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WISCONSIN
DEPT. OF NATURAL RESOURCES

May 23, 2018

BRRTS #: 07-46-581206

Mr. Theodore Balistreri
Poynette LLC
W225 N3178 Duplaineville Road
Pewaukee, WI 53511

Subject: Liability Clarification for Property Located at 617 Tower Drive, Fredonia, Wisconsin with suspected contamination from an off-site source
Parcel # 09-035-14-002.00 and Parcel # 09-035-14-010.00

Dear Mr. Balistreri:

Purpose

The Department of Natural Resources ("the Department") has reviewed your request for an off-site exemption letter for 617 Tower Drive, Fredonia, Wisconsin, referred to in this letter as "the Property." Please refer to the attached Figure 2, Site Plan Map, the Sigma Group, Inc. ("Sigma") February 20, 2018, for a site map of the Property. The purpose of this letter is to determine what provisions of the off-site exemption you presently satisfy and the conditions under which you ("the Applicant") would satisfy all the requirements of the off-site exemption in s. 292.13, Wis. Stats. Currently, Poynette LLC, is the owner of the Property. The Department received a $700 fee for providing this letter pursuant to s. 292.13 (2) and (3), Stats, and ch. NR 749, Wis. Admin. Code.

Summary Determination

With the exception of no confirmed impact of a hazardous substance on the Property, the provisions in the off-site exemption statute are satisfied by Poynette LLC, for this Property and Poynette LLC, will not be held responsible for investigation or cleanup of the substances migrating from another property, if you continue to satisfy all conditions as described in this letter. The Property owner would have limited responsibility under s. 292.13, Stats, for the groundwater contamination that may migrate or may be migrating onto the Property. The conditions for the off-site exemption would be fully satisfied if contamination from the Phillips Plastics or Modern Metals of Wisconsin sites BRRTS # 02-46-248387 and BRRTS # 02-46-178666 were detected on the Property in the future.

Request

On March 29, 2018, Sigma requested, on your behalf, that the Department of Natural Resources ("the Department") determine whether you are exempt from s. 292.11(3), (4) and (7)(b) and (c), Wis. Stats., commonly known as the "Spill Law," with respect to the existence of a hazardous substances in the groundwater that you believe is migrating onto the Property from an off-site source. Wisconsin's Spill Law includes an "off-site exemption," in s. 292.13, Wis. Stats., that limits the liability of a property owner. In particular, you have requested clarification as to whether or not you are eligible for the off-site liability exemption.

The following documents were submitted to the Department with the request:

- The off-site application form dated March 28, 2018 and cover letter.
- "AAI Phase I Environmental Site Assessment, 617 Tower Drive, Fredonia, Wisconsin", March 2018, prepared by Sigma.

Background

The Department considered the information listed above in making the determinations presented in this letter. The facility on the Property was built in 1994 and used until recently by Guy & O'Neill, Inc. for wet-wipes manufacturing, including cutting material, blending liquid components, and packaging. Based on information provided in the Phase I Assessment for the Property, it does not appear that Guy & O'Neill used TCE or related chemicals on the Property.

The Property is near, and side-gradient to known sources for soil and groundwater contaminated with TCE and other chlorinated solvents including the Phillips Plastics site (referred to as Aqua-Tech, Inc in the Sigma Phase I), BRRTS # 02-46-248387; and Modern Metals of Wisconsin site, BRRTS # 02-46-178666. Monitoring Well MW-6, located about 10 feet north of the Property, on the Modern Metals of Wisconsin site, had a Preventive Action Limit exceedance of TCE in 2017 of 2.6 ug/l according to Department file records. It is unknown if the plume of groundwater contamination from these sites has migrated onto the Property.

Liability Determinations

Based on the Department's review of technical information, including the off-site application form submitted in accordance with s. 292.13(2), Stats., the Department makes the following determinations under ss 292.13(3) and 292.55, Stats., if the presence of 1,1-dichloroethane, 1,2-dichloroethane, cis 1,2-dichlorethane, trans 1,2-dichloroethane, 1,1-dichloroethene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethene, and vinyl chloride in the groundwater were to be detected at the Property in the future and:

1. The hazardous substance discharges originated from a source on property that is not possessed or controlled by Poynette LLC.

2. Poynette LLC did not possess or control the hazardous substances on the property on which the discharge originated.

3. Poynette LLC did not cause the discharge.

4. Poynette LLC will not have liability under the Hazardous Substance Spill Law for investigation or remediation of the soil or groundwater contamination originating from off-site onto the Property, provided that Poynette LLC does not take possession or control of the property on which the discharges originated.

Because there is not confirmed hazardous substances identified on your Property, the Department is not able, at this time, to issue you a letter determining that you qualify for all the provisions of the off-site liability exemption. However, if sampling is conducted in the future that confirms contamination on your Property, and the conditions in s. 292.13, Stats, are followed, you will fully qualify for the off-site liability exemption.

Exemption Conditions

The Department's determination, as set forth in this letter, are subject to the following conditions being complied with, as specified in s. 292.13(1) and (1m), Wis. Stats:

1. The facts upon which the Department based its determination are accurate and do not change.

2. Poynette LLC, agrees to allow the following parties to enter the Property to take action to respond to the discharges: the Department and its authorized representatives; any party that possessed or controlled the hazardous substances or caused the discharge; and any consultant or contractor of such a party.

3. Poynette LLC, agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharges.

4. Poynette LLC, 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.

Responsibilities for Continuing Obligations

In addition to the conditions above, after the contamination at the source property is remediated, the approval may include continuing obligations at the source property as well as your Property. Often residual contamination remains after an approved environmental cleanup is completed and sometimes that approval includes requirements to maintain engineering controls, such as a cap or soil cover, to reduce the impact of the contamination. You may also be required to obtain DNR approval to construct a water supply well on your Property. If the cleanup approval includes requirements associated with your Property, the party conducting the cleanup is required to notify you before the DNR reviews the proposal.

Conclusion

The Department may revoke the determinations made in this letter if it determines that any of the requirements under sections 292.13(1) or (1m), Wis. Stats., cease to be met.

With the exception of a confirmed impact on the Property by the detection of 1,1-dichloroethane, 1,2-dichloroethane, cis 1,2-dichlorethane, trans 1,2-dichloroethane, 1,1-dichloroethene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethene, or vinyl chloride, the provisions in the off-site exemption statute are satisfied by Poynette LLC, for this Property. The conditions for the off-site exemption would be fully satisfied if 1,1-dichloroethane, 1,2-dichloroethane, cis 1,2-dichlorethane, trans 1,2-dichloroethane, 1,1-dichloroethene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethene, or vinyl chloride contamination from a known source not on the Property were detected on the Property.

A person who meets all the conditions of the off-site exemption is not responsible for investigating and cleaning up environmental contamination that migrates onto her or his property from a neighboring property, with certain limitations, if the statutory conditions are met.

Future Property owners are eligible for the exemption under section 292.13, Wis. Stats., if they meet the requirements listed in that statute section. The determinations in this letter regarding a liability exemption, however, only apply to the Applicant, 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 section 292.13(2), Wis. Stats.

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 that is available on the Internet at: BRRTS on the Web.

If you have any questions or concerns regarding this letter, please contact me at 920-893-8523 or by email at johnm.feeney@wisconsin.gov, or at the address listed in the letterhead.

Sincerely,

John Feeney, PG
Remediation & Redevelopment Program
Southeast Region

Attachments: Figure 2, Site Plan Map, The Sigma Group, February 20, 2018

cc:

Margaret Brunette, DNR SER (electronic)
Michael Prager – RR/5 (electronic)
Mr. Jonathan M. O'Brien, Sigma

Project : 17539 | Directory: Figures | Filename: 17539_617_Fig 2_SPM.pdf | Created By: JVW | Date: 02/20/2018

THE SIGMA GROUP
Single Source. Sound Solutions.

SITE PLAN MAP

617 TOWER DRIVE
FREDONIA, WISCONSIN

FIGURE
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