



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

June 13, 2023

Mr. Phil Marquis  
Graymont  
800 Hill Avenue  
Superior, WI 54880

Mr. Ryan Tuhkanen  
Lakehead Concrete Works, Inc.  
5572 Miller Trunk Highway  
Hermantown, MN 55811

*(Delivered via Certified Mail to the above addresses and email to [Ryan@arrowheadconcreteworks.com](mailto:Ryan@arrowheadconcreteworks.com) and [pmarquis@graymont.com](mailto:pmarquis@graymont.com))*

SUBJECT: Property Access for Remedial Action Associated with the former Superior Water Light and Power manufactured gas plant, Winter Street and US Highway 53, Superior, Wisconsin WDNR BRRTS # 02-16-275446

Dear Mr. Marquis and Mr. Tuhkanen:

The purpose of this letter is to explain the status of the remedial action being conducted by Superior Water Light and Power (SWL&P) on property owned by Cutler Laliberte McDougal (CLM), located northwest of property Lakehead Concrete Works, Inc. (Lakehead) is leasing from CLM, identified as Douglas County Parcel Identification number (PID) 028020710300, located on East 1<sup>st</sup> Street in Superior Wisconsin. This letter also explains your rights and responsibilities as property owner and lessee whose property was impacted by contamination from off-site discharges of hazardous substances associated with the former SWL&P manufactured gas plant (MGP) and gas distribution. Please read this letter carefully, in its entirety.

**Remedial Action at the former SWL&P MGP:**

The remedial action being conducted by SWL&P for the soil, groundwater, and sediment contamination resulting from the operation of the former MGP and gas distribution activities is to fulfill SWL&P's responsibility under Wisconsin Statutes (Wis. Stats.) § 292.11, to define the degree and extent of the contamination and seeing that contamination in soil, groundwater, and sediment is remediated (cleaned up) in accordance with Wisconsin Administrative (Wis. Admin.) Code chs. NR 700-799. During the site investigation of contamination resulting from discharges of hazardous substances from the former MGP and gas distribution, contamination was found on PID 028020710300.

Remediation of contamination associated with the former MGP, and gas distribution involves excavation of contaminated soil and sediment and installation of a remedial action system of air sparging wells and soil vapor extraction wells and trenches. The remedial action system will be in operation for several years following installation. Periodic maintenance and monitoring of the remedial action system as well as groundwater monitoring will continue during the operation of the remedial action system. For SWL&P to fulfill its

responsibilities under Wis. Stats. ch. 292, SWL&P has designed their remedial action to include contamination that has migrated onto PID 028020710300.

The Wisconsin Department of Natural Resources (DNR) has learned that SWL&P has obtained permission from CLM to access PID 028020710300. However, access has not been granted by Lakehead after several attempts by SWL&P to contact Lakehead regarding gaining access to PID 028020710300 for installation and operation of the remedial action system referenced above. To date, SWL&P has received no response.

**Explanation of Relevant Court Decision and Statutes:**

Section 292.11(3), Wis. Stats., imposes liability on persons who cause a discharge of a hazardous substance and persons who are in possession or control of a hazardous substance that is discharged. The Wisconsin Supreme Court held, in State v. Mauthe, 123 Wis.2d 288 (1985), that the owner of property with contamination that is continuing to discharge to the environment is “in possession or control” of those contaminants even if the property owner did not cause the contamination.

However, after the Mauthe decision was handed down, the State Legislature enacted the off-site liability exemption statute, s. 292.13, Wis. Stats. This statute generally provides that a person is exempt from liability under s. 292.11(3), (4) and (7)(b) and (c) (certain provisions of the Hazardous Substance Discharge statute) with respect to hazardous substances on property possessed or controlled by the person if the discharge of the hazardous substance originated from a source on property that is not possessed or controlled by the person and if certain other conditions are met.

Specifically, Wis. Stats. § 292.13(1) (property affected by off-site discharges), states:

*A person, other than a state agency, is exempt from s. 292.11(3), (4) and (7)(b) and (c) with respect to the existence of a hazardous substance in the groundwater on property possessed or controlled by that person if... (d) The person agrees to allow the Department, any authorized representatives of the Department, any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance and any consultant or contractor of such a party to enter the property to take action to respond to the discharge.*  
and

*(f) The person agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.*

Refusal of reasonable access to the responsible party, or their representative, to enter an impacted property to address the contamination is viewed by the DNR as taking “possession and control” of the discharge. S. Wis. Stats. § 292.11(3), states:

*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.*

**Summary:**

In summary, Wisconsin law provides that further delay or denial by Lakehead of SWL&P’s request to conduct a remedial action on PID 028020710300, for the purpose of remediating the contamination associated with MGP operation and gas distribution activities at the former SWL&P MGP site, could result in the DNR naming CLM and Lakehead as responsible parties for this contamination under Wis. Stats. § 292.11. This would make CLM and Lakehead liable for the contamination that has migrated onto PID 028020710300. Therefore, it is in your best

interest to address this issue immediately. Please contact Mr. Jamison Mehle, SWL&P at 218-395-6288 and grant permission for the remedial action as directed by the Department.

To continue the remedial action at the former SWL&P MGP site in a timely manner, please respond to me in writing with your decision within 14 days from the date you receive this letter. Failure to provide an adequate response within this time frame will result in a recommendation for the transfer of responsibility to CLM and Lakehead for contamination that has migrated onto PID 028020710300.

If you have any questions regarding the content of this letter, please contact me at 715-919-7239 or at [john.sager@wisconsin.gov](mailto:john.sager@wisconsin.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "John Sager".

John Sager  
Hydrogeologist  
Remediation & Redevelopment Program

cc: Jamison Mehle, SWL&P  
Greg Prom, SWL&P  
Chris Saari, Northern Region RR Supervisor, DNR

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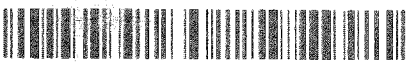
06/16/2023

Sent To Ryan Tohtkanen  
 Street and Apt. No., or PO Box No. Lakehead Concrete Works  
5572 Miller Trunk Hwy  
 City, State, ZIP+4® Harmontown, MN 55211  
 PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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- Print your name and address on the reverse so that we can return the card to you.
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Ryan Tohtkanen  
Lakehead Concrete Works  
5572 Miller Trunk Hwy  
Harmontown, MN 55211



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