



September 27, 2023

Mr. Todd Fischer  
Diamond Star Properties, LLC  
2220 E Woodlark Rd  
Appleton, WI 54911  
*Sent via electronic mail only to [etf@new.rr.com](mailto:etf@new.rr.com)*

Subject: Liability Clarification for a Prospective Purchaser of Property Located at 505 Grand Avenue, Little Chute, Wisconsin, impacted by contamination from another property Parcel #: 260045800, BRRTS # 07-45-590053

Dear Mr. Fischer:

### **Purpose**

The Department of Natural Resources ("the Department") has reviewed your request for an off-site exemption letter for 505 Grand Avenue, Little Chute, Wisconsin, referred to in this letter as "the Property." Please refer to the attached Figure 3, Boring Location Map, dated September 2021, for a site map of the Property. The purpose of this letter is to determine what provisions of the off-site exemption you presently satisfy as a potential purchaser of the Property and the conditions under which you ("the Applicant") would satisfy all the requirements of the off-site exemption in Wis. Stat. § 292.13. Currently, Diamond Star Properties, LLC is the potential purchaser of the Property. The Department received a \$700 fee for providing this letter pursuant to Wis. Stat. §§ 292.13 (2) and (3), and Wis. Admin. Code ch. NR 749.

### **Summary Determination**

Other than owning the Property, the provisions in the off-site exemption statute are satisfied by Diamond Star Properties, LLC for this Property and Diamond Star Properties, LLC will not be held responsible for investigation or cleanup of the substances migrating from another property if they continue to satisfy all conditions as described in this letter. When you acquire the Property, you would have limited responsibility under Wis. Stat. §§ 292.12 and 292.13, for the soil, groundwater, and vapor contamination that has migrated or is migrating onto the Property. The conditions for the off-site exemption would be fully satisfied when you acquire title to the Property.

### **Request**

On September 11, 2023, Trenton Ott of Friess Environmental Consulting, Inc. (FEC) requested on your behalf that the Department determine whether you are exempt from Wis. Stat. §§ 292.11(3), (4) and (7)(b) and (c), commonly known as the "Spill Law," with respect to the existence of hazardous substances in soil, groundwater and vapor that you believe are migrating onto the Property from a source on another property. Wisconsin's Spill Law includes an "off-site exemption," in Wis. Stat. § 292.13, that limits the liability of a property owner. In particular, you have requested clarification as to whether or not you are eligible for the off-site liability exemption.

The following documents were submitted to the Department with the request:

- The Off-Site Liability Exemption and Liability Clarification Application Form 4400-201 dated August 31, 2023 with cover letter, and
- The off-site liability exemption letter sent to Four D Investments, LLC on July 21, 2022

### **Background**

The Department considered the information listed above in making the determinations presented in this letter. In July of 2021, The Village of Little Chute hired Terracon Consulting, Inc. to perform soil and groundwater sampling on the Property as part of their due diligence to potentially acquire the Sandies Dry Cleaners & Laundry (Former) - SL site (“the Sandies site”), BRRTS # 02-45-552222, via a method that would qualify the Village for the local government unit (LGU) environmental liability exemption. The Sandies site has documented release(s) of volatile organic compounds (VOCs), which included elevated concentrations of tetrachloroethylene (PCE). Soil samples were obtained from one boring location (P-8) on the Property; one foot below ground surface (bgs) had 6,420 micrograms per kilogram ( $\mu\text{g}/\text{kg}$ ) PCE and five feet bgs had 263  $\mu\text{g}/\text{kg}$  PCE. A grab groundwater sample from the same location also detected 161 micrograms per liter ( $\mu\text{g}/\text{L}$ ) PCE in groundwater. The sampling location is shown on the attached Boring Location Map, Figure 3, dated September 2021. On November 19, 2021, the Department sent a letter to Four D Investments, LLC, requesting historical land use information for the Property be submitted to the Department by January 18, 2022, so the Department could continue their evaluation and determine who was responsible for the VOC contamination detected. No response was received, so the Department issued a responsible party (RP) letter to Four D Investments, LLC on March 28, 2022, assigning BRRTS #02-45-589437.

On June 24, 2022, as part of the Off-Site Liability Exemption Request (the “Request”), the Department received the historical land use information that was requested in the letter sent to Four D Investments, LLC on January 18, 2022. The Department then issued an Off-Site Liability Exemption Letter to Four D Investments, LLC on July 21, 2022, rescinded the RP letter that was previously sent to Four D Investments, LLC, and issued a No Action Required (NAR) for the Property and modifying the previous BRRTS #02-45-589437 to BRRTS #09-45-589437, reflecting the NAR decision.

On September 21, 2023, supplemental vapor investigation results were provided to the DNR as part of documentation of a Limited Phase II Environmental Site Assessment (ESA) that was performed on the Property. As part of the Phase II ESA, two sub-slab vapor ports were installed in the basement of the Property’s on-site building and they were sampled on September 5, 2023. The analytical results showed concentrations of 95,000  $\mu\text{g}/\text{m}^3$  cis-1,2-Dichloroethene (DCE), 6,900  $\mu\text{g}/\text{m}^3$  PCE, 1,140  $\mu\text{g}/\text{m}^3$  TCE, and 2,550  $\mu\text{g}/\text{m}^3$  vinyl chloride. All four of these compounds are present at concentrations above their respective small commercial and/or large commercial vapor risk screen levels (VRSLs).

The determinations listed below state which provisions in the off-site exemption statute you presently satisfy for this Property, and whether or not upon taking title to the Property, the conditions for the off-site exemption would be fully satisfied.

The off-site exemption in Wis. Stat. § 292.13, limits the environmental liability of a person in possession, (i.e., who owns a property) or control of a property affected by the discharge of a hazardous substance, when the discharge originates from another source not on the Property. At the present time, you do not possess or control the Property, but it is the Department’s understanding that you intend to purchase the Property. Because you do not currently possess or control the Property, the Department cannot issue a written determination that all the

provisions in Wis. Stat. § 292.13, have been satisfied. However, the Department does have the ability under Wis. Stat. § 292.55, to clarify a person's present or future liability for the environmental pollution of a property.

### **Liability Determinations**

Based on the Department's review of technical information, including the off-site application form submitted in accordance with Wis. Stat. § 292.13(2), the Department makes the following determinations under Wis. Stat. §§ 292.13(3) and 292.55, regarding the presence of PCE in the soil, groundwater, and vapor at the Property, including breakdown products:

1. The hazardous substance discharge originated from a source on property that is not possessed or controlled by Diamond Star Properties, LLC.
2. Diamond Star Properties, LLC did not possess or control the hazardous substances on the property on which the discharge originated.
3. Diamond Star Properties, LLC did not cause the discharge.
4. Diamond Star Properties, LLC will not have liability under the Spill Law for investigation or remediation of the soil, groundwater, and vapor contamination originating from another site onto the Property, provided that Diamond Star Properties, LLC does not take possession or control of the property on which the discharges originated.

Because you do not currently own the Property, the Department is not able currently to issue you a letter determining that you qualify for all the provisions of the off-site liability exemption. However, when you acquire title to the Property, and the conditions in Wis. Stat. § 292.13, are followed, you will fully qualify for the off-site liability exemption.

### **Exemption Conditions**

The Department's determination, as set forth in this letter, are subject to the following conditions being complied with, as specified in Wis. Stat. §§ 292.13(1) and (1m):

1. The facts upon which the Department based its determination are accurate and do not change.
2. Diamond Star Properties, LLC agrees to allow the following parties to enter the Property to take action to respond to the discharges: the Department and its authorized representatives; any party that possessed or controlled the hazardous substances or caused the discharge; and any consultant or contractor of such a party.
3. Diamond Star Properties, LLC agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharges.
4. Diamond Star Properties, LLC agrees to any other condition that the Department determines is reasonable and necessary to ensure that the Department and any other authorized party can adequately respond to the discharge.
5. With respect to soil or vapor contamination only, Diamond Star Properties, LLC agrees to take one or more specified actions directed by the Department, if the Department determines that the actions are necessary to prevent an imminent threat to human health, safety or welfare or to the environment. This would occur after

the Department has made a reasonable attempt to notify the party who caused the hazardous substance discharge about that party's responsibilities to investigate and clean up the discharge.

### **Responsibilities for Continuing Obligations**

In addition to the conditions regarding liability above, under Wis. Stats. § 292.12(2) after an interim action (such as installation or modification of a vapor mitigation system (VMS)), a cleanup action, or the investigation and cleanup of contamination at the source property is completed, approval of the actions may include continuing obligations at the source property as well as your Property. Often residual contamination remains after an approved interim action or environmental cleanup is completed and sometimes that approval includes requirements to maintain engineering controls, such as a cap or soil cover, or VMS to reduce the impact of the contamination. If approvals will include requirements for your Property, the party conducting the cleanup is required to notify you before the DNR takes action.

The United States Environmental Protection Agency (US EPA) installed a VMS at the Property during the week of April 16, 2012, and turned over responsibility for the VMS to the property owner. The current VMS is aging, as it is over 11 years old, and the Department recommends that the property owner reassess its operation. Since the time of this system's install, the science of vapor intrusion and mitigation system design has evolved, and the Department would like to ensure that this building is protected from the acute risk associated with PCE's breakdown product, trichloroethylene (TCE). DNR recommends that the property owner contact a professional (e.g. National Radon Proficiency Program (NRPP) certified mitigator experienced with chemical vapor intrusion mitigation) to assess the VMS's effectiveness at reducing vapor concentrations in the building at 505 Grand Avenue. Systems with similar construction have been shown to lose effectiveness over time, and require replacement of system components (e.g. the blower fan) or other enhancements. Any modifications proposed for the VMS at the Property are recommended to be communicated to the Department in advance to assure best management practices and protection of public health. Any modifications to the VMS at this Property must be documented and provided to the Department per Wis. Admin. Code NR 708 and NR 724.

### **Conclusion**

The Department may revoke the determinations made in this letter if it determines that any of the requirements under Wis. Stat. §§ 292.13(1) or (1m), cease to be met.

With the exception of owning the Property, the provisions in the off-site exemption statute are satisfied by Diamond Star Properties, LLC for this Property. The conditions for the off-site exemption would be fully satisfied if Diamond Star Properties, LLC takes title to the Property. A person who meets all the conditions of the off-site exemption is not responsible for investigating and cleaning up environmental contamination that migrates onto her or his property from a neighboring property, with certain limitations, if the statutory conditions are met.

Also, future Property owners are eligible for the exemption under Wis. Stat. § 292.13, if they meet the requirements listed in that statute section. The determinations in this letter regarding a liability exemption, however, only apply to the Applicant, and may not be transferred or assigned to other parties. The Department will provide a written determination to future owners of this Property, if such a determination is requested in accordance with the requirements of Wis. Stat. § 292.13(2).

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for this activity is shown at the top of this letter. The Department tracks information on all determinations such as this in a Department database that is available online at [dnr.wi.gov](http://dnr.wi.gov) and search: "BOTW."

September 27, 2023  
Diamond Star Properties, LLC  
Liability Clarification for Prospective Purchaser  
Four D Investments LLC, BRRTS # 07-45-590053

If you have any questions or concerns regarding this letter, please contact me at (920) 366-5685 or by email at [josie.schultz@wisconsin.gov](mailto:josie.schultz@wisconsin.gov) or at the address listed in the letterhead.

Sincerely,



Josie Schultz  
Project Manager  
Remediation & Redevelopment Program

Attachment:

Figure 3, Boring Location Map, dated September 2021  
Operation of Vapor Abatement System at 505 Grand Avenue, Little Chute, dated August 8, 2012

cc: Deborah Smith ([bakersoutlet@sbcglobal.net](mailto:bakersoutlet@sbcglobal.net))  
Dale Smith ([dsmith@fanncoporation.com](mailto:dsmith@fanncoporation.com))  
Rick Frieseke ([rfrieseke@fecinc.us](mailto:rfrieseke@fecinc.us))  
Trenton Ott, Freiss Environmental Consulting, Inc. ([tott@fecinc.us](mailto:tott@fecinc.us))  
Dave Kittel, Village of Little Chute ([david.kittel@littlechutewi.org](mailto:david.kittel@littlechutewi.org))  
Tauren Beggs, DNR ([tauren.beggs@wisconsin.gov](mailto:tauren.beggs@wisconsin.gov))  
Michael Prager, DNR ([Michael.prager@wisconsin.gov](mailto:Michael.prager@wisconsin.gov))







**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604

August 8, 2012

Ms. Debbie Smith, Owner/Operator  
Baker's Outlet  
505 Grand Avenue, Little Chute, WI 54140

Re: Operation and Maintenance of Vapor Abatement System at 505 Grand Avenue

As you know, U.S. Environmental Protection Agency (U.S. EPA) has been conducting a cleanup at the former Sandies Dry Cleaner and Laundry Site in the past year which included removal of soil contaminated with tetrachloroethylene (PCE). As part of that cleanup you gave us verbal permission to install a vapor abatement system in your basement at 505 Grand Avenue to control PCE vapors which may migrate. This system was installed the week of April 16, 2012. Subsequently, we collected indoor air samples to determine the effectiveness of the system. Results of the air monitoring indicate cleanup goals for PCE at Sandies, and Bakery are being met.

The purpose of this letter is to document your previous verbal agreement to install the aforementioned system. The vapor abatement system includes PVC piping, timer, and an inline fan to vent vapors from the basement area to above the roofline. EPA paid for the material and installation of the system. Operation & maintenance (O&M) of the system will be the property owner's responsibility (which includes the electric bill).

If you have questions regarding the vapor abatement system please contact me at 312-886-4314. If you have health related questions, please contact Henry Nehls-Lowe at the Wisconsin Department of Health Services at 608-266-3479.

Sincerely,

Ramon C. Mendoza  
U.S. EPA On-Scene Coordinator



