

**BEFORE THE  
STATE OF WISCONSIN**

**DEPARTMENT OF NATURAL RESOURCES**

In the Matter of Community Within the Corridor )	BRRTS # 02-41-263675
Limited Partnership – Investigation and )	Facility ID: #241025400
Immediate Actions at East Block Building Complex )	
2748 N. 32nd St. Milwaukee, Wisconsin. )	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND EMERGENCY ORDER**

The following constitutes a summary of the Findings of Fact and Conclusions of Law upon which the Department of Natural Resources (DNR) bases this Emergency Order.

**I. FINDINGS OF FACT**

The DNR finds that:

1. The Community Within the Corridor East Block Building Complex is a 4-acre parcel of land located at 2748 N. 32nd St. Milwaukee, WI (“Community Within the Corridor-East Block” or “Property”). The Community Within the Corridor-East Block includes a collection of interconnecting buildings that had been used for manufacturing operations for approximately 50 years. The manufacturing operations resulted in soil and groundwater contamination on the Property. The Property is listed on the DNR’s Bureau for Remediation and Redevelopment Tracking System (BRRTS) under the reference BRRTS # 02-41-263675.
2. In the early 2000s, a site investigation and remediation of solvent contamination was conducted for underground storage tanks located in the northern part of the Property. In 2008, the Department issued a closure letter for the underground storage tanks response action subject to conditions and continuing obligations that the building and pavement is maintained and that further investigation would be necessary if structural impediments (such as the pavement or building floors) are removed. The closure decision was also conditioned on maintenance of two vapor mitigation systems, and the need for further evaluation of the potential for vapor inhalation and mitigation when planning any future redevelopment.
3. Community Within the Corridor Limited Partnership (CWC) is the current owner and developer of the Property.
4. In July 2020, CWC submitted a request to the DNR for a post-closure modification (PCM) in connection with the proposed redevelopment of the property into a mix of affordable housing, commercial spaces, and other amenities.
5. On April 6, 2021, DNR sent CWC a letter reopening the closed case and identifying CWC as a responsible party.
6. As part of CWC’s purchase of the property, Phase I and Phase II Environmental Site Assessment were conducted and reports were included in the PCM request. Sampling results from the Phase II Environmental Site Assessment confirmed that volatile organic compounds, including trichloroethylene (TCE), are present in the soil and/or the groundwater.

7. TCE is a manufactured solvent often used in industrial processes, especially as a metal degreaser. When soil or groundwater is contaminated with TCE, it can travel as a vapor through a basement or foundation into a building.
8. Vapor intrusion generally refers to subsurface contamination that can volatilize and the vapors enter the breathing space of buildings. Vapors may migrate through man-made utility structures, basement sumps, cracks in building foundation, or other mechanisms.
9. Under Wis. Admin. Code § NR 700.03 (66p), the Vapor Action Level means “the concentration of vapors from volatile compounds is at or above the 1-in-100,000 ( $1 \times 10^{-5}$ ) excess lifetime cancer risk or is at or above a hazard index of 1 for non-carcinogens.” The current residential Vapor Action Level for indoor air for TCE is 2.1 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ). The DNR bases the Vapor Action Level on US Environmental Protection Agency (US EPA) risk values for human exposure to contaminants in indoor air. TCE concentrations above this level pose acute and long-term health risks.
10. Under Wis. Admin. Code § NR 700.03 (66w), “‘Vapor risk screening level’ means the concentration of vapors in samples collected outside a building to estimate indoor vapor concentrations. The vapor risk screening level is equal to the vapor action level multiplied [divided] by an appropriate attenuation factor.” The Vapor Risk Screening Levels (VRSLs) are used for subsurface soil vapor samples. VRSLs are used to determine if subsurface soil vapor samples have the potential to produce indoor air concentrations over the Vapor Action Levels. Documented levels of TCE in subsurface soil vapor at the Community Within the Corridor-East Block exceed not only the residential use VRSL, but also the industrial use VSRL.
11. Both the DNR and the Wisconsin Department of Health Services (DHS) have responsibility for ensuring that human health, safety, and welfare is protected at contaminated sites.
12. DHS has advised DNR that immediate action should be taken when indoor air TCE levels are found to be present above the indoor air Vapor Action Level for TCE and when women of child-bearing age are present, as exposure to TCE can cause fetal cardiac malformations.
13. When TCE is the contaminant of concern, DHS advises that “indoor air should always be evaluated to assist with risk assessment and be able to interrupt exposures as soon as possible to sensitive populations.”
14. If sub-slab vapor sample concentrations are at or over VRSLs, interruption or mitigation of the vapor exposure pathway is required per Wis. Adm. Code § NR 726.05.
15. When a vapor sample concentration is at or above a Vapor Action Level or a VRSL, and it is determined that vapor intrusion poses a threat to building occupants, action must be taken to address the hazardous substance discharge in accordance with Wis. Stat. § 292.11(3) and Wis. Admin. Code § NR 722.09(2)(d).
16. When vapor intrusion is occurring, vapor mitigation can be used to reduce the indoor air contaminant levels to below Vapor Action Levels as part of an immediate action, but periodic indoor air testing is then needed to confirm that contaminant levels remain below Vapor Action Levels for occupancy.
17. Beginning in 2020, CWC and its consultant submitted various requests and information to DNR about the redevelopment work that was proposed for the East block site, including proposed changes to the vapor mitigation systems that were in place when the property was acquired.
18. On December 2, 2020, DNR advised that vapor investigation can be an iterative process, and that vapor mitigation system commissioning and additional sub-slab sampling should be conducted after the redevelopment is complete.
19. On April 6, 2021, DNR sent a letter to CWC that includes a paragraph regarding “Special Vapor Intrusion Concern with Trichloroethylene” which states TCE “is of special concern from a human

health perspective due to its potential for acute (or short-term) health risks at relatively low concentrations in air.”

20. On April 9, 2021, DNR provided a review of CWC’s proposed Remedial Action Design Report. The DNR commented that the feasibility and design of the proposed vapor mitigation system “does not provide enough evidence to show that it will adequately interrupt or mitigate vapors.” DNR also noted “[a] robust indoor air sampling plan will be required following the installation of the [vapor mitigation system] and after the interior construction is complete and the heating, ventilation and air conditioning systems are operational.”
21. The DNR’s April 9, 2021 letter specifically advised CWC on the acute risks of TCE, particularly for fetal heart malformation that may occur when a pregnant mother is exposed to TCE during the first trimester of pregnancy. DNR advised “establishing the indoor air concentrations prior to occupancy is highly recommended” and “Periodic sampling of indoor air throughout a given year to ensure protectiveness is also highly recommended.”
22. On May 10, 2021, DNR received a technical assistance request from CWC’s consultant regarding a proposed modification for the vapor mitigation/extraction system.
23. On June 8, 2021, DNR reviewed a report proposing a modified vapor mitigation and extraction system. DNR noted the proposed plan included an expanded vapor mitigation system and the excavation of approximately 320 tons of soil in the areas with the highest concentration of TCE in sub-slab vapors at the site. DNR advised against a proposed future action to shut off the vapor mitigation system to determine whether residual vapors exist below the building while the building is occupied, noting that “this action could expose the future occupants of the building to harmful TCE vapors. As previously indicated, TCE poses an acute health risk in indoor air at concentrations that exceed its applicable vapor risk screening level (VRSL) and TCE contamination has been identified at this site at concentrations exceeding each of the residential, small-commercial and industrial VRSLs.”
24. On December 22, 2021, DNR sent a letter providing review of a Site Investigation Report. DNR noted that an indoor air sampling program would be required after the vapor mitigation system and interior construction are complete and HVAC systems are operational. DNR also requested a commissioning plan for the vapor mitigation system that includes an indoor sampling plan to demonstrate that Vapor Action Levels are not exceeded in the indoor air, under Wis. Admin. Code § NR 726.05(4).
25. On February 14, 2022, DNR requested submission of a site-wide operation and maintenance/commissioning plan for the vapor mitigation system to include a robust indoor air sampling plan to demonstrate that Vapor Action Limits are not exceeded in indoor air, per Wis. Admin. Code § NR 726.05(4).
26. From February 14, 2022 to December 2022, DNR received documentation from CWC’s consultant relating to groundwater monitoring and CWC’s response to DNR’s review of CWC’s site investigation report.
27. On December 8, 2022, CWC’s consultant provided a report of the vapor mitigation system pilot testing for a portion of the buildings within the Community Within the Corridor - East Block.
28. By letter dated December 23, 2022, received by the DNR on December 28, 2022, CWC’s consultant provided a proposed vapor mitigation system commissioning plan. The plan stated: “If VALs are complied with and adequate sub-slab depressurization is demonstrated, it is expected that the building will be open for residents in January/February 2023.”
29. The DNR met with DHS and the City of Milwaukee, including representatives from the Department of Neighborhood Services and the Milwaukee Health Department, on January 12, 2023. The purpose of the meeting was to inform all attendees about the background and status of the CWC

East Block site and to discuss DNR concerns with the commissioning plan schedule and occupancy schedule outlined in the commissioning plan, received by DNR on December 28, 2022.

30. On January 23, 2023, DNR provided review of a commissioning plan proposed in December 2022. DNR did not approve the plan and again strongly recommended completing all necessary rounds of commissioning prior to any occupancy to avoid potentially exposing future residents to indoor air contamination that may present acute health risks. DNR's letter explains: "Commissioning provides the data needed to demonstrate that the vapor pathway has been mitigated or interrupted. . . DNR strongly encourages you to complete full system commissioning prior to occupancy to demonstrate that the vapor pathways have been successfully mitigated or interrupted to prevent potentially exposing future residents to health risks. . . ."
31. On February 21, 2023, DNR again recommended completing all necessary rounds of commissioning prior to any occupancy to avoid potentially exposing future residents to indoor air contamination that may present acute health risks from TCE.
32. On March 23, 2023, DNR received confirmation a soil excavation occurred beneath the building in July and August 2021.
33. On March 23, 2023, DNR learned that the first round of commissioning test results for Community Within the Corridor - East Block indicated Vapor Action Level exceedances for TCE from indoor air samples and that there were women of childbearing age living in the building. Sampling of indoor air within the building by K. Singh & Associates, Inc. (K. Singh), a consultant for CWC, found levels of TCE as high as 400 ug/m<sup>3</sup> (or 200 times the Vapor Action Level) in residential and communal spaces of the building.
34. On March 24, 2023, DNR provided the indoor air report to the Milwaukee Health Department and to DHS. DNR advised CWC representatives that Wis. Admin. Code § NR 708.05 requires responsible parties to take immediate action for discharges that pose an imminent threat to public health, safety or welfare.
35. On March 25, 2023, the Milwaukee Health Department issued an Order for Evacuation of the Community Within the Corridor – East Block due to the presence of TCE in indoor air within the building above recommended health levels. More than 150 residents were evacuated by the City of Milwaukee and are currently housed in hotels.
36. On March 27, 2023, DNR requested additional information from CWC, including a confirmation sampling plan and a schedule for data driven re-occupation of the building.
37. To ensure the protection of public health, safety, and welfare of residents of the Property, both short-term and long-term, several actions are required to identify and remove vapor intrusion pathways into the building, demonstrate that the installed vapor mitigation system is operating effectively, identify assess and mitigate vapor intrusion pathways and/or sources that are not effectively mitigated by the vapor mitigation system, and perform adequate confirmation sampling that demonstrates vapor concentrations of TCE remain below the DNR residential Vapor Action Level for all occupied spaces under normal building operating conditions.

## **II. CONCLUSIONS OF LAW**

The DNR concludes that:

1. For the protection of public health, safety or welfare, the DNR has authority under Wis. Stat. § 292.11(7)(c) to issue an emergency order or a special order to the person possessing, controlling or responsible for the discharge of hazardous substances to fulfill the duty imposed by Wis. Stat. § 292.11(3) and Wis. Admin. Code chs. NR 700-754 rule series.

2. Wis. Admin. Code § 728.09(1) authorizes the DNR to “issue emergency orders without prior hearing, pursuant to s. 292.11(7)(c), Stats., to the person or persons responsible for a hazardous substance discharge, for the purpose of protecting public health, safety, or welfare.” The emergency order becomes effective upon issuance of the order to the responsible party.
3. Wis. Stat. § 292.11(3) states that “a person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state.”
4. TCE is a “hazardous substance” as defined by Wis. Stat. § 292.01(5).
5. CWC is a “person” as defined by Wis. Stat. § 292.01(13).
6. Under Wis. Admin. Code § 700.03(51), a “Responsible party” or “responsible parties” means
  - (a) Any person who is required to conduct a response action under ch. 292, Stats.
  - (b) Persons liable to reimburse the department for the costs incurred by the department to take response action under chs. 289 and 292, Stats.
  - (c) Owners and operators of solid waste facilities that are subject to regulation under ch. NR 508.
7. Under Wis. Stat. 292.11(3), CWC is a responsible party as it is a property owner in possession and control of the hazardous substance discharge.
8. Wis. Admin. Code ch. NR 708 requires a responsible party to take immediate and interim actions to protect public health, safety, or welfare or the environment.
9. Under Wis. Admin. Code § NR 722.09(2)(d), where a discharge of volatile hazardous substances has occurred, such as TCE, “the vapor intrusion pathway shall be evaluated to determine the likelihood of those substances entering the breathing space of a structure.”
10. Under Wis. Admin. Code § NR 722.09(2)(d)1., a responsible party is required “to conduct any necessary actions . . . to protect public health, safety, or welfare or to prevent a significant damaging effect on indoor air quality for present or future use.”
11. The actions required in Section III of this Order are necessary to accomplish the purposes of Wis. Stats. § 292.11(3), and to protect public health, safety, or welfare of the residents of Community Within the Corridor-East Block.
12. Wis. Admin. Code § 708.05(6)(a) requires responsible parties to prepare and submit documentation to the DNR describing the immediate actions taken at their site or facility and the outcome of those actions within 45 days after the initial hazardous substance discharge notification to the DNR or as otherwise directed by the DNR.
13. This Order is enforceable through prosecution by the Attorney General under Wis. Stat. §§ 299.95 and 299.97.

### **III. EMERGENCY ORDER**

Based on the above Findings of Fact and Conclusions of Law, the DNR hereby orders CWC to complete the following actions within the times specified:

1. Within two (2) business days of the date of issuance of this Order, submit documentation, including maps, of all vapor mitigation system components and their operating specifications. In addition, submit data collected to-date (e.g., pressure field extension measurements, air flow readings) for all points of measurement with locations identified on maps.

2. Within two (2) business days of the date of issuance of this Order, provide documentation, that has not previously been submitted, of excavation of contaminated soil conducted within buildings' footprint (including locations of the excavations, depths of excavations, soil confirmation sample results and locations, a description of material used to backfill the excavations, description of the process used to replace the floor slab, description of how the floors were sealed, and other relevant observations regarding the excavations and condition of the building).
3. Identify, assess, and mitigate vapor intrusion pathways and/or sources, including conduits and off-gassing from building materials, and provide documentation and summary of actions taken.
4. Demonstrate using pressure field extension and indoor air testing that the installed vapor mitigation system is preventing exceedance of the DNR's residential Vapor Action Level for TCE throughout the entire building under all expected occupied building operating conditions and that vapor concentrations of TCE will remain below the DNR's residential Vapor Action Level throughout the entire building.
5. Submit all indoor air sample results to the DNR upon receipt of the results by the responsible party and/or consultant. Lab reports are acceptable. Include maps showing locations of all samples.
6. Unless directed otherwise in writing by the DNR, submit weekly progress reports describing the actions taken at the site and provide a status update on all immediate action items listed in paragraphs 3. and 4. directly above.

Compliance with the conditions of this Order does not release, modify, or supersede CWC's legal responsibility to comply with all applicable requirements of Wis. Stat. ch. 292 and the Wis. Admin. Code chs. NR 700-754 rule series.

#### **NOTICE OF APPEAL RIGHTS**

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review department decisions must be filed. For judicial review of a decision pursuant to Wis. Stat. §§ 227.52 and 227.53 and Wis. Admin. Code § 728.09(1), you have ten (10) days after the decision is mailed, or otherwise served by the department to file your petition with the appropriate circuit court and serve the petition to the department. Such a petition for judicial review must name the Department of Natural Resources as the respondent.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES  
For the Secretary

By:



Shaun Deeney, Major  
Investigations and Environmental Enforcement Section  
Wisconsin Department of Natural Resources

Dated: March 31, 2023