



September 21, 2020

Bear Development, LLC (electronic)
Adam Templer
4011 80th Street
Kenosha, WI 53142

Subject: Off-site Liability exemption for property located at 1420 White Rock Ave., Waukesha, WI with vapors and groundwater contamination from an off-site source
Parcel # 1003271 BRRTS # 07-68-586161

Dear Mr. Templer:

Purpose

The Department of Natural Resources ("the department") recently reviewed your request for an off-site exemption letter for the property located at 1420 White Rock Ave., which will be referred to in this letter as "the Property." In addition, the property is referred as the Spring City Commons on the department BRRTS database. Refer to the attached "Figure 1" for a map 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

The department, based on the information made available to it, confirms that Bear Development LLC qualifies for the off-site liability exemption, and Bear Development LLC is not responsible for investigation or cleanup of the contamination that originated on a neighboring property. The Property owner may be responsible for limited actions that are described in this letter, under Wis. Stat. §§ 292.12 and 292.13, for the vapors and groundwater contamination that migrated onto the Property.

Request

You have requested that the department determine if Bear Development LLC is exempt from Wis. Stats. §§ 292.11(3), (4) and (7)(b) and (c), (commonly known as the "Spill Law"), with respect to the existence of a hazardous substance discharge in the vapors and groundwater that you believe is migrating onto the Property from an off-site source.

Wis. Stats. § 292.13(2) requires the department to issue, upon request, a written determination regarding a liability exemption for a person who possesses or controls property that is contaminated by an off-site discharge when certain conditions are met. To make this determination, the department reviewed information about the Property, including vapors and groundwater sampling data for the Property and/or other sites contained in the following documents:

- Off-Site Liability Exemption and Liability Clarification Application form (Form 4400-201) dated July 10, 2020
- Endpoint Solutions, July 12, 2019, "Phase 1 Environmental Site Assessment"
- KPRG and Associates, Inc., April 26, 2018, "Interim Soil and Groundwater/Surface Water Data Summary"

Background

The department considered the documents listed above in making the determinations presented in this letter. The Property formerly contained four lots which have recently combined into one. The earliest information is from Sanborn maps from 1911 and the site already contains numerous dwellings and a saloon. Most of the dwellings are likely single-family residential homes. By 1949 a bowling alley is present on one of the parcels. The bowling alley was removed after 2017 due to a fire. Currently a few of the residences are still present but they will be removed for the proposed development of multi-family residential.

To investigate the potential off-site vapor contamination, two borings SV- 1, and SV-2 were installed on the Property. Two vapor samples were collected and were laboratory analyzed for trichloroethylene (TCE). Analytical results of the vapor identified TCE in both samples. Analytical results of the vapor identified TCE at SV-1 at a concentration above the respective WDNR Deep Soil- Residential VRSL. Based on these results, and the planned property use for multi-family residential use, a vapor barrier and sub-slab piping are being installed during construction with possible use after construction is complete.

The Spring City Commons development is located within an area currently being investigated as part of an open WDNR BRRTS case (02-68-098404) associated with the adjacent former Navistar property (Navistar Inc.) The investigation activities conducted to date by the responsible party (Navistar, Inc.) documented the presence of CVOCs, including trichloroethene (TCE), in groundwater that extends beneath the property that is currently being developed. The estimated extent of groundwater impacts is illustrated by KPRG and Associates, Inc. [KPRG] on Figure 8.

Determination

Based upon the available information and in accordance with Wis. Stat. § 292.13, the department makes the following determinations regarding the presence of trichloroethylene contamination in the soil vapor on the Property as indicated on the map in attached “Figure 1” and the extent of trichloroethylene groundwater contamination as indicated on the map in attached “Figure 8”.

The department, based on the information available, determined that the Property owner met the conditions in Wis. Stats. § 292.13 to qualify for the liability exemption, including but not limited to the following provisions:

1. The hazardous substance discharge originated from a source on property that is not possessed or controlled by Bear Development LLC.
2. Bear Development LLC did not possess or control the hazardous substance on the property on which the discharge originated.
3. Bear Development LLC did not cause the discharge.
4. Bear Development LLC will not have liability under the Spill Law for investigation or remediation of the groundwater contamination originating from off-site onto the Property, provided that Bear Development LLC does not take possession or control of the property on which the discharge originated.

Exemption Conditions

The department’s determination, as set forth in this letter, is subject to compliance with the following conditions, as specified in Wis. Stats. §§ 292.13(1) and (1m).

1. The facts upon which the department based its determination are accurate and do not change.
2. Bear Development LLC 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 substance or caused the discharge; and any consultant or contractor of such a party.

3. Bear Development LLC agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.
4. Bear Development 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, vapor or sediment contamination only, Bear Development 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 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.

Consideration for Future Development

Since development of the Property is currently planned, the Property owner should work with an environmental consultant to evaluate whether vapors from the groundwater contamination may pose a risk and provide an acceptable vapor mitigation system. Guidance regarding evaluating potential vapor intrusion can be found in RR-800 "Addressing Vapor Intrusion at Remediation & Redevelopment Sites in Wisconsin" available on the DNR webpage at <https://dnr.wi.gov/files/PDF/pubs/rr/RR800.pdf>.

Responsibilities for Continuing Obligations

In addition to the conditions above, after the contamination at the source property is remediated, the department's approval of the cleanup may include continuing obligations at the source property as well as your Property. Often residual contamination remains after an approved environmental cleanup is complete. This approval may include requirements to maintain engineering controls, such as a cap or soil cover, to reduce the impact of the contamination. In that event, you may also be required to notify the DNR prior to constructing a water supply well on your Property. If the neighboring property owners request for cleanup approval includes requirements for your Property, the party conducting the cleanup is required to notify you before the DNR reviews the proposal for final approval of the clean-up.

Conclusion

The department granted Bear Development LLC an off-site exemption under Wis. Stats. § 292.13. Please note that the department may revoke the determinations made in this letter if it determines that any of the requirements under Wis. Stats. § 292.13, cease to be met.

Future Property owners are eligible for the exemption under Wis. Stats. § 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 Bear Development LLC, 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. Stats. § 292.13.

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 available online at dnr.wi.gov and search: "BOTW".

If you have any questions or concerns regarding this letter, please contact me at 414-207-2133, by email at mark.drews@wisconsin.gov.

Sincerely,



Mark Drews

Remediation and Redevelopment Program

Attachment: Figure 1, "Soil Vapor Probe Locations", Ramboll US Corp, May 19, 2020
Figure 8, "Extent of TCE Impacts", KPRG, January 22, 2018

cc: Michael Prager RR/5 (electronic)
Ramboll, Jeanne Tarvin, 175 N. Corporate Dr., Suite 160, Brookfield, WI 53045 (electronic)
Margaret Brunette SER (electronic)



map modified by Randall US Corporation 05/19/2019

TCE = trichloroethylene (concentrations in micrograms per cubic meter)
 J=Laboratory flag indicating that results reported between the Method Detection Limit and Limit of Quantitation (LOQ), which is a result that is less certain than results at or above the LOQ.



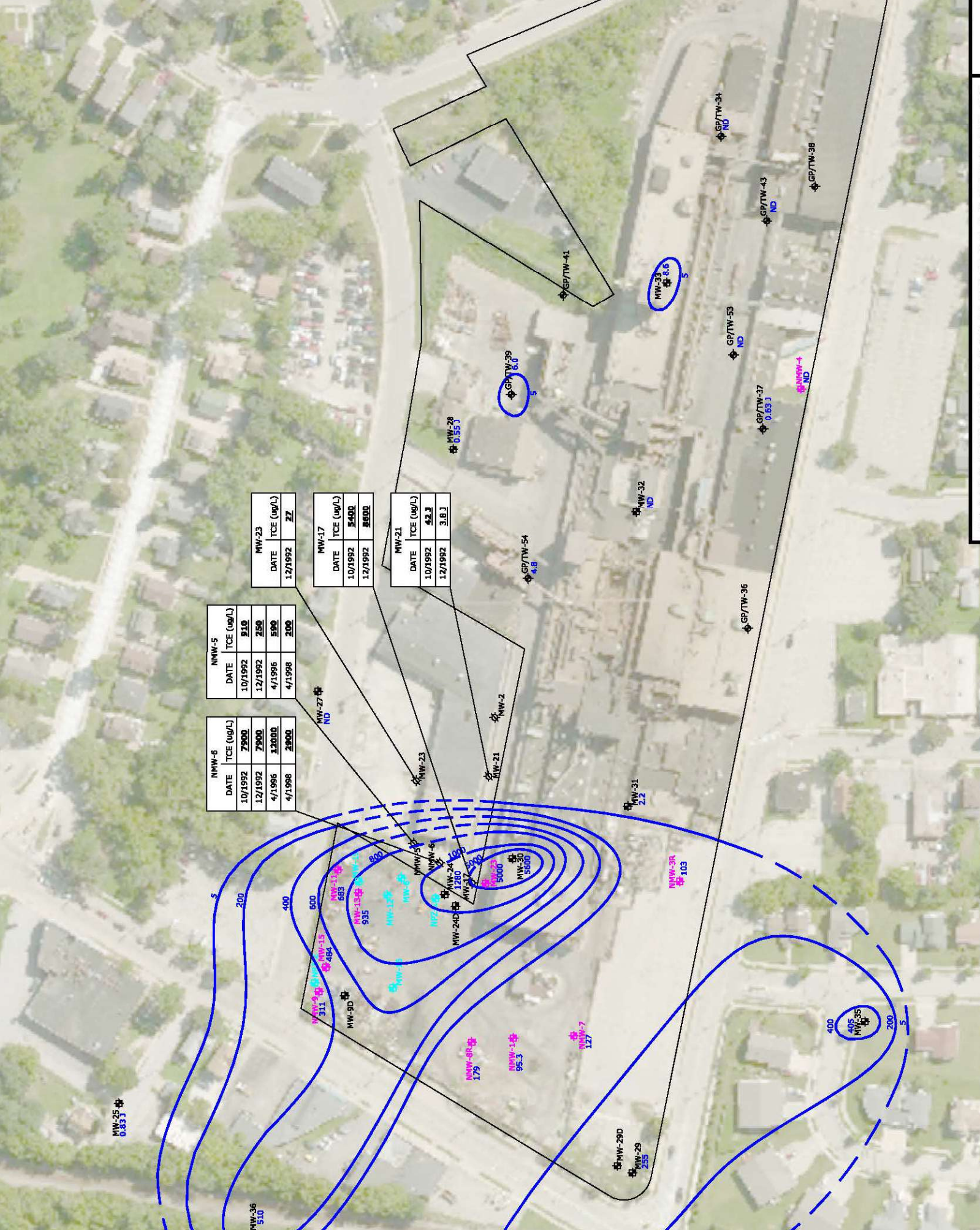
ENVIRONMENTAL CONSULTATION & REMEDIATION		K P R G	
KPRG and Associates, Inc.		KPRG and Associates, Inc.	
14665 West Lisbon Road, Suite 1A Brookfield, Wisconsin 53005 Telephone 262-781-0475 Facsimile 262-781-0478		14665 West Lisbon Road, Suite 1A Brookfield, Wisconsin 53005 Telephone 262-781-0475 Facsimile 262-781-0478	
414 Plaza Drive, Suite 106 Westmont, Illinois 60559 Telephone 630-325-1300 Facsimile 630-325-1593		414 Plaza Drive, Suite 106 Westmont, Illinois 60559 Telephone 630-325-1300 Facsimile 630-325-1593	
SOIL VAPOR PROBE LOCATIONS		Hansen Brothers, LLC	
Vacant Lot Parcels Waukesha, WI		Date: December 16, 2019	
Scale: 1" = 100'		KPRG Project No. 11717	
FIGURE 1		FIGURE 1	

MW-3-3
2.2
NMW-1-1
95.3
MW-1-1

GP/TW-4.8

NOTES:

BOX PLO
SINCE-
ALL VAL
UNDERL
BOLD



MW-23	
DATE	TCE (ug/L)
12/1992	27

MW-17	
DATE	TCE (ug/L)
10/1992	5400
12/1992	8600

MW-21	
DATE	TCE (ug/L)
10/1992	42.3
12/1992	3.8.1

NMW-5	
DATE	TCE (ug/L)
10/1992	910
12/1992	250
4/1996	590
4/1998	200

NMW-6	
DATE	TCE (ug/L)
10/1992	7900
12/1992	7900
4/1996	12000
4/1998	29000

MW-27
ND

MW-2