hazardous substance spills, and which has not been vetted through the required rulemaking process. Taking all of this into consideration, PDM believed there was no cause for concern about PFOA and PFOS on the Development property because the levels are far below the Environmental Protection Agency's

¹ See BRRTS Nos. 0-13-584472, 02-13-584369, 02-13-583366; 02-13-581254; 02-13-585319.

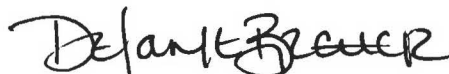
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Recommended Health Advisory Level of 70 ppt, combined.² Therefore, PDM does not believe the simple act of testing groundwater for contaminants known to be present in the area warrants a notification of a new discharge under Wis. Stat. § 292.11. Nonetheless, DNR has requested that PDM officially notify the agency of a “new discharge” based on these testing results, so in an effort to move the Development forward, this letter serves to satisfy DNR’s request. After consultation with DNR staff, PDM does not anticipate that this notification will result in PDM being declared a responsible party as defined in Wis. Admin. Code NR 700.03(51), nor in the commencement of a new remediation case by DNR.

In addition, this letter and the attached information serves as a request for Lease Liability Clarification in accordance with Wis. Stat. § 292.55. PDM is working to prepare a material management plan and a discharge management plan for handling of soil and water during construction of the Development. Details of those plans will be submitted to DNR upon completion. In general, PDM intends to leave any excavated soil on Airport property, and to containerize any dewatered groundwater for further testing. Along with the detailed discharge management plan, PDM will submit a Notice of Intent for coverage under the WPDES General Permit for Contaminated Groundwater from Remedial Action Operations, WPDES Permit No. 0046566, and will continue working with DNR to determine the parameters of discharging the water. PDM respectfully requests a determination on the Lease Liability Clarification request by Friday, August 14, in order to avoid further delay of the Development construction schedule.

Should you have any questions regarding this letter or the enclosed information, please feel free to contact me.

Regards,



Delanie Breuer

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Encs.

cc Phillip Bower, WDNR
Jason Knutson, DNR
Adrian Stocks, DNR
Tim Ryan, DNR
Robin Nyffeler, DNR

² See generally EPA, Drinking Water Health Advisories for PFOA and PFOS, accessed at <https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos> (last accessed Aug. 10, 2020). EPA describes the health advisory level of 70 ppt as offering “a margin of protection for all Americans throughout their life from adverse health effects resulting from exposure to PFOA and PFOS in drinking water.”