State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
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June 5, 2013

Mark Geall
Tanesay Development
1335 North Dearborn
Chicago, IL 60610

Sue Olson
City of Appleton
100 North Appleton Street
Appleton, WI 54911

Subject: Conditional Approval of the Soil Management Plan for RiverHeath Development
WDNR Site Name: *RiverHeath, LLC Development*, South RiverHeath Way
(a.k.a. 1130 Banta Court), Appleton, WI
General Property BRRTS # **07-45-560433**

Dear Mr. Geall and Ms. Olson:

On April 24, 2013, the Wisconsin Department of Natural Resources (the "Department") received a Soil Management Plan (SMP) submitted by OMNNI Associates (OMNNI) on behalf of the City of Appleton and Tanesay Development for the RiverHeath Development at 1130 Banta Court, Appleton, Outagamie County, Wisconsin (the "Property"). The Department also received the $500 review fee for "other technical assistance" under ch. NR 749, Wis. Adm. Code.

Upon receipt of the SMP, the Department assigned "General Property" tracking number, BRRTS # 07-45-560433, for this Property with the site name *RiverHeath, LLC Development*. The "General Property" tracking number included by OMNNI on the SMP, BRRTS # 07-45-524978, is specific to the former Telulah Canal footprint with the site name *Telulah Canal / M I LLC*. Future correspondence regarding the SMP and future phases of development at this Property should reference *RiverHeath, LLC Development* and BRRTS # 07-45-560433.

Summary of Soil Management Plan

The SMP addresses plans for management of soils during construction of RiverHeath's building B4, South RiverHeath Way and Newberry Street and associated public and private utilities. Soils planned for excavation include both contaminated soil and clean fill. This letter addresses management and reuse of contaminated soils regulated under ch. NR 718, Wis. Adm. Code.

The SMP proposes to excavate soil for installation of public and private utilities in addition to construction of an underground parking structure at the Property. Approximately 2,300 cubic yards of contaminated soils are proposed to be temporarily stockpiled in up to two stockpile locations, which are both located within 300 feet of the Fox River. Contaminated soils will be placed on plastic, covered and anchored at the stockpile locations. Silt fencing will surround the stockpile locations on the Property until the contaminated soils can be reused beneath the parking lot for the B4 building and adjacent hardscaped areas on the Property. The SMP provides additional detail for management of soils and stockpiles.

Conditional Approval

The SMP is approved under s. NR 718.11(3), Wis. Adm. Code with the following conditions:

1. Management of soils must comply with all requirements of the *WPDES General Permit No. WI-S067831-4: Construction Site Storm Water Runoff* for RiverHeath Building B4, FIN: 48377, issued April 17, 2013 to RiverHeath, LLC and for South RiverHeath Way and Newberry Street, FIN: 48416, issued April 17, 2013 to the City of Appleton;

2. Closure of the site-wide Banta Court Property case, BRRTS # 02-45-548762, on September 1, 2009 was based on an "exposure area approach". The risk-based calculations for residual contaminated soils were the basis for the closure, as allowed under ch. NR 720, Wis. Adm. Code. When/if soils with residual contamination begin to be reused on the Property, RiverHeath, LLC must provide the Department with written notification within 14 days of reuse. At that time, a letter of responsibility will be issued to RiverHeath, LLC reopening the Banta Court Property case.

3. Additional detail for the proposed covers of a "parking lot and hardscape surface" is necessary to confirm the covers will meet the minimum standards for a direct contact cap over contaminated soils. RiverHeath, LLC must submit this detail to the Department for review within 30 days from the date of this approval.

4. Excavated contaminated soils must be reused and capped within 90 days from the date of this approval.

5. RiverHeath, LLC must submit a Cap Maintenance Plan to the Department within 30 days of final cap placement over reused contaminated soils.

6. An abbreviated request for closure of the site-wide Banta Court Property case, BRRTS # 02-45-548762, should be submitted to the Department by RiverHeath, LLC within 60 days of final cap placement over reused contaminated soils. The abbreviated request for closure should include documentation of contaminated soil placement and coverings, a GIS Registry packet and applicable fees. You are encouraged to work with the Department to assure complete documentation is submitted.

7. Future phases of the RiverHeath, LLC Development that include excavation of soils will require submittal of a new Soil Management Plan and submittal of the fee for "other technical assistance" under ch. NR 749, Wis. Adm. Code for Department review and approval. If contaminated soils are again proposed to be reused on the Property, the Cap Maintenance Plan for the Property will need to be amended. This may require the need for submittal of updated GIS Registry packet(s) and appropriate fees under ch. NR 749, Wis. Adm. Code.

Voluntary Party Liability Exemption Program and Insurance

Based on my phone conversation on June 3, 2013 with Mark Geall, the Department understands that RiverHeath, LLC intends to pursue reissuance of the Certificate of Completion (COC), originally issued on October 23, 2009 for BRRTS # 06-45-548615. As discussed, RiverHeath, LLC may submit an application to enter the Voluntary Party Liability Exemption (VPLE) Program at any time in this process. Fees for the VPLE Program can be found under ch. NR 750, Wis. Adm. Code. The current application fee is $250. Please contact the Department to discuss the documentation necessary for the application

in this specific situation. Under the VPLE Program, the Department bills an hourly rate for direct oversight and fees under ch. NR 749, Wis. Adm. Code do not apply.

On June 3, 2013, Michael Prager, Land Recycling Team Leader with the Department, spoke with the Account Executive for Aon, who is the insurance broker for the State of Wisconsin, and the state's contact with American International Group, Inc. (AIG) out of Chicago, Illinois, the insurance carrier for the VPLE Program, to determine how these actions may affect the natural attenuation insurance for this Property. The one-time natural attenuation insurance fee was paid for this Property in 2009. Based on their conversation, AIG is not requesting any additional forms or fees. As requested by AIG, the Department will provide them with a copy of the new COC once issued and this Property will continue to be on the State's insurance policy.

Thank you for your cooperation with the conditions for approval of the SMP. Please contact me in Oshkosh at 920-424-7887 or at Jennifer.borski@wisconsin.gov with any questions.

Sincerely,

Jennifer Borski

Jennifer Borski
Hydrogeologist
Remediation and Redevelopment Program

Electronic Copy:
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