

521526

J4455 127

ET
Jrel

State of Wisconsin
County of Marinette

AFFIDAVIT

Tract Index 8-19-93

I, Daniel R. Helf, having been duly sworn, say that said person is employed as an Environmental Enforcement Specialist by the State of Wisconsin Department of Natural Resources, Green Bay, Wisconsin; that on the 16th day of August, 1993, said person conducted a follow-up inspection of the property owned by Mrs. LaVerne Heimbuch located at W1604 Cleveland Avenue, City of Marinette, Marinette County, Wisconsin; and that the reinspection revealed no action has been taken to investigate and/or remediate soils contaminated with lead and cadmium found on the property as required in s. 144.76(3), Wisconsin Statutes, and the attached administrative order issued on April 7, 1993. The contamination poses a potential hazard to the safety of soil and groundwater in this area.

This affidavit and the attached administrative order, dated April 7, 1993, addressed to Mrs. LaVerne Heimbuch, will be filed with the Register of Deeds in Marinette County, Wisconsin. The purpose of this filing is to inform any potential purchaser of the property as to the soil contamination and the need to investigate and remediate the site.

Daniel R. Helf

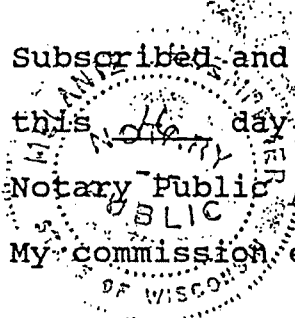
Daniel R. Helf

Subscribed and Sworn to me

this 16 day of August, 1993

Notary Public MARINETTE, Wisconsin

My commission expires March 2, 1997



This instrument drafted by D.R. Helf

Melanie J. Huff

Melanie J. Huff
REGISTER OF DEEDS
OF MARINETTE COUNTY, WIS.

1993 AUG 16 PM 2:20

RECORDED

0-00

D. Helf 1125 W. Madison St 54303

BEFORE THE

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Discharge of)
 Hazardous Substances on Property)
 Owned by Mrs. LaVerne Heimbuch, W1604)
 Cleveland Avenue, City of Marinette,)
 Wisconsin)

ORDER No. LMD-93-04
 ENTRACK FID No. 438092270
 WDNR ERRP ID: 38-0082

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The following constitutes a summary of the Findings of Fact and Conclusions of Law upon which the Department of Natural Resources (Department) bases Order No. LMD-93-04.

FINDINGS OF FACT

P.N. 024-00959.000 -

1. Mrs. LaVerne Heimbuch (respondent) owns the former salvage yard property (salvage yard) located at W1604 Cleveland Avenue, City of Marinette, Wisconsin. *E 314' of SW NW Section 11 T 30N, R 23E*
2. On January 18, 1991, Mr. Stanley Nogalski, Department Solid Waste Investigator, wrote a memo alerting other Department staff to aerial slides of the salvage yard which show serious ground discoloration. According to Mr. Nogalski, these discolored areas may have been caused by disposal of oil, auto fluids, and residue from burning vehicles to the soils when the salvage yard was in operation. Mr. Nogalski further observed that the salvage yard site was apparently located partially on top of a former sawdust fill in a wetland.
3. On March 28, 1991, the Department sent a letter to the respondent describing her responsibilities under section 144.76, Wisconsin Statutes, and requested that she provide the Department with additional information to further identify the extent of contamination at the salvage yard site. No response was received by the Department.
4. On May 15, 1991, the Department sent a second letter to the respondent again explaining her responsibility to perform the required investigation/remediation activities at her property. This letter also requested the respondent to provide the information requested in the March 28, 1991, letter within 10 days. The respondent's son, Mr. Ted Olsen, representing his mother, indicated that Mrs. Heimbuch did not own the salvage yard.
5. On December 27, 1991, the Department sent an additional follow-up letter to the respondent indicating that legally she was the salvage yard owner and therefore responsible for the investigation/remediation of the contamination on her property. The Department requested the name of a qualified consultant within 10 days and a site workplan within 30 days. No response was received by the Department.
6. On January 27, 1992, the Department issued a Notice of Violation to the respondent. The Notice of Violation also requested that the respondent attend an enforcement conference, which was subsequently held on February 20, 1992, and attended by Mr. Ted Olsen. During the meeting, Mr. Olsen explained that his mother did not have the money to fund cleanup of the salvage yard and the cost of removing the surface debris would be greater than the value of the property. It was then agreed that Department staff would conduct a site investigation of the salvage yard in Spring of 1992.

7. On August 18, 1992, Department staff conducted a site investigation at the salvage yard. Two soil samples were taken and sent to the State Laboratory of Hygiene for analysis. The samples contained Cadmium of 15 MG/KG and 11 MG/KG and Lead 330 MG/KG and 1300 MG/KG. A literature review found that a typical range levels of these parameters are .01 - 7.0 MG/KG and 2.0 - 200 MG/KG, respectively.
8. On November 10, 1992, the Department issued a second Notice of Violation to the respondent. Enclosed were copies of the soil sample analyses. This letter also "confirms that there is contamination present on the property." The Department again requested the respondent to provide the name of an environmental consultant within 10 days and a site workplan within 30 days. This second Notice of Violation was returned unclaimed to the Department on November 28, 1992; and was subsequently hand-delivered to the respondent by Warden Randy Starks on December 8, 1992.
9. On December 18, 1992, Mr. Olsen met with Department staff to discuss investigation and cleanup of the salvage yard site. Mr. Olsen explained that a potential buyer might be willing to take over these responsibilities. He agreed to contact the Department by January 15, 1993, after consulting with the potential buyer and the bank holding the mortgage on the salvage yard property. No response was received by the Department.
10. As of this date, the Department has not been contacted by the respondent, or her son, about hiring a consultant; nor has an investigation workplan been received for the Heimbuch salvage yard site.

CONCLUSIONS OF LAW

1. Cadmium and Lead are hazardous substances as defined by s. 144.01(4m), Wis. Stats.
2. Under s. 144.76(3), Wis. Stats., Mrs. LaVerne Heimbuch, as owner of the site, possesses or controls hazardous substances which were discharged, or caused the discharge of hazardous substances, and 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 the state.
3. Under s. 144.76(7)(c), Wis. Stats. the Department has the authority to issue Special Orders to the person possessing, controlling, or responsible for the discharge of hazardous substances to fulfill their duty imposed by s.144.76(3), Wis. Stats.
4. This Order is reasonable and necessary to accomplish the purposes of s. 144.76, Wis. Stats., and is enforceable under ss. 144.98 and 144.99, Wis. Stats.

ORDER

The Department therefore orders Mrs. LaVerne Heimbuch to:

1. Within 10 business days of the effective date of this Order, provide the Department with the name of the qualified environmental consultant hired to conduct the investigation outlined in this Order. The investigation is to determine the extent and degree of contamination at, and emanating from, the site and to prepare plans to remediate the effect of the contamination.

INVESTIGATION PLAN

2. Within 30 business days of the effective date of this Order, submit an investigation plan to the Department for its review and approval. Design the investigation plan to define the extent and degree of horizontal and vertical soil and groundwater contamination resulting from the discharge of petroleum products.

Design the investigation plan in accordance with the attached Site Investigation Checklist (incorporated herein as Attachment A) and all Department leaking underground storage tank guidance. Include a time schedule for implementing the investigation on all properties affected by the discharge.

If the Department requires modifications to the investigation plan, reply to the Department's comments within 15 business days of the date of the Department's notification. The Department may place conditions in the plan approval.

INVESTIGATION, REPORT AND REMEDIAL ACTION PLAN

3. Within 10 business days of the Department's approval of the investigation plan, conduct the investigation according to the terms and conditions of the Department's plan approval and all applicable federal and state laws and guidance.
4. Within 30 business days of the Department's approval of the investigation plan, submit a report of the findings of the investigation and a remedial action plan for soil and groundwater contamination. Proceed according to the plan approval.

IF FURTHER CONTAMINATION IS DISCOVERED

5. If the investigation plan approved by the Department under Paragraph 3 is not sufficient to fully define the degree and extent of the contamination, the investigation report shall propose an additional investigation plan for Department review. The report shall be designed to complete the investigation and shall include a proposed time schedule for a remedial action plan, or an interim remedial action plan. It should be noted that the Department will not issue an approval for this additional work, but the Department will issue a Notice to Proceed letter.

The respondent shall continue the investigation, remedial action(s) and submission of report(s) to the Department as directed by the conditions of the plan approval or Notice to Proceed letter(s).

REMEDIAL ACTION

6. Within 20 business days of the Department's approval or notice to proceed, conduct the remedial action according to the terms and conditions of the Department's approval and in accordance with all applicable federal and state laws and guidance.

NOTIFICATION OF SAMPLING

7. Notify the Department, in writing, at least 10 business days prior to any sampling performed under the investigation plan or the remedial action plan required by this Order.

REPORTING

8. Submit written monthly progress reports to the Department by the 10th of each month following the effective date of this Order. These monthly progress reports shall:
- a. Describe the actions which have been taken toward achieving compliance with this Order.
 - b. Include results of sampling, testing and all other data generated during the month.
 - c. The following additional information shall be submitted every third month:
 - i. Summary Tables for all historical groundwater chemistry data related to each well.
 - ii. Graphs of all historical groundwater chemistry data related to each monitoring well. At a minimum, these graphs shall be drawn depicting ch. NR 140, Wis. Adm. Code, Preventive Action Limit and Enforcement Standard Exceedances for the compounds of concern.
9. Mail or deliver copies of each report, plan or other submittal required by this Order to each of the following addresses:

Wisconsin Department of Natural Resources
Lake Michigan District Headquarters
Attn: Mr. Bruce Urben
1125 North Military Avenue
P.O. Box 10448
Green Bay, WI 54307-0448 (2 Copies)

Wisconsin Department of Natural Resources
Emergency and Remedial Response Section, SW/3
P. O. Box 7921
Madison, WI 53707 (1 copy)

RIGHT TO AMEND

10. The Department reserves jurisdiction to amend this Administrative Order if such action is necessary for the protection of public health, safety or welfare.

NOTICE OF APPEAL RIGHTS

This order shall become effective unless a written request for a hearing to contest the issuance of this Order, or any of its terms, is filed with the Department within 30 days after the date this Order is mailed. All hearing requests shall be filed either by delivery to the Office of the Secretary of the Department at 101 South Webster Street, Madison, Wisconsin, or by certified mail addressed to the Office of the Secretary, Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707. If a hearing is requested, the Order shall not become effective until the hearing examiner has issued a decision affirming or modifying the Order. This notice is provided pursuant to s. 227.48(2), Wis. Stats.


All hearing requests must be made in accordance with s. NR 2.05(2), Wis. Adm. Code, and must identify the grounds for the petition and the desired modification or change to the Order and include information demonstrating the following:

1. The substantial interest of the petitioner which is injured in fact or threatened with injury by Department action or inaction;
2. That there is no evidence of legislative intent that this interest is not to be protected;
3. That the injury to the petitioner is different in kind or degree from the injury to the general public caused by Department action or inaction; and
4. That there is a dispute of material fact.

For Judicial review of a decision, pursuant to ss. 227.52 and 227.53, Wis. Stats., you have 30 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 on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

Dated at Madison, Wisconsin, this 7th day of April, 1993.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
By:



 John LaFontaine, Director
 Office of Environmental Enforcement
 Division of Enforcement

521526