



November 3, 2022

Ms. Lindsay Bucholz
10191 Flagstone Dr.
Cedarburg, WI 53012

BRRTS#: 07-46-590830

Subject: Liability Clarification for a Prospective Purchaser of Property
Located at 1229-1231 12th Avenue, Grafton, Wisconsin,
with Suspected Contamination from an Off-site Source
Parcel #: 10-060-10-05-000

Dear Ms. Bucholz:

Purpose

The Department of Natural Resources ("the Department") has reviewed your request for an off-site exemption letter for 1229-1231 12th Avenue, Grafton, Wisconsin, referred to in this letter as "the Property." Please refer to the attached Figure 1 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 would satisfy all the requirements of the off-site exemption in s. 292.13, Wis. Stats. Currently, you are the potential purchaser of the Property. The Department received a \$700 fee for providing this letter pursuant to s. 292.13 (2) and (3), Stats, and ch. NR 749, Wis. Admin. Code.

Summary Determination

Other than not owning the Property and that there has been no confirmed impact of a hazardous substance on the Property, the provisions in the off-site exemption statute are satisfied by you for the Property and you will not be held responsible for investigation or cleanup of the substances migrating from another property if you continue to satisfy all conditions as described in this letter. When you acquire the Property, you would have limited responsibility under ss. 292.12 and 292.13, Stats, for vapor and/or groundwater contamination that may be found to have migrated or are currently migrating onto the Property. The conditions for the off-site exemption would be fully satisfied when you acquire title to the Property and contamination is found to be migrating onto the Property from an off-site source.

Request

On October 26, 2022, Moraine Environmental, Inc. requested, on your behalf, that the Department determine whether you are exempt from s. 292.11(3), (4) and (7)(b) and (c), Wis. Stats., commonly known as the "Spill Law," with respect to the existence of hazardous substances in the vapor and groundwater that you believe could be migrating onto the Property from a source on another property. Wisconsin's Spill Law includes an "off-site exemption," in s. 292.13, Wis. Stats., 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:

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1. The off-site application form dated October 3, 2022.
2. An email from Ms. Kathy Bucholz with documentation of property use history attached.

Background

The Department considered the information listed above as well as Department file documents in making the determinations presented in this letter. The Property is located in downtown Grafton and is currently being used for a commercial business with a residential apartment upstairs. The Property is east of the Quality Cleaners open site that has known perchloroethylene (dry cleaning solvent) contamination in the soil, groundwater, and vapor. A site investigation and remedial action of the Quality Cleaners site has been ongoing since 2013. Groundwater flow has been shown to be moving from the Quality Cleaners site towards the Property. While sampling on the Property has not yet been conducted, the site investigation conducted so far around the Property suggests that perchloroethylene and its likely daughter products such as trichloroethylene may be in the groundwater and/or vapor at the Property. The DNR recommends vapor intrusion testing on the Property to evaluate the risk that chemical vapors may pose for occupants of the building. It is the DNR's understanding that you plan to install a vapor mitigation system in the building as a condition of the property transaction financing.

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 s. 292.13, Wis. Stats., 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 own the Property, the Department cannot issue a written determination that all the provisions in s. 292.13, Wis. Stats., have been satisfied. However, the Department does have the ability under s. 292.55, Wis. Stats., 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 s. 292.13(2), Stats., the Department makes the following determinations under ss 292.13(3) and 292.55, Stats., regarding the potential presence of perchloroethylene and its likely daughter products such as trichloroethylene in the groundwater and/or vapor at the Property:

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

Because you do not currently own the Property and there are not currently confirmed hazardous substances identified on the Property, the Department is not able at this time 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 if sampling is conducted in the future that confirms contamination on the Property, and the conditions in s. 292.13, Stats, 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 s. 292.13(1) and (1m), Wis. Stats:

1. The facts upon which the Department based its determination are accurate and do not change.
2. Ms. Lindsay Bucholz agrees to allow the following parties to enter the Property to take action to respond to the discharge: 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. Ms. Lindsay Bucholz agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharges.
4. Ms. Lindsay Bucholz 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. This includes signing an access agreement and allowing access for installation and sampling of monitoring wells and/or vapor sampling pins on the Property.

Responsibilities for Continuing Obligations

In addition to the conditions above, after the contamination at the source property is remediated, the approval may include continuing obligations at the source property as well as the Property. Often residual contamination remains after an approved environmental cleanup is completed and sometimes that approval includes requirements to maintain engineering controls, such as a cap, soil cover, or vapor mitigation system to reduce the impact of the contamination. You may also be required to obtain DNR approval to construct a water supply well on the Property. If the request for cleanup approval includes requirements for the Property, the party conducting the cleanup is required to notify you before the DNR reviews the proposal.

Conclusion

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

With the exception of owning the Property, the provisions in the off-site exemption statute are satisfied by Ms. Lindsay Bucholz for the Property. The conditions for the off-site exemption would be fully satisfied if Ms. Lindsay Bucholz takes title to the Property and contamination is found on 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 section 292.13, Wis. Stats., 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 the Property, if such a determination is requested in accordance with the requirements of section 292.13(2), Wis. Stats.

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Wisconsin

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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 on the Internet at: <http://dnr.wi.gov/topic/brownfields/botw.html>. If you have any questions or concerns regarding this letter, please contact me at 262-416-8643 or by email at johnm.feeney@wisconsin.gov or at the address listed in the letterhead.

Sincerely,

A handwritten signature in black ink, appearing to read "John Feeney". The signature is fluid and cursive, with the first name "John" being more prominent than the last name "Feeney".

John Feeney, PG
Remediation & Redevelopment Program
Department of Natural Resources

Attachment: Figure 1, October 28, 2022, DNR

cc: Mr. Dave Lennon, Moraine Environmental, Inc.
Ms. Margaret Brunette, DNR (electronic)
Mr. Michael Prager – RR/5 DNR (electronic)

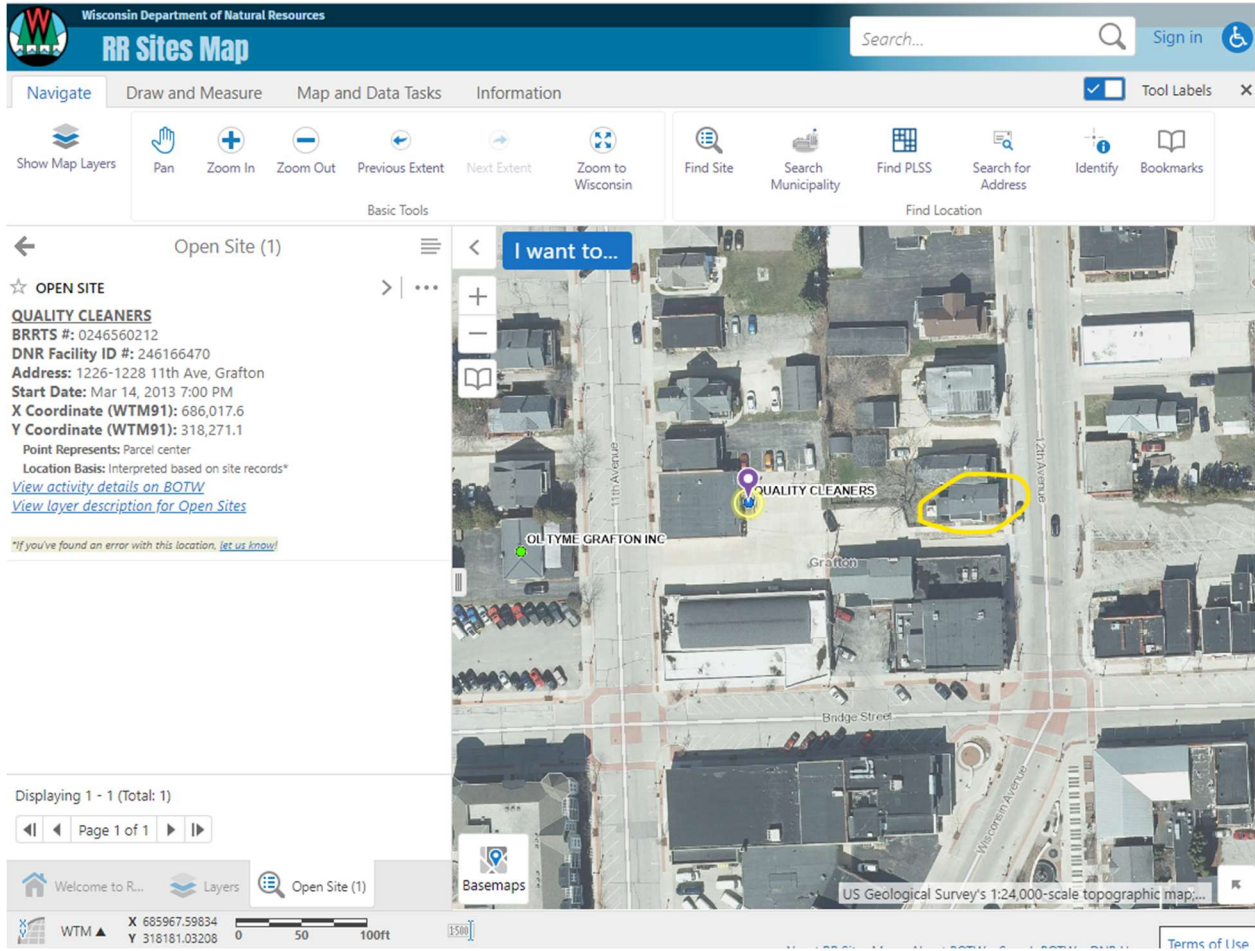


Figure 1. 1229-1231 12th Avenue, Grafton, Wisconsin. Shown in the yellow circle to the right of the Quality Cleaners location indicated on the map.