

Notice: Use this form to request a **written response (on agency letterhead)** from the Department of Natural Resources (DNR) regarding technical assistance, a post-closure change to a site, a specialized agreement or liability clarification for Property with known or suspected environmental contamination. A fee will be required as is authorized by s. 292.55, Wis. Stats., and NR 749, Wis. Adm. Code., unless noted in the instructions below. Personal information collected will be used for administrative purposes and may be provided to requesters to the extent required by Wisconsin's Public Records law [ss. 19.31 - 19.39, Wis. Stats.].

Definitions

"Property" refers to the subject Property that is perceived to have been or has been impacted by the discharge of hazardous substances.

"Liability Clarification" refers to a written determination by the Department provided in response to a request made on this form. The response clarifies whether a person is or may become liable for the environmental contamination of a Property, as provided in s. 292.55, Wis. Stats.

"Technical Assistance" refers to the Department's assistance or comments on the planning and implementation of an environmental investigation or environmental cleanup on a Property in response to a request made on this form as provided in s. 292.55, Wis. Stats.

"Post-closure modification" refers to changes to Property boundaries and/or continuing obligations for Properties or sites that received closure letters for which continuing obligations have been applied or where contamination remains. Many, but not all, of these sites are included on the GIS Registry layer of RR Sites Map to provide public notice of residual contamination and continuing obligations.

Select the Correct Form

This form should be used to request the following from the DNR:

- Technical Assistance
- Liability Clarification
- Post-Closure Modifications
- Specialized Agreements (tax cancellation, negotiated agreements, etc.)

Do not use this form if one of the following applies:

- Request for an **off-site liability exemption or clarification** for Property that has been or is perceived to be contaminated by one or more hazardous substances that originated on another Property containing the source of the contamination. Use DNR's Off-Site Liability Exemption and Liability Clarification Application Form 4400-201.
- Submittal of an Environmental Assessment for the **Lender Liability Exemption**, s 292.21, Wis. Stats., **if no response or review by DNR is requested**. Use the Lender Liability Exemption Environmental Assessment Tracking Form 4400-196.
- Request for an **exemption to develop on a historic fill site** or licensed landfill. Use DNR's Form 4400-226 or 4400-226A.
- **Request for closure** for Property where the investigation and cleanup actions are completed. Use DNR's Case Closure - GIS Registry Form 4400-202.

All forms, publications and additional information are available on the internet at: dnr.wi.gov/topic/Brownfields/Pubs.html.

Instructions

1. Complete sections 1, 2, 6 and 7 for all requests. Be sure to provide adequate and complete information.
2. Select the type of assistance requested: Section 3 for technical assistance or post-closure modifications, Section 4 for a written determination or clarification of environmental liabilities; or Section 5 for a specialized agreement.
3. Include the fee payment that is listed in Section 3, 4, or 5, unless you are a "Voluntary Party" enrolled in the Voluntary Party Liability Exemption Program **and** the questions in Section 2 direct otherwise. Information on to whom and where to send the fee is found in Section 8 of this form.
4. Send the completed request, supporting materials and the fee to the appropriate DNR regional office where the Property is located. See the map on the last page of this form. A paper copy of the signed form and all reports and supporting materials shall be sent with an electronic copy of the form and supporting materials on a compact disk. For electronic document submittal requirements see: <http://dnr.wi.gov/files/PDF/pubs/rr/RR690.pdf>

The time required for DNR's determination varies depending on the complexity of the site, and the clarity and completeness of the request and supporting documentation.

Technical Assistance, Environmental Liability Clarification or Post-Closure Modification Request

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Section 1. Contact and Recipient Information

Requester Information

This is the person requesting technical assistance or a post-closure modification review, that his or her liability be clarified or a specialized agreement and is identified as the requester in Section 7. DNR will address its response letter to this person.

Last Name Witte	First Edward	MI B	Organization/ Business Name Godfrey & Kahn, Legal Counsel for Navistar, Inc.
Mailing Address 833 East Michigan Street, Suite 1800			City Milwaukee
			State WI
			ZIP Code 53202
Phone # (include area code) (414) 287-9518	Fax # (include area code) (414) 273-5198	Email nwwitte@gklaw.com	

The requester listed above: (select all that apply)

- Is currently the owner
 Is considering selling the Property
 Is renting or leasing the Property
 Is considering acquiring the Property
 Is a lender with a mortgagee interest in the Property
 Other. Explain the status of the Property with respect to the applicant:

Legal Counsel for Navistar, Inc.

Contact Information (to be contacted with questions about this request) Select if same as requester

Contact Last Name Witte	First Edward	MI B	Organization/ Business Name Godfrey & Kahn, Legal Counsel for Navistar, Inc.
Mailing Address 833 East Michigan Street, Suite 1800			City Milwaukee
			State WI
			ZIP Code 53202
Phone # (include area code) (414) 287-9518	Fax # (include area code) (414) 273-5198	Email nwwitte@gklaw.com	

Environmental Consultant (if applicable)

Contact Last Name Gnat	First Rich	MI	Organization/ Business Name KPRG
Mailing Address 14655 Lisbon Avenue			City Brookfield
			State WI
			ZIP Code 53005
Phone # (include area code) (262) 781-0475	Fax # (include area code)	Email richardg@kprginc.com	

Attorney (if applicable)

Contact Last Name Witte	First Edward	MI B	Organization/ Business Name Godfrey & Kahn, sc
Mailing Address 833 East Michigan Street			City Milwaukee
			State WI
			ZIP Code 53202
Phone # (include area code) (414) 287-9518	Fax # (include area code) (414) 273-5198	Email nwwitte@gklaw.com	

Property Owner (if different from requester)

Contact Last Name Alido	First Ferdinand	MI	Organization/ Business Name Navistar, Inc.
Mailing Address 2701 Navistar Drive			City Lisle
			State IL
			ZIP Code 60532
Phone # (include area code) (331) 332-6364	Fax # (include area code)	Email ferdinand.alido@navistar.com	

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Section 2. Property Information

Property Name Renaissance Mfg Group-Waukesha Foundry Property		FID No. (if known)	
BRRTS No. (if known) 02-68-098404		Parcel Identification Number	
Street Address 1401 Perkins Avenue		City Waukesha	State WI
County Waukesha	Municipality where the Property is located <input checked="" type="radio"/> City <input type="radio"/> Town <input type="radio"/> Village of Waukesha	Property is composed of: <input type="radio"/> Single tax parcel <input type="radio"/> Multiple tax parcels	Property Size Acres

1. Is a response needed by a specific date? (e.g., Property closing date) Note: Most requests are completed within 60 days. Please plan accordingly.

No Yes

Date requested by: _____

Reason:

2. Is the "Requester" enrolled as a Voluntary Party in the Voluntary Party Liability Exemption (VPLE) program?

No. **Include the fee that is required for your request in Section 3, 4 or 5.**

Yes. **Do not include a separate fee.** This request will be billed separately through the VPLE Program.

Fill out the information in Section 3, 4 or 5 which corresponds with the type of request:

Section 3. Technical Assistance or Post-Closure Modifications;

Section 4. Liability Clarification; or Section 5. Specialized Agreement.

Section 3. Request for Technical Assistance or Post-Closure Modification

Select the type of technical assistance requested: [Numbers in brackets are for WI DNR Use]

- No Further Action Letter (NFA) (Immediate Actions) - NR 708.09, [183] - Include a fee of \$350. Use for a written response to an immediate action after a discharge of a hazardous substance occurs. Generally, these are for a one-time spill event.
- Review of Site Investigation Work Plan - NR 716.09, [135] - **Include a fee of \$700.**
- Review of Site Investigation Report - NR 716.15, [137] - **Include a fee of \$1050.**
- Approval of a Site-Specific Soil Cleanup Standard - NR 720.10 or 12, [67] - **Include a fee of \$1050.**
- Review of a Remedial Action Options Report - NR 722.13, [143] - **Include a fee of \$1050.**
- Review of a Remedial Action Design Report - NR 724.09, [148] - **Include a fee of \$1050.**
- Review of a Remedial Action Documentation Report - NR 724.15, [152] - **Include a fee of \$350**
- Review of a Long-term Monitoring Plan - NR 724.17, [25] - **Include a fee of \$425.**
- Review of an Operation and Maintenance Plan - NR 724.13, [192] - **Include a fee of \$425.**

Other Technical Assistance - s. 292.55, Wis. Stats. [97] (For request to build on an abandoned landfill use Form 4400-226)

- Schedule a Technical Assistance Meeting - **Include a fee of \$700.**
- Hazardous Waste Determination - **Include a fee of \$700.**
- Other Technical Assistance - **Include a fee of \$700.** Explain your request in an attachment.

Post-Closure Modifications - NR 727, [181]

- Post-Closure Modifications: Modification to Property boundaries and/or continuing obligations of a closed site or Property; sites may be on the GIS Registry. This also includes removal of a site or Property from the GIS Registry. **Include a fee of \$1050, and:**
 - Include a fee of \$300 for sites with residual soil contamination; and
 - Include a fee of \$350 for sites with residual groundwater contamination, monitoring wells or for vapor intrusion continuing obligations.

Attach a description of the changes you are proposing, and documentation as to why the changes are needed (if the change to a Property, site or continuing obligation will result in revised maps, maintenance plans or photographs, those documents may be submitted later in the approval process, on a case-by-case basis).

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Section 4. Request for Liability Clarification

Select the type of liability clarification requested. Use the available space given or attach information, explanations, or specific questions that you need answered in DNR's reply. Complete Sections 6 and 7 of this form. **[Numbers in brackets are for DNR Use]**

"Lender" liability exemption clarification - s. 292.21, Wis. Stats. [686]

❖ **Include a fee of \$700.**

Provide the following documentation:

- (1) ownership status of the real Property, and/or the personal Property and fixtures;
- (2) an environmental assessment, in accordance with s. 292.21, Wis. Stats.;
- (3) the date the environmental assessment was conducted by the lender;
- (4) the date of the Property acquisition; for foreclosure actions, include a copy of the signed and dated court order confirming the sheriff's sale.
- (5) documentation showing how the Property was acquired and the steps followed under the appropriate state statutes.
- (6) a copy of the Property deed with the correct legal description; and,
- (7) the Lender Liability Exemption Environmental Assessment Tracking Form (Form 4400-196).
- (8) If no sampling was done, please provide reasoning as to why it was **not** conducted. Include this either in the accompanying environmental assessment or as an attachment to this form, and cite language in s. 292.21(1)(c)2.,h.-i., Wis. Stats.:
 - h. The collection and analysis of representative samples of soil or other materials in the ground that are suspected of being contaminated based on observations made during a visual inspection of the real Property or based on aerial photographs, or other information available to the lender, including stained or discolored soil or other materials in the ground and including soil or materials in the ground in areas with dead or distressed vegetation. The collection and analysis shall identify contaminants in the soil or other materials in the ground and shall quantify concentrations.
 - i. The collection and analysis of representative samples of unknown wastes or potentially hazardous substances found on the real Property and the determination of concentrations of hazardous waste and hazardous substances found in tanks, drums or other containers or in piles or lagoons on the real Property.

"Representative" liability exemption clarification (e.g. trustees, receivers, etc.) - s. 292.21, Wis. Stats. [686]

❖ **Include a fee of \$700.**

Provide the following documentation:

- (1) ownership status of the Property;
- (2) the date of Property acquisition by the representative;
- (3) the means by which the Property was acquired;
- (4) documentation that the representative has no beneficial interest in any entity that owns, possesses, or controls the Property;
- (5) documentation that the representative has not caused any discharge of a hazardous substance on the Property; and
- (6) a copy of the Property deed with the correct legal description.

Clarification of local governmental unit (LGU) liability exemption at sites with: (select all that apply)

- hazardous substances spills - s. 292.11(9)(e), Wis. Stats. [649];
- Perceived environmental contamination - [649];
- hazardous waste - s. 292.24 (2), Wis. Stats. [649]; and/or
- solid waste - s. 292.23 (2), Wis. Stats. [649].

❖ **Include a fee of \$700, a summary of the environmental liability clarification being requested, and the following:**

- (1) clear supporting documentation showing the acquisition method used, and the steps followed under the appropriate state statute(s).
- (2) current and proposed ownership status of the Property;
- (3) date and means by which the Property was acquired by the LGU, where applicable;
- (4) a map and the ¼, ¼ section location of the Property;
- (5) summary of current uses of the Property;
- (6) intended or potential use(s) of the Property;
- (7) descriptions of other investigations that have taken place on the Property; and
- (8) (for solid waste clarifications) a summary of the license history of the facility.

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Section 4. Request for Liability Clarification (cont.)

Lease liability clarification - s. 292.55, Wis. Stats. [646]

❖ **Include a fee of \$700 for a single Property, or \$1400 for multiple Properties and the information listed below:**

- (1) a copy of the proposed lease;
- (2) the name of the current owner of the Property and the person who will lease the Property;
- (3) a description of the lease holder's association with any persons who have possession, control, or caused a discharge of a hazardous substance on the Property;
- (4) map(s) showing the Property location and any suspected or known sources of contamination detected on the Property;
- (5) a description of the intended use of the Property by the lease holder, with reference to the maps to indicate which areas will be used. Explain how the use will not interfere with any future investigation or cleanup at the Property; and
- (6) all reports or investigations (e.g. Phase I and Phase II Environmental Assessments and/or Site Investigation Reports conducted under s. NR 716, Wis. Adm. Code) that identify areas of the Property where a discharge has occurred.

General or other environmental liability clarification - s. 292.55, Wis. Stats. [682] - Explain your request below.

❖ **Include a fee of \$700 and an adequate summary of relevant environmental work to date.**

No Action Required (NAR) - NR 716.05, [682]

❖ **Include a fee of \$700.**

Use where an environmental discharge has or has not occurred, and applicant wants a DNR determination that no further assessment or clean-up work is required. Usually this is requested after a Phase I and Phase II environmental assessment has been conducted; the assessment reports should be submitted with this form. This is not a closure letter.

Clarify the liability associated with a "closed" Property - s. 292.55, Wis. Stats. [682]

❖ **Include a fee of \$700.**

- Include a copy of any closure documents if a state agency other than DNR approved the closure.

Use this space or attach additional sheets to provide necessary information, explanations or specific questions to be answered by the DNR.

Please see attached Addendum to Navistar, Inc. Request for Environmental Liability Clarification Letter

Section 5. Request for a Specialized Agreement

Select the type of agreement needed. Include the appropriate draft agreements and supporting materials. Complete Sections 6 and 7 of this form. More information and model draft agreements are available at: dnr.wi.gov/topic/Brownfields/lgu.html#tabx4.

Tax cancellation agreement - s. 75.105(2)(d), Wis. Stats. [654]

❖ **Include a fee of \$700, and the information listed below:**

- (1) Phase I and II Environmental Site Assessment Reports,
- (2) a copy of the Property deed with the correct legal description.

Agreement for assignment of tax foreclosure judgement - s.75.106, Wis. Stats. [666]

❖ **Include a fee of \$700, and the information listed below:**

- (1) Phase I and II Environmental Site Assessment Reports,
- (2) a copy of the Property deed with the correct legal description.

Negotiated agreement - Enforceable contract for non-emergency remediation - s. 292.11(7)(d) and (e), Wis. Stats. [630]

❖ **Include a fee of \$1400, and the information listed below:**

- (1) a draft schedule for remediation; and,
- (2) the name, mailing address, phone and email for each party to the agreement.

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Section 6. Other Information Submitted

Identify all materials that are included with this request.

Send both a paper copy of the signed form and all reports and supporting materials, and an electronic copy of the form and all reports, including Environmental Site Assessment Reports, and supporting materials on a compact disk.

Include one copy of any document from any state agency files that you want the Department to review as part of this request. The person submitting this request is responsible for contacting other state agencies to obtain appropriate reports or information.

- Phase I Environmental Site Assessment Report - Date: _____
- Phase II Environmental Site Assessment Report - Date: _____
- Legal Description of Property (required for all liability requests and specialized agreements)
- Map of the Property (required for all liability requests and specialized agreements)

Analytical results of the following sampled media: Select all that apply and include date of collection.

- Groundwater
- Soil
- Sediment
- Other medium - Describe: _____

Date of Collection: _____

- A copy of the closure letter and submittal materials
- Draft tax cancellation agreement
- Draft agreement for assignment of tax foreclosure judgment
- Other report(s) or information - Describe: _____

For Property with newly identified discharges of hazardous substances only: Has a notification of a discharge of a hazardous substance been sent to the DNR as required by s. NR 706.05(1)(b), Wis. Adm. Code?


- Yes - Date (if known): 06/08/1992
- No

Note: The Notification for Hazardous Substance Discharge Form - Non-Emergency Only (Form 4400-225) is accessible through the RR Program Submittal Portal application. Directions for using the form and the Submittal Portal application are available on the [Submittal Portal web page](#).

Section 7. Certification by the Person who completed this form

- I am the person submitting this request (requester)
- I prepared this request for: _____
Requester Name

I certify that I am familiar with the information submitted on this request, and that the information on and included with this request is true, accurate and complete to the best of my knowledge. I also certify I have the legal authority and the applicant's permission to make this request.


Signature

10/2/23
Date Signed

Legal Counsel for Navistar, Inc.
Title

(414) 287-9518
Telephone Number (include area code)

Technical Assistance, Environmental Liability Clarification or Post-Closure Modification Request

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Section 8. DNR Contacts and Addresses for Request Submittals

Send or deliver one paper copy and one electronic copy on a compact disk of the completed request, supporting materials, and fee to the region where the property is located to the address below. Contact a [DNR regional brownfields specialist](#) with any questions about this form or a specific situation involving a contaminated property. For electronic document submittal requirements see:

<http://dnr.wi.gov/files/PDF/pubs/rr/RR690.pdf>.

DNR NORTHERN REGION

Attn: RR Program Assistant
Department of Natural Resources
223 E Steinfest Rd Antigo, WI 54409

DNR NORTHEAST REGION

Attn: RR Program Assistant
Department of Natural Resources
2984 Shawano Avenue
Green Bay WI 54313

DNR SOUTH CENTRAL REGION

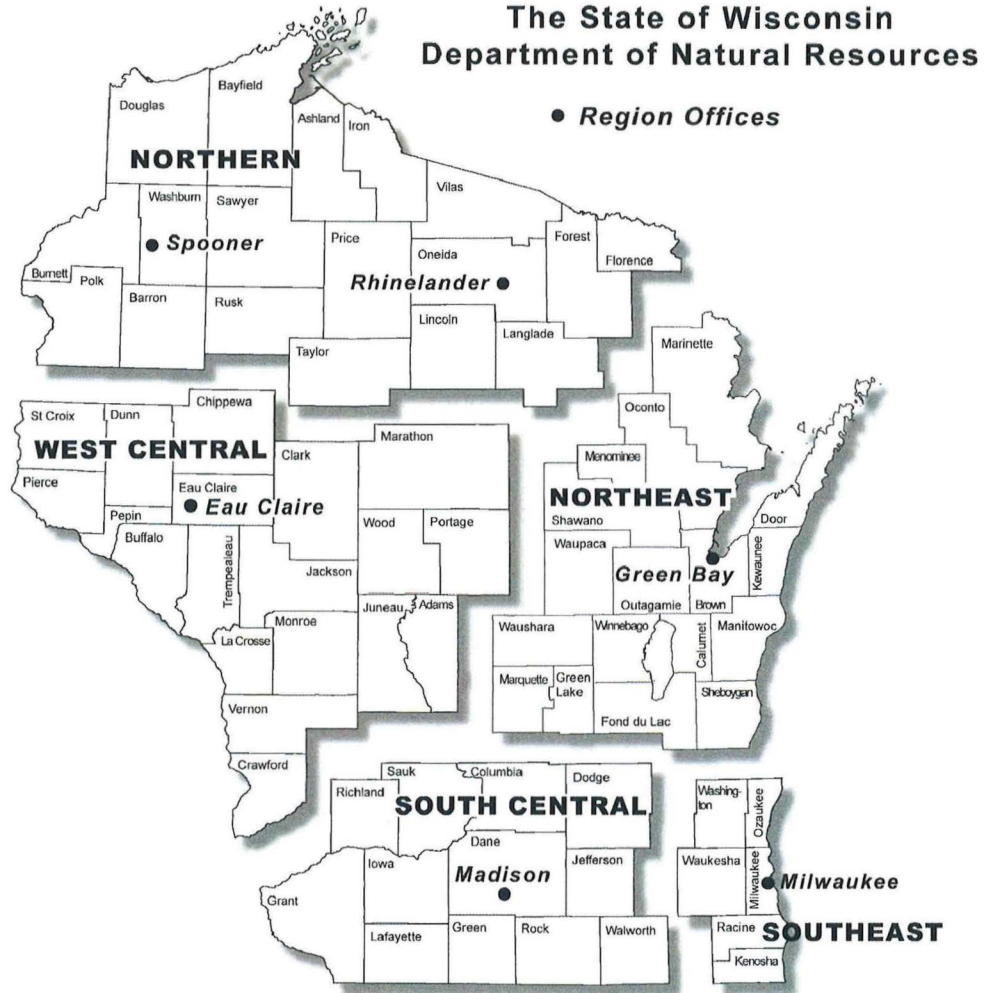
Attn: RR Program Assistant
Department of Natural Resources
3911 Fish Hatchery Road
Fitchburg WI 53711

DNR SOUTHEAST REGION

Attn: RR Program Assistant
Milwaukee DNR Office
1027 West St. Paul Ave
Milwaukee WI 53233

DNR WEST CENTRAL REGION

Attn: RR Program Assistant
Department of Natural Resources
1300 Clairemont Ave.
Eau Claire WI 54702



Note: These are the Remediation and Redevelopment Program's designated regions. Other DNR program regional boundaries may be different.

DNR Use Only			
Date Received	Date Assigned	BRRTS Activity Code	BRRTS No. (if used)
DNR Reviewer		Comments	
Fee Enclosed? <input type="radio"/> Yes <input type="radio"/> No	Fee Amount \$	Date Additional Information Requested	Date Requested for DNR Response Letter
Date Approved	Final Determination		

Addendum to Navistar, Inc. Request for Environmental Liability Clarification Letter

Edward B. Witte, Godfrey Kahn, S.C., as legal counsel for Navistar, Inc. submits this addendum to Navistar, Inc.'s request an Environmental Liability Clarification Letter from the Wisconsin Department of Natural Resources (DNR) interpreting certain provisions of Wis. Stat. §292.13, which generally codifies that a party that owns property that is affected by a hazardous substance originating from an off-site source is exempt from liability, subject to certain conditions.

Wisconsin Statutes §292.13(1)(f) provides that to maintain a §292.13 exemption, the otherwise exempt party must "avoid any actions that worsen the discharge." In the context of the present subject matter of the Environmental Liability Clarification Letter request, Navistar, Inc. is the responsible party, as reflected in BRRTS # 02-68-098404, for a source of groundwater contamination impacted by chlorinated volatile organic compounds (CVOC) that has migrated from the source property at 1401 Perkins Avenue, Waukesha, WI (referred to here as the "Navistar Groundwater Discharge"). One off site property owner, Bear Real Estate Group (Bear), requested and obtained a letter dated September 21, 2020 from the DNR under §292.13(2) to confirm that it met the conditions of §292.13 for an off-site liability exemption determination related to the Navistar Groundwater Discharge as it affected Bear's property at 1420/1421 White Rock Avenue, Waukesha, WI.

As stated by the DNR in its September 21, 2020 OSLE letter (attached), at the time Bear requested the written clarification, the Bear site was "undeveloped and contains areas of bare soil, sparsely vegetated areas and parking lots. . . [Any residential structures] appear to be removed by 2013." Noting that residential development of the Bear property was contemplated, and identifying vapor intrusion as a specific concern (notably, without specifying that anyone other than Bear would be responsible for the same), the DNR OSLE letter went on to state "the department's determination, as set forth in this letter, is subject to compliance with the following conditions, 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."

After Bear received the September 21, 2020 OSLE letter, Bear constructed a multi-unit residential structure on the property. At the time Bear did so, it integrated vapor mitigation systems, including a passive venting system and a sub-slab depressurization system, into its design. During development and construction of these systems, Bear did not request Navistar, Inc. to participate in the cost of the systems and did not seek Navistar, Inc.'s input on the technical design or performance of the systems.

Bear has now approached Navistar, Inc., seeking to have Navistar, Inc. pay for vapor intrusion and vapor mitigation operation and maintenance expenses required by the DNR at the Bear property.

Under these circumstances, Navistar asserts that Bear "worsen[ed] the discharge," as this language of §292.13(1)(f) specifically relates to the vapor phase of the Navistar Groundwater Discharge. As such, Navistar, Inc. further asserts that Bear has changed the conditions under which it requested and DNR issued the OSLE. Specifically, Bear's establishment of a residential structure, over a known CVOC groundwater plume, created human receptors and a vapor exposure pathway that had not existed when Bear received the §292.13 exemption. These conditions, solely within the control of Bear, "worsened the discharge," as that term specifically applies to the vapor phase of the discharge.

Navistar, Inc. take no issue with its continuing responsibility for addressing the Navistar Groundwater Discharge where the owners of affected properties do not alter pathways for human and environmental receptors and thus worsen the discharge; Navistar continues to diligently work to restore the environment related to this condition to ultimately obtain regulatory closure for the same.

As noted in §292.13(1), the statutory exemption from liability that otherwise applies to possessing or controlling a discharge is not unconditional. And, further, a discharge of a hazardous substance to one medium (i.e., to soil or to groundwater) may also create a discharge to an additional medium (e.g., a groundwater discharge may cause a vapor phase discharge). This is specifically contemplated in §292.13(2), which provides “[t]he department shall, upon request, issue a written determination that a person who possesses or controls property on which a hazardous substance exists in the soil or groundwater, or in vapor emitted from the soil or groundwater, is exempt” from liability under §292.11. The use of the term “or” in the emphasized portion of the quoted portion of §292.13(2) makes clear that an exemption for groundwater may not also extend to a vapor phase discharge.

Based on the foregoing, I am seeking, on behalf of Navistar, Inc., an Environmental Liability Clarification Letter interpreting the provisions of §292, and specifically §292.13(1)(f), that Navistar, Inc. is not legally responsible for actions to investigate and mitigate, including operation and maintenance of necessary mitigation systems, the vapor phase of the Navistar Groundwater Discharge where a property owner, Bear, knowingly altered conditions over the Navistar Groundwater Discharge after Bear received a §292.13 Off Site Liability Exemption letter by creating human receptors to the potential vapor phase pathway. Navistar, Inc. maintains that these facts reflect conditions or actions on the part of the otherwise exempt property owner that have worsened the vapor phase discharge of a groundwater discharge.



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 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,

A handwritten signature in cursive script that reads "Mark Drews". The signature is written in dark ink and is positioned above a horizontal line.

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)



September 21, 2020

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

Subject: Off-site Liability exemption for property located at 1421 White Rock Ave., Waukesha, WI
with vapors and groundwater contamination from an off-site source
Parcel # 1003272 BRRTS # 07-68-586162

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 1421 White Rock Ave., which will be referred to in this letter as "the Property." In addition, the property is referred to as the Frame Park 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 White Rock MF, LLC qualifies for the off-site liability exemption, and White Rock MF, 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 White Rock MF, 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 three lots which have recently combined into one parcel. Currently the site is undeveloped and contains areas of bare soil, sparsely vegetated areas and parking lots. The earliest information is contained on Sanborn maps from 1911 and the Property already contains numerous dwellings. These dwellings are likely single-family residential homes. The residence buildings appear to be removed by 2013.

To investigate the potential for off-site vapor contamination, three borings SV-3, SV-6 and SV-7 were installed on the Property. Three vapor samples were collected and were laboratory analyzed for trichloroethylene (TCE). Analytical results of the vapor identified TCE in all three samples including TCE at SV-7 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 for possible use after construction is complete.

The Frame Park Commons development is located within an area currently being investigated as part of an open WDNR BRRTS activity (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 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 (included).

Determination

Based upon the available information and in accordance with Wis. Stat. § 292.13, the department makes the following determinations regarding the presence of TCE contamination in the soil vapor in SV-3, SV-6, and SV-7 as indicated on the map in attached "Figure 1" and the extent of TCE 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 vapor 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 notify the department 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 department reviews the proposal for final approval of the clean-up.

Conclusion

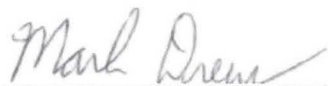
The department granted Bear Development, LLC an off-site exemption under Wis. Stats. § 292.13. Please note that the department may revoke the determinations made in this letter if it determines that any of the requirements under Wis. Stats. § 292.13, cease to be met.

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 or by email at mark.drews@wisconsin.gov.

Sincerely,



Mark Drews

Remediation and Redevelopment Program

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