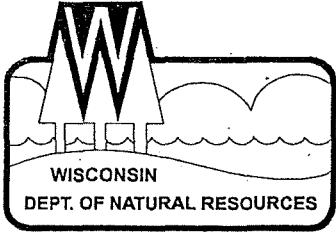


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State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary
Gloria L. McCutcheon, Regional Director

Southeast Region
Milwaukee Service Center
2300 N. Dr. ML King Drive, PO Box 12436
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August 4, 2000

Ms. Kimberley Grimm
Continental Properties Company, Inc.
P.O. Box 220
Menomonee Falls, WI 53052

File Ref: FID#241952260 RR/453
BRRTS# 06-41-181904

Subject: Certificate of Completion for 1735 W. Silver Spring Drive, formerly known as 5400 N. Green Bay Road, Parcel 1, Glendale, Wisconsin

Dear Ms. Grimm:

The Department of Natural Resources ("the Department") has reviewed your request for a Certificate of Completion for the property located at 1735 W. Silver Spring Drive, also referred to as Parcel 1 of 5400 N. Green Bay Road in Glendale, Wisconsin ("the Property"). The Department has reviewed all submittals documenting completion of the investigation and remediation of the Property. Based on the information submitted, the Department has determined that you have attained compliance with the requirements of Chapter NR 726, Wis. Adm. Code, for the hazardous substance releases originating on the Property.

In 1998, the Department issued a written determination, pursuant to s. 292.13 (1), (1m) and (2), Wis. Stats., that Continental 87 Fund LLC was exempt from liability for clean-up with respect to the hazardous substance tetrachloroethylene and its breakdown products, in soil and groundwater, that had migrated onto the property from an off-site source. A responsible party has been identified and is working on the remediation of the hazardous substances originating from the off-site source.

Continental 87 Fund LLC has now met the technical requirements of the Voluntary Party Liability Exemption process for the hazardous substance releases originating on the Property. At present, however, s. 292.15 (2) (ag), Wis. Stats., only authorizes the Department to include within a Certificate of Completion hazardous substances in groundwater for which a written liability exemption determination has been issued for contaminants in groundwater under s. 292.13 (1) and (2), Wis. Stats. The Department does not have the statutory authority to include in a Certificate of Completion hazardous substances in soil for which a written liability exemption determination has been issued under s. 292.13 (1m) and (2), Wis. Stats. Based on the work you have completed, the Department is able to issue a partial Certificate of Completion, pursuant to s. 292.15 (2) (am), Wis. Stats., with respect to the hazardous substances on the property, with the exception of the tetrachloroethylene and breakdown products for which the Department has previously issued an off-site source liability exemption determination to Continental 87 Fund LLC pursuant to s. 292.13, Wis. Stats.

Off-Site Liability Exemption

The Department's written determination, issued in 1998 pursuant to s. 292.13(2), Stats., indicated that Continental 87 Fund LLC was exempt from liability with respect to hazardous substances that migrated on the Property from an off-site source. This written determination noted that there were a hazardous



substances on the Property in the groundwater and the soil, consisting of tetrachloroethylene and its breakdown products, that had migrated onto the Property from an off-site source. Furthermore, the determination explained that Continental 87 Fund LLC is exempt from responsibility to investigate and clean up the soil and groundwater contamination on the Property caused by the discharge of tetrachloroethylene or breakdown products. The Department will continue to work with the parties who have agreed to address the tetrachloroethylene contamination on the source and down-gradient properties.

Voluntary Party Liability Exemption

Meanwhile, Continental 87 Fund LLC has been working with the Department pursuant to s. 292.15, Stats. to obtain the Voluntary Party Liability Exemption. Continental 87 Fund LLC has satisfactorily investigated and restored to the extent practicable all discharges on the Property and has minimized the harmful effects from the discharges, with the exception of the tetrachloroethylene and its breakdown products which had migrated into soil and groundwater on the Property from an off-site source. The Department has approved a site investigation and remedial action for the Property for all hazardous substance discharges originating on the Property. As you may be aware, s. 292.15 (2)(ag), Stats. was enacted in the 1999-2001 biennial budget (1999 Wisconsin Act 9). This new statutory language gave the Department authority to issue a full Certificate of Completion to a voluntary party for properties where the Department has issued a written liability exemption determination pursuant to ss. 292.13(1) and (2), Wis. Stats., for hazardous substances in groundwater on the property that originated from an off-site source if all the following conditions have been met:

- the environment is restored to the extent practicable with respect to the discharges and the harmful effects from the discharge are minimized, except for hazardous substances in the groundwater for which the voluntary party is exempt under the off-site exemption.
- the voluntary party receives a written determination from the DNR that he/she has met all the requirements under s. 292.13 for the off-site exemption;
- the voluntary party continues to satisfy the conditions of the off-site exemption, including cooperating with the DNR and the responsible parties.

The specific statutory language in s. 292.15(2)(ag), limiting its applicability to determinations made under s. 292.13(1) and (2), limits the Department's authority to situations in which the off-site contamination is in the groundwater and does not apply to determinations made under s. 292.13(1m) and (2), regarding contamination from off-site sources in the soil. As described above, the contamination on your Property caused by the discharge of tetrachloroethylene or breakdown products is in both soil and groundwater. As a result, the Department is currently unable to issue a full Certificate of Completion for the Property to Continental 87 Fund LLC pursuant to s. 292.15(2)(ag), but we are able to issue the attached partial Certificate of Completion to Continental 87 Fund LLC pursuant to s. 292.15(2)(am).

Together, the partial Certificate of Completion and the written determination for the off-site exemption issued in 1998 would clearly exempt Continental 87 Fund LLC from liability for any additional investigation or cleanup of hazardous substance discharges on the Property. Furthermore, the attached partial Certificate of Completion is transferable to any future owners of the Property, successors or assigns as described in s. 292.15(3). Also, any future purchaser of the Property, who meets the conditions of the off-site exemption in s. 292.13(1) and (1m), would be protected from potential liability for the contamination on the Property that migrated from off-site and could apply to the Department for a written determination under s. 292.13(2), Wis. Stats.

Future Consideration

The Brownfields Study Group, an advisory committee that is currently evaluating Wisconsin's Brownfields Initiative, is aware that s. 292.15(2)(ag) only applies to groundwater contamination and not soil. A subgroup of the Study Group has discussed this issue and plans to recommend that the legislature and the Governor amend this law so that it covers both groundwater and soil contamination that have migrated from off-site. This is not yet a final recommendation from the Study Group and the change would need to be adopted by the legislature and signed by the Governor to take effect. If this statutory change is adopted, the Department would then be able to issue a full Certificate of Completion to Continental 87 Fund LLC.

The Department appreciates the efforts Continental has taken to remediate this property. We would also like to recognize your patience and persistence during the review process, as your project has encountered more than one occasion of being the first to walk through recently developed statutory provisions and the related Department policy development.

If you have any questions or concerns regarding this letter, please contact me (at 414-263-8758) or Attorney Judy Ohm (at 608-266-9972).

Sincerely,



Pamela A. Mylotta
Hydrogeologist, Remediation & Redevelopment Program
Southeast Region, Milwaukee Service Center

Attachments

c: Bill Roush - Davis & Kuelthau
Art Covi - Wisconsin Gas
Todd Stuebe- Glendale CDA
Judy Ohm--LS/5
Darsi Foss--RR/3

State of Wisconsin
Department of Natural Resources

**CERTIFICATE OF COMPLETION
OF RESPONSE ACTIONS
UNDER SECTION 292.15(2)(am), WIS. STATS.**

Whereas, Continental 87 Fund LLC has applied for an exemption from liability under s. 292.15, Wis. Stats., for the property located at 1735 W. Silver Spring Drive (formerly known as 5400 N. Green Bay Road), Glendale, Wisconsin, further described in the legal description appended hereto as Attachment A and which will be referred to as "the Property";

Whereas, an environmental investigation of the Property has been conducted and has determined that the contaminants of concern at the Property consisted of diesel range organics (DRO), naphthalene, polynuclear aromatic hydrocarbons (PAHs), lead, and arsenic, and tetrachloroethylene and its natural breakdown product compounds;

Whereas, the Wisconsin Department of Natural Resources ("WDNR") has determined that the fill brought onto the property in the past does not qualify as exempt under s. NR 500.08, Wis. Adm. Code. Due to the non-exempt status of the fill, any person who proposes to build on this property must obtain approval to construct a building on the waste disposal area from the WDNR under s. NR 506.085, Wis. Adm. Code, prior to the initiation of any construction on the property. On July 8, 1998, WDNR issued a Conditional Grant of Exemption for Construction on an Abandoned Landfill to Continental 87 Fund LLC for the construction which has been completed on the Property.

Whereas, the WDNR has received and reviewed investigation reports and a remedial action plan for the Property which comply with the requirements set forth in chs. NR 700-726, Wis. Adm. Code, consisting of the documents and reports listed in Attachment B;

Whereas, in accordance with s. 292.15(2)(a), Wis. Stats., the WDNR has determined that an environmental investigation has been conducted which adequately identified and evaluated the nature and extent of the hazardous substance discharges on the Property and WDNR has approved of the remedial action plan for the Property; and

Whereas, Continental 87 Fund LLC has recorded with the Register of Deeds of Milwaukee County a deed restriction (Attachment C) for the Property which declares that the Property is held and shall be held, conveyed or encumbered, leased, rented, used, occupied and improved subject to the following limitations and restrictions:

“On and after the date of this Declaration of Restrictions, the following activities are prohibited on the Property unless prior approval has been obtained from the Wisconsin Department of Natural Resources, its successor or assigns (hereinafter collectively “the Department”): (1) Excavating or grading, other than in conformance with the Cap Maintenance Plan; (2) Filling or placing any material in landscaped areas other than clean topsoil or other clean landscaping material; (3) Plowing for the cultivation of agricultural crops; and (4) Construction or installation of a building or other structure, other than reconstruction of buildings and structures on the foundations that exist as of the date of this Deed Restriction as shown on Exhibit 1” {of the Deed Restriction}

“On and after the date of this Deed Restriction, the following activities are prohibited on the Property unless done in accordance with the Cap Maintenance Plan approved by the Department and appended hereto as Exhibit 2 {of the Deed Restriction}, or after obtaining the prior written approval of the Department: (1) Utility repairs; (2) Removal, repair or replacement of pavement; and (3) Placement of plants or other landscaping features that require excavation or grading”.

Whereas, on May 15, 2000, WDNR determined that response actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharges to the air, land, and waters of the state were completed, with exception of the tetrachloroethylene and its associated breakdown products, for which Continental 87 Fund LLC is exempt from liability under s. 292.13(1) and (1m), Wis. Stats.

Whereas, Continental 87 Fund LLC has obtained a written determination from WDNR under s. 292.13(2), Wis. Stats., that Continental 87 Fund LLC is exempt from liability under s.292.13(1) and (1)(m), Wis. Stats., with respect to the tetrachloroethylene and associated breakdown products on the Property.

Whereas, WDNR has determined that public health, safety, or the environment will not be endangered by the hazardous substances remaining after completion of the response actions undertaken by Continental 87 Fund LLC, given the manner in which the property will be developed and used.

Whereas, WDNR has determined that any activities associated with the proposed use or development of the property will not aggravate or contribute to the discharge of a hazardous substance and will not unduly interfere with, or increase the costs of, restoring the property and minimizing the harmful effects of the discharge of a hazardous substance.

Whereas, Continental 87 Fund LLC agrees to cooperate with WDNR to address any problems caused by the hazardous substances remaining on the property for which a determination has been issued under s. 292.13, Wis. Stats. and such cooperation shall include allowing access to the property or allowing WDNR or its authorized representatives to undertake activities on the property, including placement of borings, equipment and structures on the property.

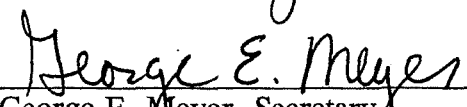
Therefore, based upon the information that has been submitted to the WDNR, the WDNR hereby certifies that the response actions set forth in the WDNR approved remedial action plans have been completed, with the exception of tetrachloroethylene and its natural breakdown products for which WDNR has previously issued a written determination exempting Continental 87 Fund LLC from liability under s. 292.13, Wis. Stats.

Upon issuance of this Certificate, Continental 87 Fund LLC and the persons qualified for protection under s. 292.15(3), Wis. Stats., are exempt from the provisions of ss. 291.37(2), and 292.11(3), (4), and (7)(b) and (c), Wis. Stats., with respect to the existence of hazardous substances on the Property, the release of which occurred prior to the date the environmental investigation required under s. 292.15(2)(a)1., Wis. Stats., was approved, provided that the owners of the Property continue to maintain and monitor the Property as required by rules promulgated by the WDNR and do not engage in activities that are inconsistent with the maintenance of the Property. The liability exemption conferred by the issuance of this Certificate of Completion shall not apply to tetrachloroethylene and its breakdown products, for which the WDNR has previously issued a written liability exemption determination pursuant to s. 292.13, Wis. Stats. Any releases of a hazardous substance to or from the property that occur after the date that the environmental investigation was approved will be the responsibility of the current property owner and any other person who possesses or controls that discharge and any person who caused the discharge.

The protection from liability provided under s. 292.15(2), Wis. Stats., does not apply to any person who has obtained a Certificate of Completion by fraud or misrepresentation, or by the knowing failure to disclose material information to the WDNR or under circumstances in which Continental 87 Fund LLC knew or should have known about more discharges of hazardous substances than was revealed by the investigation approved by the WDNR.

Nothing in this Certificate or in s. 292.15, Wis. Stats., affects the authority of the WDNR to exercise any powers or duties under applicable laws other than ss. 291.37(2) and 292.11(3), (4), and (7)(b) and (c), Wis. Stats., with respect to any release or threatened release of contaminants at the Property, or the right of the WDNR to seek relief available against any person who is not entitled to protection from liability under s. 292.15, Wis. Stats., with respect to such release or threatened release.

SIGNED AND CERTIFIED this 7 day of August, 2000.


George E. Meyer, Secretary
Wisconsin Department of Natural Resources

CERTIFICATE OF COMPLETION
ATTACHMENT A
LEGAL PROPERTY DESCRIPTION
Continental 87 Fund LLC, 1735 W. Silver Spring Drive

Parcel 1 of Certified Survey Map No. 6499 recorded in Milwaukee County on April 2, 1998 in Volume 4278, Pages 949-955 as Document No. 7511509, being a division of lands in that part of the Northeast ¼ and the Northwest ¼ of the Northeast ¼ of Section 31, Township 8 North, Range 22 East, partly in the cities of Milwaukee and Glendale, Milwaukee County, Wisconsin as corrected by Affidavit of Corrections recorded July 20, 1998 as Document No. 7567565.

ATTACHMENT B
INVESTIGATION AND REMEDIAL ACTION PLAN REPORTS
Continental 87 Fund LLC, 1735 W. Silver Spring Drive

1. Letter from Graef, Anhalt, Schloemer & Associates to WDNR, dated December 18, 1997, regarding "Request for Written Determination of "Off-Site" Sources, Wisconsin Gas Company North Service Center and Vacant Lands Adjacent to the NSC (Parcels A, B, and C).
2. Reports prepared by Graef, Anhalt, Schloemer & Associates, Inc., for Continental 85 and 87 Funds LLC:
 - a. Phase I Environmental Site Assessment for Parcel A, dated December 1997.
 - b. Phase I Environmental Site Assessment for Parcel B, dated December 1997.
 - c. Phase I Environmental Site Assessment for Parcel C, dated December 1997.
 - d. Soil and Groundwater Investigation - Parcel A, dated December 1997.
 - e. Soil and Groundwater Investigation - Parcel B, dated December 1997.
 - f. Soil and Groundwater Investigation - Parcel C, dated December 1997.
3. Environmental Site Assessment, Wisconsin Gas Company North Service Center Property and Parcels A and B, dated December 1996, prepared by Geraghty & Miller, Inc. for Wisconsin Gas Company.
4. Site Investigation Report, The Crestwood Area Site, 1720-1800 West Silver Spring Drive, Glendale, Wisconsin, March 13, 1998, by HNTB Corporation, for The Glendale Community Development Authority.
5. Recorded Certified Survey Map No. 6499 for 5400 N. Green Bay Road
6. "Remedial Action Plan, Parcel A, 5400 North Green Bay Road", dated June 25, 1998, prepared by Graef, Anhalt, Schloemer & Associates.
7. Letter from Graef, Anhalt, Schloemer & Associates to WDNR, RE: Continental Glendale Site, dated January 30, 1998.
8. Completed WDNR Form 4400-178 (12/96 Version), "Land Recycling Program, Purchaser Liability Exemption Program Application", dated February 12, 1998.
9. "Soil and Groundwater Materials Handling Management Plan for Parcels A, B & C", dated May 13, 1998, prepared by Graef, Anhalt, Schloemer & Associates.
10. "Soil Investigation and Groundwater Quality Monitoring, Parcels A, B & C", submitted April 3, 1998, prepared by ARCADIS Geraghty & Miller.
11. "Request for Exemption to Construct on an Abandoned Site, Continental 85/87 Fund LLC/Wisconsin Gas Site Parcels A, B & C, 5400 North Green Bay Road", dated February 24, 1998, prepared by Graef, Anhalt, Schloemer & Associates.
12. "Opinion Letter – Application of Act 453 to Parcels A, B & C, 5400 North Green Bay Road", dated May 13, 1998, prepared by Graef, Anhalt, Schloemer & Associates.
13. "Results of Off-Site Extent of Contamination Soil Investigations, June 8 and 11, 1998, Continental 87 Fund LLC", prepared by Graef, Anhalt, Schloemer & Associates.