State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
2300 N. Dr. Martin Luther King, Jr. Drive
Milwaukee WI 53212-3128

Tony Evers, Governor
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September 29, 2020

Mr. Josh Herion
8867 Sheridan Road
Kenosha, WI 53143

Subject: Off-site Liability exemption for property located at 8867 Sheridan Road, Kenosha, WI with soil, vapors, and groundwater contamination from an off-site source
Parcel # 06-123-18-426-016

Dear Mr. Herion:

Purpose
The Department of Natural Resources ("the department") recently reviewed your request for an off-site exemption letter for the property located at 8867 Sheridan Road, Kenosha, which will be referred to in this letter as "the Property." Refer to the attached Exhibit 1: Site Diagram, 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 Josh Herion qualifies for the off-site liability exemption, and Josh Herion 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 soil, vapor, and groundwater contamination that migrated onto the Property. The Property owner is responsible for any discharges of hazardous substances that occurred on the Property. This includes known discharges, new discharges, and would include contamination already identified on the Property if an on-site source is later identified.

Request
You have requested that the department determine if Josh Herion 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 soil, vapors, and groundwater, that you believe is migrating onto the Property from an off-site source, 8927 Sheridan Road.

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 and an adjacent parcel, including soil, vapors, and groundwater sampling data for the Property and/or other sites contained in the following documents:

- Reports relating to 8927 Sheridan Road:
  - Phase I Environmental Site Assessment, STS Consultants, Ltd., August 30, 2000
  - Phase II Environmental Site Assessment, STS Consultants, Ltd., October 4, 2000
  - Investigation Report for a Targeted Brownfield Assessment, TN & Associates, Inc., August 26, 2004
  - Supplemental Site Investigation and Remedial Action Options Report, STS Consultants, Ltd., May 11, 2007

- Site Condition Update, AECOM, June 2013

- Reports relating to 8867 Sheridan Road (the Property):
  - Phase I Environmental Property Assessment, EPS Environmental Services, Inc., March 18, 2014
  - Phase II Limited Subsurface Investigation, EPS Environmental Services, Inc., April 18, 2014
  - Data Analysis Summary, Nova Consulting, August 7, 2014
  - Supplemental Site Investigation, Terracon, May 15, 2014
  - Supplemental Site Investigation, Terracon, May 15, 2015
  - Site Investigation Work Plan, Terracon, December 2, 2015

- Off-Site Liability Exemption and Liability Clarification Application form (Form 4400-201) dated July 21, 2020.

Background

The department considered the documents listed above in making the determinations presented in this letter. Also considered was a statement provided by your environmental consultant, Deigan & Associates, LLC, confirming that you have never owned the 8927 Sheridan Road parcel where a portion of the contamination affecting the Property appears to originate.

The parcel with address 8927 Sheridan Road is located immediately south of the Property. It was occupied by C & L Industrial Cleaners from 1967 to 1995, by the BBL Barrel Company in 1998, and has been owned by the City of Kenosha since at least 2000. C & L reportedly cleaned building entrance carpets; BBL was an industrial supply company. Environmental investigations initiated at 8927 Sheridan Road in 2000 determined that tetrachloroethene (PCE) was discharged at numerous locations. PCE is suspected to have been used by C & L as part of their laundry operations. Two likely source areas of PCE contamination included an apparent surface spill and leaking sewer lateral on the northwest corner of that parcel.

The Property was occupied as an automotive storage yard from 1941 through 1986, various other business operated there since. Environmental investigations were initiated on the Property in 2014 to assess whether the operation of the salvage yard resulted in contamination and whether it had been impacted by contamination previously identified at 8927 Sheridan Road. Investigations confirmed that chlorinated volatile organic compounds (CVOCs), including PCE, that impacted the northwest corner of the neighboring parcel were also found on the adjacent west side of the Property.

An evaluation of the relative contaminant concentrations on the two parcels suggests that contamination originating on 8927 Sheridan Road has migrated onto the Property and impacted areas immediately south of the on-site building. CVOC compounds detected on the Property in soil samples collected from near the north end of the onsite building (borings B-4 and B-5) appear to be indicative of a separate surface spill, and not from an off-site source.

Determination

Based upon the available information and in accordance with Wis. Stat. § 292.13, the department makes the following determinations regarding the presence of tetrachloroethene (PCE) and trichloroethene (TCE) in soil identified at B-1, B-2, GP-1, MW-100, and B-300; PCE, TCE, and 1,2-dichloroehtene in MW-1, MW-2, B-1, and B-2; and PCE in vapor at VP-1, VP-2, and VP-3 as identified on the attached Exhibit: Site Diagram. Other contamination identified at this site is the responsibility of the Property owner.

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 Josh Herion.
2. Josh Herion did not possess or control the hazardous substance on the property on which the discharge originated.
3. Josh Herion did not cause the discharge.
4. Josh Herion will not have liability under the Spill Law for investigation or remediation of the soil, sediment or groundwater contamination originating from off-site onto the Property, provided that Josh Herion 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. Josh Herion 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. Josh Herion agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.
4. Josh Herion 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 and vapor contamination only, Josh Herion 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.

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.

Consideration for Future Redevelopment

Sub-slab vapor testing found chlorinated solvent contamination in vapors under the existing building at concentrations below the residential vapor risk screening levels. If additional building, redevelopment, or change in use of the Property is planned in the future, the Property owner should work with an environmental consultant to evaluate whether chlorinated solvent contamination from soil, groundwater, or vapor may pose a risk. 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.

Conclusion

The department granted Josh Herion 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 Josh Herion, 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".

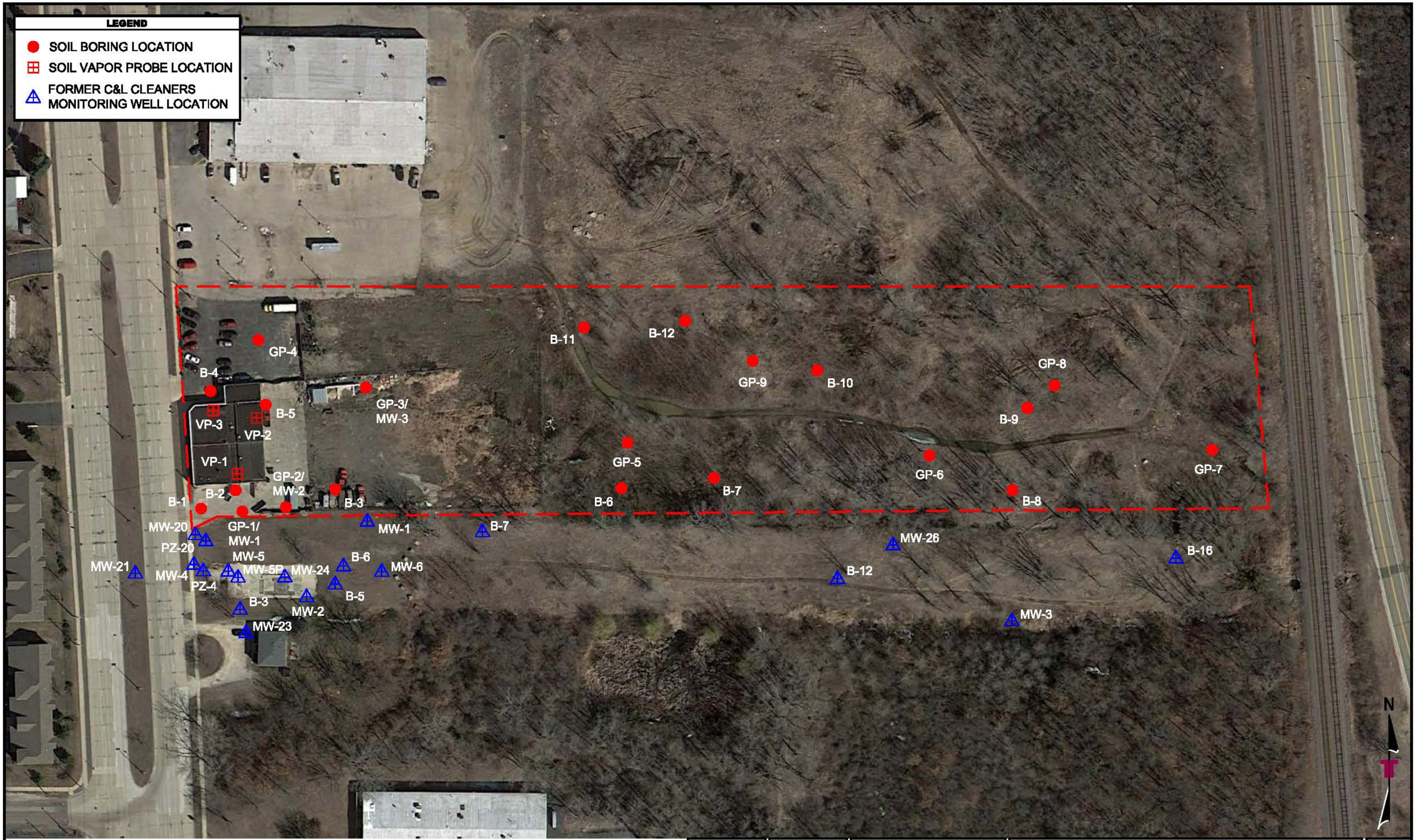
If you have any questions or concerns regarding this letter, please contact me at (414) 405-0764, by email at paul.grittner@wisconsin.gov.

Sincerely,

Paul Grittner
Hydrogeologist
Remediation & Redevelopment Program

Attachments: Exhibit 1, Site Diagram, Terracon Consultants, Inc. (2015)

cc: Gary Deigan, Deigan & Associates, LLC, 28835 N Herky Drive, Unit 102, Lake Bluff, IL 60044
Michael Prager, DNR (Electronic)
Margaret Brunette, DNR (Electronic)



Project Mngr:	PAL
Drawn By:	JMN
Checked By:	PAL
Approved By:	BRS
Project No.	58147081
Scale:	AS SHOWN
File No.	58147081
Date:	5/12/2015

Terracon
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9555 SOUTH 57th STREET FRANKLIN, WI 53132
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SITE DIAGRAM

MULTI-USE COMMERCIAL PROPERTY
8867 SHERIDAN ROAD
KENOSHA WISCONSIN

EXHIBIT 1