State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
Box 7921
Madison, WI 53707-7921

Scott Walker, Governor
Daniel L. Meyer, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711

May 15, 2018

BRRTS#: 03-10-000847
Clark County

Mr. Randy Wilkinson
W11991 US Highway 10
Fairchild, WI 54741

Subject: Administrative Order to investigate the property Located at W11991 US Highway 10, Fairchild, Clark County, Wisconsin

Dear Mr. Wilkinson:

Enclosed is an Administrative Order which requires you to investigate and remediate petroleum contamination at the above referenced property. Please review the order carefully as it describes both the steps you need to take and your appeal rights if you wish to challenge the Department's decision.

If you have questions concerning this order, please contact Environmental Enforcement Specialist Deb Dix at 715-421-9914 or deb.dix@wisconsin.gov. Any technical questions concerning the investigation of this site can be directed to Matt Thompson (Hydrogeologist) at (715) 839-3750.

Sincerely,

Steven L. Sisbach, Section Chief
Environmental Enforcement and Emergency Management
Bureau of Law Enforcement

cc: M. Thompson – WCR
D. Dix – WCR
D. Rozeboom – WCR
S. Ales – RR/5
J. Mills – LS/8

BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Alleged Discharge of a Hazardous Substance on Property Currently Owned by Randy Wilkinson, Located at W11991 US Highway 10, Fairchild, Clark County, Wisconsin	)))))	**BRRTS #: 03-10-000847**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ADMINISTRATIVE ORDER

The following constitutes a summary of the Findings of Fact and Conclusions of Law upon which the Department of Natural Resources (department) bases this Order.

FINDINGS OF FACT

The department finds that:

1. The property located at W11991 US Highway 10, Fairchild, Clark County, Wisconsin (Site) served as a gas station from approximately 1942 to 1982. The pump island was removed in approximately 1982; however, the underground storage tanks were not properly abandoned or removed.
2. In August of 1992, the department was notified by the Wisconsin Department of Transportation (WisDOT) of a hazardous substance detection at the Site. WisDOT performed a phase II investigation of the highway right-of-way and confirmed the presence of a petroleum release. Four hundred and fifty (450) tons of contaminated soil was removed from the upper four feet of the right-of-way during the highway reconstruction project.
3. Soil and groundwater samples were collected from the Site during WisDOT highway reconstruction. The samples were analyzed by a Wisconsin state certified laboratory. Soil samples collected from the sidewall of the excavation which adjoins the subject property indicated levels of contamination in excess of state standards and requires additional investigation.
4. At the time, the Site was owned by Ester Luna. A responsible party letter was issued to Ester Luna on September 29, 1992. Ms. Luna passed away and a responsible party letter was issued to Nieves Luna, manager of the Luna Estate, on September 16, 1994.
5. Representatives of the Luna Estate did not respond or take action to investigate the degree and extent of contamination and a deed affidavit notifying future purchasers of the presence of, and liability for, the contamination was filed with the property deed on June 22, 1999.
6. Sometime in 2012, Mr. Randy Wilkinson began using the property as a bar.
7. Department staff contacted Mr. Wilkinson by telephone on March 28, 2013 noting that a letter was sent to Mr. Wilkinson on March 21, 2013 requesting site access to validate the location of the former underground storage tanks. Mr. Wilkinson stated that he had paid the property back taxes and was trying to take the property on "squatter's rights".

8. Department staff performed a site inspection at the property on April 29, 2013 at which time the property boundary was confirmed and it appears the former pump island and tanks would have been within that boundary. Information was provided to Mr. Wilkinson's mother regarding the potential liability of obtaining ownership of the property along with a copy of site plans from the March 1991 WisDOT report.
9. The Luna Family executed a Quit Claim deed of the property to Mr. Wilkinson, which was filed with the Clark County Register of Deeds on April 30, 2015. The Quit Claim Deed states that the "The Grantee agrees to assume all responsibility for the DNR contamination affidavit currently on record".
10. A responsible party letter was issued to Mr. Randy Wilkinson on August 3, 2015.
11. Department staff contacted Mr. Wilkinson by telephone on April 20, 2016 to request a status update. Mr. Wilkinson was notified that, as owner of the property he is responsible for performing an investigation. Mr. Wilkinson indicated he would not perform a site investigation because he did not cause the release and in his opinion, is not responsible. A Notice of Noncompliance was issued on April 20, 2016. No response was received.
12. A Notice of Violation was issued to Mr. Wilkinson on September 20, 2016 with an enforcement conference schedule for October 17, 2016. Mr. Wilkinson did not respond or attend the conference. A summary letter was issued to Mr. Wilkinson on October 31, 2016. (Note: There has been no additional contact made since this date)
13. To date, Mr. Randy Wilkinson has provided no information to the department stating that he has, or intends to, investigate the degree and extent of contamination.

The department believes, based on the contaminants present at the property (lead, benzene, ethylbenzene, xylenes, and trimethlybenzenes) that this order is necessary for the protection of public health, safety, welfare and the environment.

CONCLUSIONS OF LAW

The department concludes that:

1. Wis. Stat. § 292.11(3) states that 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.
2. Petroleum products are "hazardous substances" as defined by Wis. Stat. § 292.01(5).
3. Mr. Randy Wilkinson is a "person" as defined by Wis. Stat. § 292.01(13).
4. The department has authority under Wis. Stat. § 292.11(7)(c), to issue an emergency order or a special order to the person possessing, controlling or responsible for the discharge of hazardous substances to fulfill the duty imposed by § 292.11, Wis. Stats., and chs. NR 700 to 726, Wis. Adm. Code, for the protection of public health, safety or welfare.
5. This Order is necessary to accomplish the purposes of Wis. Stat. § 292.11, and chs. NR 700 to 726, Wis. Adm. Code, and is enforceable through prosecution by the Attorney General under Wis. Stat. §§ 299.95 and 299.97, and ch. NR 728, Wis. Adm. Code.

ADMINISTRATIVE ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the department orders Mr. Randy Wilkinson to complete the following schedule of actions within the times specified:

1. Conduct all the necessary response actions in accordance with Wis. Stat. Ch. 292 and the Wis. Adm. Code NR 700 rule series.
2. Hire an environmental consultant and submit written verification to the department that you have hired an environmental consultant within 30 days of the effective date of this order.
3. Provide the department with a Site Investigation Workplan prepared by the environmental consultant within 60 days of the effective date of this order.
4. Initiate the site investigation within 90 days of submitting the site investigation workplan.
5. Within 60 days after completion of the field investigation and receipt of the laboratory data, you must submit a Site Investigation Report.
6. If the department requires modification of the Site Investigation Report, the consultant shall modify the Site Investigation Report to address the department's comments and resubmit the report to the department within thirty (30) calendar days after receipt of the department's notification. The department may place conditions on the approval of the Site Investigation Report.
7. Within 60 days after receiving departmental approval of the site investigation report, submit to the department for approval a Remedial Action Options Report consistent with ch. NR 722 Wis. Adm. Code.
8. Unless directed otherwise in writing by the department, submit progress reports every six (6) months in accordance with § NR 700.11, Wis. Adm. Code.
9. The Respondent shall be responsible for complying with all applicable federal and state requirements. The Respondent shall be responsible for obtaining all federal, state, and local permits or licenses, which are necessary for the performance of this Order.
10. The Responsible party shall pay a fee consistent with ch. NR 749, Wis. Adm. Code and § 292.94, Wis. Stats. for department review and/or technical assistance required by the Respondent or required by the department under the provisions of this Order. The department agrees to provide all technical comments in writing to both the Respondent and consultant.
11. In accordance with § NR 700.11, Wis. Adm. Code, the Respondent shall provide at least one paper copy and electronic/digital copy of each report, plan and other submittal required by this Order. Mail or deliver copies of each report, plan or other submittal required by this Order to the following address:

    Wisconsin Department of Natural Resources
    Eau Claire Service Center
    Attn: Matthew Thompson
    1300 W. Clairemont Avenue
    Eau Claire, WI 54701

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review department decisions must be filed. For judicial review of a decision pursuant to §§ 227.52 and 227.53, Wis. Stats., you have thirty (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 to the department. Such a petition for judicial review must name the Department of Natural Resources as the respondent.

To request a contested case hearing pursuant to § 227.42, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. All requests for contested case hearings must be made in accordance with § NR 2.05(5), Wis. Adm. Code, and served on the Secretary in accordance with § NR 2.03, Wis. Adm. Code. The filing of a request for a contested case hearing does not extend the thirty (30) day period for filing a petition for judicial review.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

For the Secretary
By:

Steven L. Sisbach, Section Chief
Environmental Enforcement and Emergency Management
Bureau of Law Enforcement

May 15, 2018
Date