

McIlheran, Adam S - DNR

From: Thompson, Chris <CThompson@braunintertec.com>
Sent: Tuesday, November 28, 2023 2:56 PM
To: McIlheran, Adam S - DNR; jgrimes@dermody.com
Cc: Brunette, Margaret M - DNR; Prager, Michael A - DNR; Grittner, Paul V - DNR; Thompson, Chris
Subject: RE: NAR Determination/GLC Letter for LogistiCenter East Soil Pile, 8000 95th Street, Pleasant Prairie, WI - BRRTS#07-30-586163
Attachments: WE Energies NAR 08262020.pdf

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Adam:

Thank you for getting to this matter in a timely fashion.

I would like to request a change, however, to your November 20, 2023 *Liability Clarification and No Action Required Determination* letter.

While we submitted the discharge notification form on-line, 4400-225, and our sampling and analysis data, that was done in consultation with Mr. Grittner, as the best path forward leading to issuance of the NAR in a manner, and language, similar to what WE Energies had done in 2020 where WE Energies received a finding that: *No Discharge of A Hazardous Substance Or Environmental Pollution and No Discharge Or Environmental Pollution Was Found* and, "... therefore, further site investigation activities are not required and no response action is required...". A copy of that WE Energies finding, dated August 26, 2020 is attached for reference. Our understanding was that Dermody would receive that same language.

The alternative path forward to reporting a "discharge" at the Dermody property in Pleasant Prairie, that I had discussed with Mr. Grittner, was to use our professional judgement, in general accordance with your Guidance RR-103, that there had not been a discharge of hazardous substances, based on the reasons laid out in our October 17, 2023 Memorandum attached to the form 4400-237 requesting Technical Assistance.

Revising your NAR Determination letter is important for a number of reasons, the most important being that if or when the property that Dermody is developing is sold, or certain tenants are looking to lease some of the property, during Due Diligence on the part of a buyer or Lessee, the issue of a "release" will lead to uncertainties that can be hard to explain away to those not familiar with these matters. Your correspondence uses language including "... do not appear to be indicative of a significant discharge..." and "... insignificant" and "... low level contamination..." and "... may require management as a solid waste...". In the context of Due Diligence, this will be confusing and may lead to unnecessary further site investigation of the subject soils (when in fact all of these soils will have already been touched and observed during site grading).

Your older form 400-225, now replaced by an on-line form only, allowed for the "potential" of impacts to the environment (Section 5 of that form) and that is the form, and the designation we provided, that we originally submitted in support of the NAR request with the understanding that this would be the same finding by your office, that while a potential, that the field conditions and data show that there was not a discharge and no impact to the subject soils. Your new form does not have that option I believe.

Our professional judgment is that there has not been a “discharge” to the soils in question, for all of the reasons that we discussed in our Memorandum, and we respectfully request that you also reach this same conclusion.

I appreciate your attention to this matter.

I would be glad to hear from you via a Teams call, or similar, if necessary.

Respectively,



Christopher Thompson, PE
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From: McIlheran, Adam S - DNR <Adam.McIlheran@wisconsin.gov>
Sent: Monday, November 20, 2023 7:39 AM
To: jgrimes@dermody.com
Cc: Thompson, Chris <CThompson@braunintertec.com>; Brunette, Margaret M - DNR <Margaret.Brunette@wisconsin.gov>; Prager, Michael A - DNR <Michael.Prager@wisconsin.gov>; Grittner, Paul V - DNR <Paul.Grittner@wisconsin.gov>
Subject: NAR Determination/GLC Letter for LogistiCenter East Soil Pile, 8000 95th Street, Pleasant Prairie, WI - BRRTS#07-30-586163

You don't often get email from adam.mcilheran@wisconsin.gov. [Learn why this is important](#)

Mr. Grimes,

Attached is your No Action Required concurrence letter. There will be no hard copy mailed unless you request a hard copy. The letter will be available on the DNR BOTW [webpage](#) soon. Any questions, let me know.

Regards,

Adam

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Adam McIlheran

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