

**From:** Dillon Plamann <dplamann@fehrgraham.com>  
**Sent:** Wednesday, September 28, 2022 8:54 AM  
**To:** Schultz, Josie M - DNR; Donald P. Gallo  
**Cc:** John Butz  
**Subject:** RE: Bay Towel, 501 S. Adams Street, Green Bay  
**Attachments:** 21-1121 PH18 - Bay Towel 2022-09-28 - 445 South Adams Street Access Agreement - Second Request.pdf

**CAUTION: This email originated from outside the organization.  
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Good morning Josie,

Please see the attached second access permission request letter that is being sent out today. If we don't hear anything back in about 2 weeks, I will reach out to you to begin coordinating with DHS.

Thank you,

**DILLON PLAMANN, PG | Project Hydrogeologist  
Fehr Graham | Engineering & Environmental**

909 North 8th Street, Suite 101  
Sheboygan, WI 53081  
C: 920.946.2407  
[fehrgraham.com](http://fehrgraham.com)

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**From:** Schultz, Josie M - DNR <[josie.schultz@wisconsin.gov](mailto:josie.schultz@wisconsin.gov)>  
**Sent:** Monday, September 26, 2022 6:16 PM  
**To:** Dillon Plamann <[dplamann@fehrgraham.com](mailto:dplamann@fehrgraham.com)>; Donald P. Gallo <[DGallo@axley.com](mailto:DGallo@axley.com)>  
**Subject:** RE: Bay Towel, 501 S. Adams Street, Green Bay

Hi Dillon,

The day managed to get away on me - would you want to discuss this tomorrow morning?

The general process for requesting access for vapor sampling is that DNR requires you to make two attempts to gain access, and we will need copies of the sent access agreements for our records. If only one request for access has been sent, the following would be the next steps:

1. Send a second request for access.
2. If 2+ weeks go by and there is still no response, DNR will then need to consult with DHS.
3. DHS will send toxicological literature, and they may also ask local health (i.e. Brown County Health Dept) for assistance.
4. After DHS sends the toxicological literature, DNR will then send a third and final request with your access agreement.

Regards,

Josie

**We are committed to service excellence.**

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

**Josie Schultz**

Cell Phone: (920) 366-5685

[Josie.Schultz@Wisconsin.gov](mailto:Josie.Schultz@Wisconsin.gov)



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**From:** Dillon Plamann <[dplamann@fehrgraham.com](mailto:dplamann@fehrgraham.com)>

**Sent:** Monday, September 26, 2022 8:39 AM

**To:** Schultz, Josie M - DNR <[josie.schultz@wisconsin.gov](mailto:josie.schultz@wisconsin.gov)>; Donald P. Gallo <[DGallo@axley.com](mailto:DGallo@axley.com)>

**Subject:** RE: Bay Towel, 501 S. Adams Street, Green Bay

**CAUTION: This email originated from outside the organization.  
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Good morning Josie,

We are still having trouble obtaining access agreement for the vapor sampling from the property owner at 445 S. Adams Street. To summarize, they have confirmed they received the access agreement and are reviewing, but did not indicate if they were willing to sign or not. Would you have some time this afternoon to discuss the steps we need to take try to get access, or if we are denied to ensure we have the proper paperwork in place?

Thank you,

**DILLON PLAMANN, PG | Project Hydrogeologist**  
**Fehr Graham | Engineering & Environmental**

909 North 8th Street, Suite 101  
Sheboygan, WI 53081  
C: 920.946.2407  
[fehrgraham.com](http://fehrgraham.com)

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**From:** Schultz, Josie M - DNR <[josie.schultz@wisconsin.gov](mailto:josie.schultz@wisconsin.gov)>

**Sent:** Monday, August 1, 2022 1:07 PM

**To:** Donald P. Gallo <[DGallo@axley.com](mailto:DGallo@axley.com)>

**Cc:** Dillon Plamann <[dplamann@fehrgraham.com](mailto:dplamann@fehrgraham.com)>

**Subject:** RE: Bay Towel, 501 S. Adams Street, Green Bay - Drilling Schedule

Don,

Thank you for this update. Please keep me informed if you have trouble gaining access to the other buildings. If the property owner(s) deny access twice, DNR will need to consult with DHS prior to sending our third and final request for access. We will also need copies of the sent access agreements.

Thanks,  
Josie

**We are committed to service excellence.**

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

**Josie Schultz**

Cell Phone: (920) 366-5685

[Josie.Schultz@Wisconsin.gov](mailto:Josie.Schultz@Wisconsin.gov)



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**From:** Donald P. Gallo <[DGallo@axley.com](mailto:DGallo@axley.com)>  
**Sent:** Sunday, July 31, 2022 8:53 PM  
**To:** Schultz, Josie M - DNR <[josie.schultz@wisconsin.gov](mailto:josie.schultz@wisconsin.gov)>  
**Cc:** Dillon Plamann <[dplamann@fehrgraham.com](mailto:dplamann@fehrgraham.com)>  
**Subject:** FW: Bay Towel, 501 S. Adams Street, Green Bay - Drilling Schedule

**CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Josie;

Status of offsite access agreements and drilling schedule and offsite vapor sampling for your information, we will keep you informed.

Donald P. Gallo  
Axley Brynelson, LLP  
N17 W24222 Riverwood Drive, Suite250  
Waukesha, Wi. 53186  
Off. 262-409-2283  
Cell 414-507-6350

**Don Gallo**

Attorney

**AXLEY ATTORNEYS**

N17W24222 Riverwood Dr. Ste 250 | Waukesha, WI 53188  
Phone: 262.409.2283 | Mobile: 414.507.6350 | Fax: 262.524.9200  
Email: [DGallo@axley.com](mailto:DGallo@axley.com) | [bio](#) | [axley.com](#)

**Legal Assistant:** Carrie Fox

Phone: 262.409.2285 | Email: [cfox@axley.com](mailto:cfox@axley.com)

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**From:** Dillon Plamann <[dplamann@fehrgraham.com](mailto:dplamann@fehrgraham.com)>

**Sent:** Thursday, July 28, 2022 4:23 PM

**To:** John Butz <[jbutz@baytowel.com](mailto:jbutz@baytowel.com)>; Donald P. Gallo <[DGallo@axley.com](mailto:DGallo@axley.com)>

**Subject:** Bay Towel, 501 S. Adams Street, Green Bay - Drilling Schedule

External Email

Good afternoon John and Don,

We have finalized drilling dates, and it is scheduled for August 24 and 25. The City is also aware of this, and they have confirmed that the appropriate paperwork completed by the drilling date.

For vapor sampling access, the property owner at 317 Chicago Street (Donna Van Ark) said she sent in the signed agreement earlier this week, so I would expect to receive it tomorrow or early next week.

The property owner at 445 S. Adams Street confirmed they received the access agreement and are reviewing, but did not indicate if they were willing to sign or not. I will continue to follow up with them, as if they do not want us to do the vapor sampling on their property we would want something in writing that they are denying access.

Thank you for your patience, it is always challenging getting access agreements in place when doing off site work. But we are just about done and will be able to get things moving at a faster pace.

**DILLON PLAMANN, PG | Project Hydrogeologist**  
**Fehr Graham | Engineering & Environmental**

909 North 8th Street, Suite 101  
Sheboygan, WI 53081  
C: 920.946.2407  
[fehrgraham.com](http://fehrgraham.com)

September 28, 2022

301 N Broadway LLC  
1600 Shawano Avenue, Suite 204  
Green Bay, WI 54301

**RE: Access Permission for Environmental Site Investigation – Second Request  
Former Bay Towel Site  
501 S. Adams Street  
Green Bay, WI  
BRRTS # 02-05-237064**

To whom it may concern:

As described in our first access permission request submitted May 18, 2022, Fehr Graham, 909 North 8th Street, Suite 101, Sheboygan, Wisconsin, has been hired by Bay Towel to complete additional environmental site investigation efforts for the former Bay Towel site located at 501 South Adams Street, Green Bay, WI 54301 (BRRTS #02-05-237064).

This work includes a need to obtain vapor samples from your property at 445 South Adams Street, Green Bay, WI 54301. Fehr Graham is the environmental consultant for the project, and we are seeking permission to obtain samples. Please consider this our second request to obtain permission to collect the samples.

The Wisconsin Department of Natural Resources (WDNR) approved site investigation includes the following investigation activities that are proposed to be conducted on your Property:

- » Four (4) sub-slab vapor ports will be installed and sampled to analyze the vapor chemistry below the property building. Up to two (2) sub-slab vapor sampling events will be completed, depending on laboratory analytical results. At least one (1) round of sub-slab vapor sampling will be completed during the winter months (i.e., snow cover and/or frozen ground conditions).
- » One (1) indoor air vapor sample will be collected to analyze the vapor chemistry within the property building.

Attached is a form that provides permission for access to do this work. The WDNR encourages you to be cooperative with permission for access, and what to expect during the vapor sampling is discussed further in the attached WDNR Publications RR-589, RR-953, and RR-954. If you have any questions on the need for this work or any other issues, please feel free to contact the WDNR Project Manager for the Bay Towel Site, Ms. Josie Schultz. She can be reached at [josie.schultz@wisconsin.gov](mailto:josie.schultz@wisconsin.gov) or by phone at (920) 366-5685.

Please fill out the missing information on the attached form, sign and return the form to me in the enclosed envelope.

Thank you for your time and cooperation, your help with this matter is appreciated. If you have any questions, please call me at 920.946.2407 or email me at [dplamann@fehrgraham.com](mailto:dplamann@fehrgraham.com)

Sincerely,



Dillon Plamann, P.G.  
Project Hydrogeologist

Attachments: RR-589 Publication "When Contamination Crosses the Line"  
RR-953 Publication "Why Test for Vapor Intrusion?"  
RR-954 Publication "What to Expect During Vapor Intrusion Sampling"  
Blank Access Agreement for Signature  
Return Envelope

Cc: Ms. Josie Schultz, WDNR, Green Bay, WI 54313 via email only to [josie.schultz@wisconsin.gov](mailto:josie.schultz@wisconsin.gov)  
Mr. Don Gallo, esq., Hartford, WI 53027 via email only to [DonGalloLaw@outlook.com](mailto:DonGalloLaw@outlook.com)  
Mr. John Butz, Bay Towel, Green Bay, WI 54313 via email only to [jbutz@baytowel.com](mailto:jbutz@baytowel.com)

O:\Bay Towel\21-1121 SIWP\Communications\Access Agreement\445 South Adams Street\Second Request\Fehr Graham Access Agreement Cover Letter - 445 South Adams Street - Second Request.docx

## ACCESS AGREEMENT TO ALLOW ENTRY TO PREMISES

**PROPERTY OWNER: 301 N Broadway LLC**

**LOCATION: 445 South Adams Street**

**CITY: Green Bay STATE: Wisconsin**

1. **RIGHT OF ENTRY TO PREMISES.** The undersigned Owner is the legal owner of the property and hereby grants the undersigned Consultant, and Consultant's employees and agents of Bay Towel, Inc. ("Bay Towel"), to enter upon and perform certain exploration activities upon the property described above. Specifically, the allowed activities are:
  - » Four (4) sub-slab vapor ports will be installed and sampled to analyze the vapor chemistry below the property building. Up to two (2) sub-slab vapor sampling events will be completed, depending on laboratory analytical results. At least one (1) round of sub-slab vapor sampling will be completed during the winter months (i.e., snow cover and/or frozen ground conditions).
  - » One (1) indoor air vapor sample will be collected to analyze the vapor chemistry within the property building.
2. **PURPOSE OF ACTIVITIES.** The purpose of the allowed activities is to evaluate the degree and extent of possible soil, groundwater and vapor contamination associated with the release from the former Bay Towel site located at 501 South Adams Street, Green Bay, WI 54301 (BRRTS #02-05-237064).
3. **TERM OF AGREEMENT.** The activities authorized hereunder are expected to be completed on or before December of 2024. All rights and privileges granted by Owner shall cease on that date, unless they are extended by a subsequent agreement.
4. **STANDARD OF CARE.** Consultant will perform its activities in a manner consistent with that level of care and skill ordinarily exercised by other members of Consultant's profession practicing in the same or similar locality under similar conditions.
5. **AGREEMENT NOT TO INTERFERE.** Owner shall not interfere with any of the activities described herein, unless such activities pose a threat to human health or safety or a threat of damage to Owner's property.
6. **UTILITY MARKING.** Consultant agrees to arrange for public utilities on the Owner's property in the vicinity of the proposed activities to be identified and marked (e.g. by Digger's Hotline) prior to Consultant's activities on the Owner's property. With respect to private utilities, Owner is responsible to identifying the existence of such utilities and then Consultant is responsible for hiring a private utility locate company to locate the identified private utilities.
7. **RESTORATION OF PROPERTY.** Material and equipment utilized by the Consultant will be removed by Consultant from the property upon completion of the exploration and activities authorized by this agreement. Consultant will restore the property to substantially the same condition prior to Consultant's activities.

## **ACCESS AGREEMENT TO ALLOW ENTRY TO PREMISES**

8. **PROVISION OF ANALYTICAL RESULTS.** Upon written request, Consultant shall provide copies of analytical results of vapor, soil and/or groundwater samples obtained on Owner's property to Owner within two weeks of completion of the field activities.
9. **INSURANCE.** Consultant represents to the best of its knowledge, information and belief that it carries Worker's Compensation Insurance and that it has coverage under employer's liability, commercial general liability, bodily injury and property damage, and professional liability errors and omissions policies that Consultant deems reasonable and adequate. Upon request, Consultant shall furnish to Owner proof of such insurance coverage and the respective limits of liability.
10. **INDEMNIFICATION.** Consultant shall indemnify and hold harmless from and against 3rd party tort damages, costs (including reasonable attorneys fees) for personal injury or property damage occurring to Owner or third parties solely to the extent caused from the act of negligence or willful misconduct by Consultant as a result of the work which Consultant, its employees perform on the property. The limitation of liability shall not exceed \$2,000,000.
11. **NO REAL ESTATE INTEREST.** Consultant acquires no rights in the property by virtue of this agreement.
12. **COST OF ACTIVITIES.** Owner shall not be responsible for any costs or expenses incurred by the activities described herein.
13. **GOVERNING LAW.** This Agreement shall be governed by the laws of the state of Wisconsin.
14. **COUNTERPARTS.** This Agreement may be signed in two or more counterparts, each of which shall be treated as an original but which, when taken together, shall constitute one and the same instrument.

### **PROPERTY OWNER**

AUTHORIZED SIGNATOR: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_



**ACCESS AGREEMENT TO ALLOW ENTRY TO PREMISES**

**CONSULTANT**

AUTHORIZED SIGNATOR: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**BAY TOWEL, INC.**

AUTHORIZE SIGNATOR: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_



## When Contamination Crosses a Property Line

### The Off-Site Environmental Liability Exemption - Wis. Stat. §§ 292.12 and 292.13 Rights and Responsibilities of Off-site, Affected Property Owners

#### Purpose

This fact sheet summarizes the state's statutory liability exemption for owners of real property affected by environmental contamination migrating from another property. It also explains how contamination from one property can impose health and safety obligations on other properties even when the liability exemption is in effect.

#### Background

It is relatively common to discover that substances used at an older commercial or industrial property have migrated into the soil, surface water and groundwater and have traveled onto a neighboring property. When this occurs, the party responsible for investigating and cleaning up the source of the contamination is required to take action to address health and safety concerns at both the source property and the off-site property.

When contamination from one property crosses a property boundary, Wisconsin law provides an environmental liability exemption to the affected property owner who meets the conditions in the law. The affected property owner is identified as the "off-site" owner in state law, because environmental contamination has moved beyond the source property's boundaries.

The Wisconsin Department of Natural Resources (DNR) will generally not ask off-site, exempt property owners to investigate or remediate contamination that did not originate on their property. A few exceptions to the exemption, related to imminent health and safety threats and long term obligations, are described in the next section.

The statutory off-site exemption is self-implementing and is effective as long as an eligible party meets all the statutory conditions. Property owners and others may request a written exemption determination letter from the DNR for a fee, but this letter is not required to have the exemption protections.

#### Summary of an off-site property owner's rights and responsibilities

Wisconsin law, Wis. Stat. § 292.11(3), requires anyone who causes, possesses or controls a hazardous substance discharge to the environment (i.e. land, air, water) to take action to restore the

environment to the extent practicable and minimize harmful effects. When contamination from one property migrates and affects another property, however, Wisconsin law provides an exemption for an owner (possessor) of the affected, neighboring property from the requirement to take response actions under Wis. Stat. §§ 292.11(3), (4) and (7)(b) and (c). This statutory provision is known as the "off-site liability exemption," and is authorized by Wis. Stat. § 292.13.

#### Related Guidance

- [Off-site Liability Exemption Application \(Form 4400-201\)](#)
- [General Liability Clarification Letters \(RR-619\)](#)
- [Continuing Obligations for Environmental Protection \(RR-819\)](#)
- [Environmental Contamination and Your Real Estate \(RR-973\)](#)

An off-site property owner is someone who owns property affected by soil, groundwater, sediment, soil gas (vapor) or other environmental contamination that originated on another property. The property where the contamination began is known as the source property. An affected off-site property owner is eligible for an off-site liability exemption if all of the following conditions in Wis. Stat. § 292.13 are satisfied, including, but not limited to:

- The off-site property owner did not cause the original discharge of the hazardous substance;
- The off-site property owner did not, and does not, possess or control the hazardous substance that was discharged on the source property;
- The property that contains the source of the migrating contamination is not owned or controlled by the same person or entity that owns the affected off-site property;
- The off-site property owner allows reasonable access to their property, so the DNR and its contractors, along with those responsible for the contamination, can take necessary response actions to protect public health;
- The off-site property owner does not interfere with the response actions of others and does not do anything to make the contamination situation worse;
- The off-site property owner agrees to other conditions that the DNR determines are reasonable and necessary to ensure that response actions are adequate; and
- For soil and sediment contamination, when the responsible party is not responding appropriately to the contamination, the off-site property owner agrees to take actions that the DNR determines are necessary to prevent an imminent threat to human health and safety. For example, taking action to limit public access to the property, installing containment barriers, and addressing fire, explosion and vapor hazards on the property.

### **No Exemption from Reporting Requirements**

The off-site exemption does not exempt an affected property owner from Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR.

### **Limitations of the Exemption**

The off-site exemption is conditional, limited in scope and applies solely to legal responsibilities identified in Wis. Stat. §§ 292.11(3), (4) and (7)(b)(c). The off-site exemption does not exempt a property owner from:

- Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR;
- Wis. Stat. § 292.12, which authorizes the DNR to require continuing public health protection obligations on any property affected by environmental contamination (see page 4 of this fact sheet); and
- Limited, immediate actions, as specified in Wis. Stat. § 292.13(1m)(e). For instance, off-site property owners may be required to address an imminent threat from fire, explosion or vapors if there is not a party responsible for the cleanup who can conduct the actions.

In addition, the off-site liability exemption is not automatically transferable, nor assignable, to future owners of the off-site property. However, it is likely that a new owner could be eligible for the exemption if they meet the conditions in Wis. Stat. § 292.13, including the ability to substantiate that they do not currently, or have ever, owned the source property and did not cause the discharge.

## Overview of migrating contamination

Hazardous substances that are spilled or otherwise discharged to the environment can disperse and move around underground. These substances can spread out and migrate, or travel, through the soil into groundwater and nearby lakes and rivers. Gases (vapors) emanating from underground hazardous substances can also make their way upward into houses and other buildings.

When hazardous substances (contamination) move from their starting place (source) and affect the soil, sediment, groundwater or indoor air of an adjacent or nearby property, it is important to accurately determine who is legally responsible for investigating the nature and extent of the contamination, cleaning it up, and mitigating its harmful effects.

## Discovering contamination from an off-site source

When a property owner discovers soil or groundwater contamination they believe came from another property, the owner must first notify the DNR of the contamination. The DNR will then work with the owner and potentially responsible parties to ensure appropriate actions are taken to investigate and clean up the contamination to protect health and safety.

## Migrating contamination and access to property

Responsible parties are required by state law to investigate and remediate, to the extent practicable, all contamination that migrates within and beyond the boundaries of a source property. If the contamination crosses a property line, the responsible party must investigate where it goes and ask owners of affected, off-site properties for permission to access their properties. Property access is needed so the environmental investigation and cleanup or mitigation work can be completed.

An off-site property owner must allow access to their property to be eligible for the off-site liability exemption. When signing an access agreement, the off-site owners may wish to negotiate with the responsible party on issues such as the work schedule, the restoration of disturbed landscaping, etc.

If the owner of an affected off-site property does not allow the responsible party's environmental consultants or the DNR onto their property, the off-site owner will not qualify for the off-site exemption and the off-site owner may assume legal responsibility for the contamination on their property.

## Obtaining an off-site liability determination letter from the DNR

Off-site property owners can request a liability determination letter from the DNR, for a fee, that documents the exemption in writing.

To obtain a letter, the off-site property owner must provide information to demonstrate that there are hazardous substances impacting their property from a source on another property and that all the other conditions for the exemption have been met. The off-site property owner can use the investigation data collected by the responsible party in response to the contamination or an owner of an off-site property may collect their own data to demonstrate the contamination is coming from somewhere else.

### Requesting a Determination or Clarification Letter

To obtain an off-site liability determination letter or liability clarification letter, submit the DNR's [Off-site Liability Exemption application, Form 4400-201](#) and the applicable fee. This form includes instructions and describes the information needed by the DNR for a site-specific letter.

## **Obtaining a liability clarification letter from the DNR**

If someone does not meet all the requirements for the exemption, (e.g. a prospective purchaser) and therefore doesn't qualify for an off-site liability determination letter, anyone with an interest in a property that is or may be affected by migrating contamination can still request that the DNR review the site-specific situation and provide a written liability clarification letter for a fee. Liability clarification letters may be helpful when evaluating the potential purchase of a property or when contamination is suspected to be impacting a property.

## **Continuing obligations for the protection of health and safety at off-site properties**

When residual contamination extends across a property line, continuing obligations may also extend onto an affected, off-site property. In these situations, owners of off-site properties may not be legally responsible for responding to the contamination, but they are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety.

Wisconsin, like most states, allows some residual contamination to remain after a cleanup of contaminated soil, vapors, sediment or groundwater has been approved by the state (see Wis. Stat. § 292.12). The removal of all contamination is generally not practicable, nor is it always necessary for the protection of public health and the environment.

When the DNR approves the completion of an interim action, or a remedial action, or issues a case closure letter at a site where residual contamination exists, the DNR may condition or qualify its case closure approval on compliance with continuing obligations at the source property and affected off-site properties to protect public health and the environment.

These continuing obligations are property-specific requirements and restrictions identified in the DNR approval or case closure letter. They are legal responsibilities associated with the source property, and apply to current and future owners of the property. If contamination has migrated off-site, there may be continuing obligations that also apply to off-site, affected properties.

### **Common Continuing Obligations for Source and Affected, Off-site Properties**

One common continuing obligation, for the owners of the source property and affected, off-site properties, is the proper management and disposal of contaminated soil that is excavated. Other continuing obligations and requirements necessary to protect health and safety may include:

- Keeping clean soil and vegetation over contaminated soil;
- Maintaining a cover of pavement, soil, asphalt, etc. over contaminated soil or groundwater;
- Operating and maintaining a vapor mitigation system that is installed by the responsible party;
- Obtaining DNR approval prior to constructing or reconstructing a well at properties with groundwater contamination; and
- Maintaining industrial use for a property that was cleaned up to industrial standards.

Owners of off-site properties are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety, except for those continuing obligations imposed for residual sediment contamination.

## **Notice to Affected Off-site Property Owners of Case Closure Request and Possible Continuing Obligations**

The party responsible for cleaning up contamination must notify affected, off-site property owners of a proposed continuing obligation on their property before the DNR reviews a request for case closure. State law requires this, and it allows the off-site property owners some time to provide the DNR with any technical information that may be relevant to the cleanup approval.

An off-site property owner is, of course, free to discuss responsibility for the proposed off-site continuing obligations with the responsible party. If an off-site property owner enters into a legally enforceable agreement (i.e. a private contract) with the party responsible for the contamination, under which the responsible party assumes responsibility for maintaining a continuing obligation on the off-site owner's property, that agreement must be submitted to the DNR and recorded in the database per Wis. Stat. § 292.12(5)(c).

If the DNR approves a case closure request that includes continuing obligations at an off-site property, the DNR will notify off-site owners of the continuing obligation. A property owner may request modification of a continuing obligation in the future if environmental conditions change. For example, petroleum contamination degrades over time and laboratory test results of new soil, groundwater or vapor samples may support modifying or removing a continuing obligation.

### **Finding information about continuing obligations**

Information about property-specific continuing obligations can be found (as applicable) in the DNR interim action approval letter, the case closure letter for the source property, and in the DNR documents giving notice to off-site property owners. These letters and related documents are available in the DNR database of property cleanup activities.

This database, called [BRRTS on the Web](#), is available at [dnr.wi.gov](http://dnr.wi.gov) (search "BRRTS"). The documents about affected, off-site properties that are associated with a specific source property can be found in BRRTS when you search the site number or address of the property that is the source of the contamination. Property owners, local government officials, building contractors, well drillers and others may review the database to find out if there are any land-use restrictions or continuing obligations associated with a specific property before beginning work there.

### **For more information**

Questions about the off-site environmental liability exemption and continuing obligations can be directed to the brownfields specialist in your local DNR regional office. To find a specialist in your area, go to [dnr.wi.gov](http://dnr.wi.gov) and search "brownfields contacts."

For additional information about off-site contamination and liability clarification letters go to [dnr.wi.gov](http://dnr.wi.gov) and search for "off-site contamination." For additional information about residual contamination and continuing obligations go to [dnr.wi.gov](http://dnr.wi.gov) and search for "continuing obligations."

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The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Chief, Public Civil Rights, Office of Civil Rights, U.S. Department of the Interior, 1849 C. Street, NW, Washington, D.C. 20240. This publication is available in alternative format (large print, Braille, etc.) upon request. Please call for more information. Note: If you need technical assistance or more information, call the Accessibility Coordinator at 608-267-7490 / TTY Access via relay - 711

## Why Test for Vapor Intrusion?



Vapor intrusion is likely an unfamiliar term to you, and hearing that your property should be tested for possible chemical vapor intrusion may cause you some concern. That is understandable, and this information sheet is designed to answer basic questions many people have. Please refer to DNR PUB-RR-892, “What is Vapor Intrusion?” for a summary discussion of the term “vapor intrusion.”

Most cases of vapor intrusion will pose no immediate threat to your health and safety. However, when other neighborhood properties are contaminated, it is wise to get your home or building tested to determine if there is any cause for concern. If potentially harmful chemical vapors are detected inside your home or building, the Department of Natural Resources (DNR), working in collaboration with other health and environmental professionals, will help you come up with a solution to protect you and your family.

Please consider the following factors when deciding whether to allow access for sampling:

### Peace of mind

If there’s a chance that chemical vapor or soil gas is seeping into your home or business, testing can determine whether it really is and to what extent. If testing reveals a problem, then steps can be taken to resolve it, making the indoor air you breathe safer for you and your family. Like radon gas, vapors from nearby soil or groundwater contamination can be diverted from beneath your home or office building and safely expelled into the outdoors, thus improving air quality inside your home or building.

*The goal of sampling a residence or business is to eliminate as many of the unknowns as possible and safely address any concerns.*

### Who pays for testing?

You didn’t cause this problem, so you don’t have to pay for testing just as long as you allow reasonable and timely access to have testing done. The cost of sampling at potentially impacted residences or workplaces, like yours, is covered by the responsible party (the person or business legally obligated to investigate and clean up the contamination). In some cases, it’s paid for directly by DNR, the Department of Health Services (DHS), or some other agency. Vapor sampling will be performed by a professional, and samples will be sent to a specialized lab for analysis.

### Trained professionals and experts oversee the process

Multiple state and local agencies often work together to determine if vapor intrusion is a potential health risk in an area. The DNR, DHS, local health officials, the responsible party and environmental consultants are working together to ensure that quality samples are taken and that all results are given extensive review. It is important to gather the information in order to adequately understand if or where there may be a risk of vapor intrusion in your neighborhood.

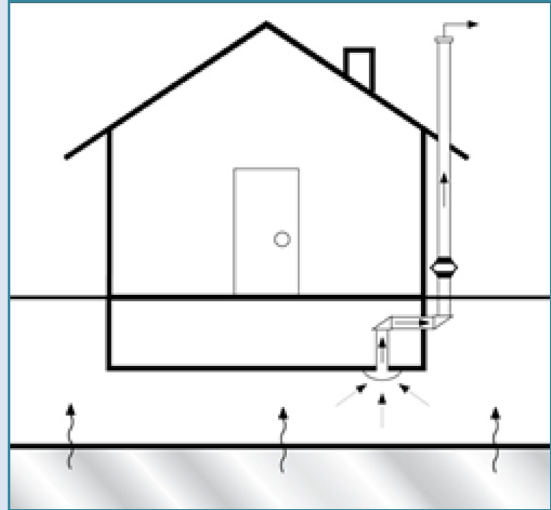


## A simple, cost effective solution exists

If vapor intrusion is a problem in a house or building, it can generally be solved by installing a vapor mitigation system. These sub-slab depressurizing systems are similar to those used to eliminate radon gas underneath homes, and have been used for years in a safe and effective manner. If the source of the vapor is tied to a responsible party, they will often pay to have a system installed at your home. The annual upkeep and operation of a typical system is generally less than \$100 per year, mostly for electricity. These annual costs are typically the responsibility of the homeowner.

## How will I know if the vapors have been eliminated?

After a vapor mitigation system is installed, follow-up testing of indoor air typically takes place three to six months later. The systems are usually considered permanent fixtures of the building. In cases where the source of the vapor is completely eliminated, the systems should no longer be needed.



If potentially harmful chemical vapor intrusion is detected in a home or business, the most common solution is to install a sub-slab depressurization system. This system captures and redirects soil vapors from below the building foundation before they enter the indoor air. Vapors are vented outside of the building where they disperse into the air and are rendered harmless.

Sub-slab depressurization systems also prevent radon from entering homes, which is an added health benefit in radon-prone areas.

## Where can I find more information?

Health and vapor-related information can be found at the Wisconsin Department of Health Services (DHS) website at [dhs.wisconsin.gov](http://dhs.wisconsin.gov), search “Vapor.” For other health-related questions, please contact your local health department: [www.dhs.wisconsin.gov/localhealth](http://www.dhs.wisconsin.gov/localhealth).

For more DNR information, please visit the DNR’s Remediation and Redevelopment (RR) Program’s Vapor Intrusion page at [dnr.wi.gov/topic/Brownfields/Vapor.html](http://dnr.wi.gov/topic/Brownfields/Vapor.html).

Additional information can be obtained through the DNR field office in your region. To find the correct office, visit the RR Program Staff Contacts page at [dnr.wi.gov/topic/Brownfields/Contact.html](http://dnr.wi.gov/topic/Brownfields/Contact.html) or call the RR Program at (608) 266-2111.

This document contains information about certain state statutes and administrative rules but does not necessarily include all of the details found in the statutes and rules. Readers should consult the actual language of the statutes and rules to answer specific questions. The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Equal Opportunity Office, Department of Interior, Washington, D.C. 20240. This publication is available in alternative format upon request. Please call 608-267-3543 for more information.



## What to Expect During Vapor Intrusion Sampling



The sampling procedure for vapor intrusion is performed by health and environmental professionals. It involves drilling one or more small holes into the basement or lowest level of your building, collecting a vapor sample from those holes - also called ports - and then sending the sample to a specialized lab for analysis. This is called sub-slab sampling. Sampling professionals try to minimize any inconveniences to you by informing you up front on what to expect and working with your schedule on the days of sampling.

***Vapor sampling provides information about the extent of potential contamination in your neighborhood.***

### Should I be on site for the sampling?

It's up to you. Sampling professionals will need to be let in to install the testing equipment and collect the samples. The arrangements you make are completely dependent on your availability and comfort level with others on your property.

### How many times will sampling professionals enter my property, and how is sampling done?

In general, you should plan on two or three visits over two or three days. While the actual sampling procedure and schedule may vary, the following provides a typical approach:

**Day 1:** The first day includes locating suitable locations for port installation, then drilling and installing the ports. This usually takes about an hour or two.

**Day 2:** The second day involves attaching the collection canister to the port to begin collecting the samples. A 24-hour indoor air sampling kit may also be set up. This visit will also take an hour or two.

**Day 3:** The third day is a shorter visit to gather all of the sampling equipment and seal off the ports. Sometimes the port site is left in place in case samples may need to be collected in the future.

### Why not take indoor air samples instead of sub-slab samples?

Indoor air quality often changes from day to day, creating misleading assumptions about long-term indoor air quality. Indoor air quality may be affected by vapors given off by household or commercial products including paints, glues, fuels, cleaners, cigarette smoke, aerosol sprays, new carpeting or furniture. Also, any outdoor air that enters the inside of your house may also contain vapors which can alter test results. By itself, indoor air testing will not necessarily confirm that the vapors in the indoor air are entering a building from underground sources. However, indoor air samples are usually collected at the same time as the sub-slab samples for comparison purposes.



## What if there is a crawl space instead of a basement?

If there is a crawl space or a basement with a dirt floor, it is not possible to install a port. In these cases, a sample of air is collected from the crawl space or basement over a 24 hour period. Sometimes a port can be installed in the side wall of the foundation.

## Who pays for testing, and when will I get the results?

In many cases, the responsible party (the person or business legally obligated to investigate and clean up the environmental contamination) pays for the testing. The responsible party may also pay for the installation of a mitigation system if it is necessary. Sometimes, other parties such as DNR or the Dept. of Health may pay for testing. As long as the property owner provides reasonable and timely access for testing, rarely would they be responsible for the cost.

The laboratory results are usually available in two to four weeks and will be shared with you through a state or local health agency, the Wisconsin DNR, the responsible party or a hired consultant. An explanation of the findings and additional steps to be taken, if any, will also be provided.



A sub-slab vapor sampling system is usually in place for a day or two during the sampling process. The metal canisters (foreground) collect the vapor sample from the port (smaller canister in back of photo). The same canisters can be used to collect indoor air samples.

## Where can I find more information?

Health and vapor-related information can be found at the Wisconsin Department of Health Services (DHS) website at [dhs.wisconsin.gov](http://dhs.wisconsin.gov), search “Vapor.” For other health-related questions, please contact your local health department: [www.dhs.wisconsin.gov/localhealth](http://www.dhs.wisconsin.gov/localhealth).

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May 18, 2022

301 N Broadway LLC  
1600 Shawano Avenue, Suite 204  
Green Bay, WI 54301

**RE: Access Permission for Environmental Site Investigation  
Former Bay Towel Site  
501 S. Adams Street  
Green Bay, WI  
BRRTS # 02-05-237064**

To whom it may concern:

Fehr Graham, 909 North 8th Street, Suite 101, Sheboygan, Wisconsin, has been hired by Bay Towel to complete additional environmental site investigation efforts for the former Bay Towel site located at 501 South Adams Street, Green Bay, WI 54301 (BRRTS #02-05-237064).

This work includes a need to obtain vapor samples from your Property at 445 South Adams Street, Green Bay, WI 54301. Fehr Graham is the environmental consultant for the project, and we are seeking permission to obtain samples.

The Wisconsin Department of Natural Resources (WDNR) approved site investigation which includes the following investigation activities that are proposed to be conducted on your Property:

- » Four (4) sub-slab vapor ports will be installed and sampled to analyze the vapor chemistry below the property building. Up to two (2) sub-slab vapor sampling events will be completed, depending on laboratory analytical results. At least one (1) round of sub-slab vapor sampling will be completed during the winter months (i.e., snow cover and/or frozen ground conditions).
- » One (1) indoor air vapor sample will be collected to analyze the vapor chemistry within the property building.

Attached is a form that provides permission for access to do this work. The WDNR encourages you to be cooperative with permission for access, and the situation is discussed further in the attached WDNR Publication RR-589. If you have any questions on the need for this work or any other issues, please feel free to contact the WDNR Project Manager for the Bay Towel Site, Ms. Josie Schultz. She can be reached at [josie.schultz@wisconsin.gov](mailto:josie.schultz@wisconsin.gov) or by phone at (920) 366-5685.

Please fill out the missing information on the attached form, sign and return the form to me in the enclosed envelope.

May 22, 2022  
Access Permission for Environmental Investigation  
Page 2

Thank you for your time and cooperation, your help with this matter is appreciated. If you have any questions, please call me at 920.946.2407 or email me at [dplamann@fehrgraham.com](mailto:dplamann@fehrgraham.com)

Sincerely,

A handwritten signature in black ink, appearing to read 'Dillon Plamann', written in a cursive style.

Dillon Plamann, PG  
Project Hydrogeologist

Attachments: RR-589 Publication "When Contamination Crosses the Line"  
Blank Access Agreement for Signature  
Return Envelope

Cc: Ms. Josie Schultz, WDNR, Green Bay, WI 54313 via email only to [josie.schultz@wisconsin.gov](mailto:josie.schultz@wisconsin.gov)

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## When Contamination Crosses a Property Line

### The Off-Site Environmental Liability Exemption - Wis. Stat. §§ 292.12 and 292.13 Rights and Responsibilities of Off-site, Affected Property Owners

#### Purpose

This fact sheet summarizes the state's statutory liability exemption for owners of real property affected by environmental contamination migrating from another property. It also explains how contamination from one property can impose health and safety obligations on other properties even when the liability exemption is in effect.

#### Background

It is relatively common to discover that substances used at an older commercial or industrial property have migrated into the soil, surface water and groundwater and have traveled onto a neighboring property. When this occurs, the party responsible for investigating and cleaning up the source of the contamination is required to take action to address health and safety concerns at both the source property and the off-site property.

When contamination from one property crosses a property boundary, Wisconsin law provides an environmental liability exemption to the affected property owner who meets the conditions in the law. The affected property owner is identified as the "off-site" owner in state law, because environmental contamination has moved beyond the source property's boundaries.

#### Related Guidance

- [Off-site Liability Exemption Application \(Form 4400-201\)](#)
- [General Liability Clarification Letters \(RR-619\)](#)
- [Continuing Obligations for Environmental Protection \(RR-819\)](#)
- [Environmental Contamination and Your Real Estate \(RR-973\)](#)

The Wisconsin Department of Natural Resources (DNR) will generally not ask off-site, exempt property owners to investigate or remediate contamination that did not originate on their property. A few exceptions to the exemption, related to imminent health and safety threats and long term obligations, are described in the next section.

The statutory off-site exemption is self-implementing and is effective as long as an eligible party meets all the statutory conditions. Property owners and others may request a written exemption determination letter from the DNR for a fee, but this letter is not required to have the exemption protections.

#### Summary of an off-site property owner's rights and responsibilities

Wisconsin law, Wis. Stat. § 292.11(3), requires anyone who causes, possesses or controls a hazardous substance discharge to the environment (i.e. land, air, water) to take action to restore the

environment to the extent practicable and minimize harmful effects. When contamination from one property migrates and affects another property, however, Wisconsin law provides an exemption for an owner (possessor) of the affected, neighboring property from the requirement to take response actions under Wis. Stat. §§ 292.11(3), (4) and (7)(b) and (c). This statutory provision is known as the "off-site liability exemption," and is authorized by Wis. Stat. § 292.13.

An off-site property owner is someone who owns property affected by soil, groundwater, sediment, soil gas (vapor) or other environmental contamination that originated on another property. The property where the contamination began is known as the source property. An affected off-site property owner is eligible for an off-site liability exemption if all of the following conditions in Wis. Stat. § 292.13 are satisfied, including, but not limited to:

- The off-site property owner did not cause the original discharge of the hazardous substance;
- The off-site property owner did not, and does not, possess or control the hazardous substance that was discharged on the source property;
- The property that contains the source of the migrating contamination is not owned or controlled by the same person or entity that owns the affected off-site property;
- The off-site property owner allows reasonable access to their property, so the DNR and its contractors, along with those responsible for the contamination, can take necessary response actions to protect public health;
- The off-site property owner does not interfere with the response actions of others and does not do anything to make the contamination situation worse;
- The off-site property owner agrees to other conditions that the DNR determines are reasonable and necessary to ensure that response actions are adequate; and
- For soil and sediment contamination, when the responsible party is not responding appropriately to the contamination, the off-site property owner agrees to take actions that the DNR determines are necessary to prevent an imminent threat to human health and safety. For example, taking action to limit public access to the property, installing containment barriers, and addressing fire, explosion and vapor hazards on the property.

### **No Exemption from Reporting Requirements**

The off-site exemption does not exempt an affected property owner from Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR.

### **Limitations of the Exemption**

The off-site exemption is conditional, limited in scope and applies solely to legal responsibilities identified in Wis. Stat. §§ 292.11(3), (4) and (7)(b)(c). The off-site exemption does not exempt a property owner from:

- Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR;
- Wis. Stat. § 292.12, which authorizes the DNR to require continuing public health protection obligations on any property affected by environmental contamination (see page 4 of this fact sheet); and
- Limited, immediate actions, as specified in Wis. Stat. § 292.13(1m)(e). For instance, off-site property owners may be required to address an imminent threat from fire, explosion or vapors if there is not a party responsible for the cleanup who can conduct the actions.

In addition, the off-site liability exemption is not automatically transferable, nor assignable, to future owners of the off-site property. However, it is likely that a new owner could be eligible for the exemption if they meet the conditions in Wis. Stat. § 292.13, including the ability to substantiate that they do not currently, or have ever, owned the source property and did not cause the discharge.

## **Overview of migrating contamination**

Hazardous substances that are spilled or otherwise discharged to the environment can disperse and move around underground. These substances can spread out and migrate, or travel, through the soil into groundwater and nearby lakes and rivers. Gases (vapors) emanating from underground hazardous substances can also make their way upward into houses and other buildings.

When hazardous substances (contamination) move from their starting place (source) and affect the soil, sediment, groundwater or indoor air of an adjacent or nearby property, it is important to accurately determine who is legally responsible for investigating the nature and extent of the contamination, cleaning it up, and mitigating its harmful effects.

## **Discovering contamination from an off-site source**

When a property owner discovers soil or groundwater contamination they believe came from another property, the owner must first notify the DNR of the contamination. The DNR will then work with the owner and potentially responsible parties to ensure appropriate actions are taken to investigate and clean up the contamination to protect health and safety.

## **Migrating contamination and access to property**

Responsible parties are required by state law to investigate and remediate, to the extent practicable, all contamination that migrates within and beyond the boundaries of a source property. If the contamination crosses a property line, the responsible party must investigate where it goes and ask owners of affected, off-site properties for permission to access their properties. Property access is needed so the environmental investigation and cleanup or mitigation work can be completed.

An off-site property owner must allow access to their property to be eligible for the off-site liability exemption. When signing an access agreement, the off-site owners may wish to negotiate with the responsible party on issues such as the work schedule, the restoration of disturbed landscaping, etc.

If the owner of an affected off-site property does not allow the responsible party's environmental consultants or the DNR onto their property, the off-site owner will not qualify for the off-site exemption and the off-site owner may assume legal responsibility for the contamination on their property.

## **Obtaining an off-site liability determination letter from the DNR**

Off-site property owners can request a liability determination letter from the DNR, for a fee, that documents the exemption in writing.

To obtain a letter, the off-site property owner must provide information to demonstrate that there are hazardous substances impacting their property from a source on another property and that all the other conditions for the exemption have been met. The off-site property owner can use the investigation data collected by the responsible party in response to the contamination or an owner of an off-site property may collect their own data to demonstrate the contamination is coming from somewhere else.

### **Requesting a Determination or Clarification Letter**

To obtain an off-site liability determination letter or liability clarification letter, submit the DNR's [Off-site Liability Exemption application, Form 4400-201](#) and the applicable fee. This form includes instructions and describes the information needed by the DNR for a site-specific letter.

## **Obtaining a liability clarification letter from the DNR**

If someone does not meet all the requirements for the exemption, (e.g. a prospective purchaser) and therefore doesn't qualify for an off-site liability determination letter, anyone with an interest in a property that is or may be affected by migrating contamination can still request that the DNR review the site-specific situation and provide a written liability clarification letter for a fee. Liability clarification letters may be helpful when evaluating the potential purchase of a property or when contamination is suspected to be impacting a property.

## **Continuing obligations for the protection of health and safety at off-site properties**

When residual contamination extends across a property line, continuing obligations may also extend onto an affected, off-site property. In these situations, owners of off-site properties may not be legally responsible for responding to the contamination, but they are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety.

Wisconsin, like most states, allows some residual contamination to remain after a cleanup of contaminated soil, vapors, sediment or groundwater has been approved by the state (see Wis. Stat. § 292.12). The removal of all contamination is generally not practicable, nor is it always necessary for the protection of public health and the environment.

When the DNR approves the completion of an interim action, or a remedial action, or issues a case closure letter at a site where residual contamination exists, the DNR may condition or qualify its case closure approval on compliance with continuing obligations at the source property and affected off-site properties to protect public health and the environment.

These continuing obligations are property-specific requirements and restrictions identified in the DNR approval or case closure letter. They are legal responsibilities associated with the source property, and apply to current and future owners of the property. If contamination has migrated off-site, there may be continuing obligations that also apply to off-site, affected properties.

### **Common Continuing Obligations for Source and Affected, Off-site Properties**

One common continuing obligation, for the owners of the source property and affected, off-site properties, is the proper management and disposal of contaminated soil that is excavated. Other continuing obligations and requirements necessary to protect health and safety may include:

- Keeping clean soil and vegetation over contaminated soil;
- Maintaining a cover of pavement, soil, asphalt, etc. over contaminated soil or groundwater;
- Operating and maintaining a vapor mitigation system that is installed by the responsible party;
- Obtaining DNR approval prior to constructing or reconstructing a well at properties with groundwater contamination; and
- Maintaining industrial use for a property that was cleaned up to industrial standards.

Owners of off-site properties are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety, except for those continuing obligations imposed for residual sediment contamination.



## **Notice to Affected Off-site Property Owners of Case Closure Request and Possible Continuing Obligations**

The party responsible for cleaning up contamination must notify affected, off-site property owners of a proposed continuing obligation on their property before the DNR reviews a request for case closure. State law requires this, and it allows the off-site property owners some time to provide the DNR with any technical information that may be relevant to the cleanup approval.

An off-site property owner is, of course, free to discuss responsibility for the proposed off-site continuing obligations with the responsible party. If an off-site property owner enters into a legally enforceable agreement (i.e. a private contract) with the party responsible for the contamination, under which the responsible party assumes responsibility for maintaining a continuing obligation on the off-site owner's property, that agreement must be submitted to the DNR and recorded in the database per Wis. Stat. § 292.12(5)(c).

If the DNR approves a case closure request that includes continuing obligations at an off-site property, the DNR will notify off-site owners of the continuing obligation. A property owner may request modification of a continuing obligation in the future if environmental conditions change. For example, petroleum contamination degrades over time and laboratory test results of new soil, groundwater or vapor samples may support modifying or removing a continuing obligation.

### **Finding information about continuing obligations**

Information about property-specific continuing obligations can be found (as applicable) in the DNR interim action approval letter, the case closure letter for the source property, and in the DNR documents giving notice to off-site property owners. These letters and related documents are available in the DNR database of property cleanup activities.

This database, called [BRRTS on the Web](#), is available at [dnr.wi.gov](http://dnr.wi.gov) (search "BRRTS"). The documents about affected, off-site properties that are associated with a specific source property can be found in BRRTS when you search the site number or address of the property that is the source of the contamination. Property owners, local government officials, building contractors, well drillers and others may review the database to find out if there are any land-use restrictions or continuing obligations associated with a specific property before beginning work there.

### **For more information**

Questions about the off-site environmental liability exemption and continuing obligations can be directed to the brownfields specialist in your local DNR regional office. To find a specialist in your area, go to [dnr.wi.gov](http://dnr.wi.gov) and search "brownfields contacts."

For additional information about off-site contamination and liability clarification letters go to [dnr.wi.gov](http://dnr.wi.gov) and search for "off-site contamination." For additional information about residual contamination and continuing obligations go to [dnr.wi.gov](http://dnr.wi.gov) and search for "continuing obligations."

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This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Chief, Public Civil Rights, Office of Civil Rights, U.S. Department of the Interior, 1849 C. Street, NW, Washington, D.C. 20240. This publication is available in alternative format (large print, Braille, etc.) upon request. Please call for more information. Note: If you need technical assistance or more information, call the Accessibility Coordinator at 608-267-7490 / TTY Access via relay - 711

## ACCESS AGREEMENT TO ALLOW ENTRY TO PREMISES

**PROPERTY OWNER: 301 N Broadway LLC**

**LOCATION: 445 South Adams Street**

**CITY: Green Bay STATE: Wisconsin**

1. **RIGHT OF ENTRY TO PREMISES.** The undersigned Owner is the legal owner of the property and hereby grants the undersigned Consultant, and Consultant's employees and agents of Bay Towel, Inc. ("Bay Towel"), to enter upon and perform certain exploration activities upon the property described above. Specifically, the allowed activities are:
  - » Four (4) sub-slab vapor ports will be installed and sampled to analyze the vapor chemistry below the property building. Up to two (2) sub-slab vapor sampling events will be completed, depending on laboratory analytical results. At least one (1) round of sub-slab vapor sampling will be completed during the winter months (i.e., snow cover and/or frozen ground conditions).
  - » One (1) indoor air vapor sample will be collected to analyze the vapor chemistry within the property building.
2. **PURPOSE OF ACTIVITIES.** The purpose of the allowed activities is to evaluate the degree and extent of possible soil, groundwater and vapor contamination associated with the release from the former Bay Towel site located at 501 South Adams Street, Green Bay, WI 54301 (BRRTS #02-05-237064).
3. **TERM OF AGREEMENT.** The activities authorized hereunder are expected to be completed on or before December of 2024. All rights and privileges granted by Owner shall cease on that date, unless they are extended by a subsequent agreement.
4. **STANDARD OF CARE.** Consultant will perform its activities in a manner consistent with that level of care and skill ordinarily exercised by other members of Consultant's profession practicing in the same or similar locality under similar conditions.
5. **AGREEMENT NOT TO INTERFERE.** Owner shall not interfere with any of the activities described herein, unless such activities pose a threat to human health or safety or a threat of damage to Owner's property.
6. **UTILITY MARKING.** Consultant agrees to arrange for public utilities on the Owner's property in the vicinity of the proposed activities to be identified and marked (e.g. by Digger's Hotline) prior to Consultant's activities on the Owner's property. With respect to private utilities, Owner is responsible to identifying the existence of such utilities and then Consultant is responsible for hiring a private utility locate company to locate the identified private utilities.
7. **RESTORATION OF PROPERTY.** Material and equipment utilized by the Consultant will be removed by Consultant from the property upon completion of the exploration and activities authorized by this agreement. Consultant will restore the property to substantially the same condition prior to Consultant's activities.

## **ACCESS AGREEMENT TO ALLOW ENTRY TO PREMISES**

8. **PROVISION OF ANALYTICAL RESULTS.** Upon written request, Consultant shall provide copies of analytical results of vapor, soil and/or groundwater samples obtained on Owner's property to Owner within two weeks of completion of the field activities.
9. **INSURANCE.** Consultant represents to the best of its knowledge, information and belief that it carries Worker's Compensation Insurance and that it has coverage under employer's liability, commercial general liability, bodily injury and property damage, and professional liability errors and omissions policies that Consultant deems reasonable and adequate. Upon request, Consultant shall furnish to Owner proof of such insurance coverage and the respective limits of liability.
10. **INDEMNIFICATION.** Consultant shall indemnify and hold harmless from and against 3rd party tort damages, costs (including reasonable attorney fees) for personal injury or property damage occurring to Owner or third parties solely to the extent caused from the act of negligence or willful misconduct by Consultant as a result of the work which Consultant, its employees perform on the property. The limitation of liability shall not exceed \$2,000,000.
11. **NO REAL ESTATE INTEREST.** Consultant acquires no rights in the property by virtue of this agreement.
12. **COST OF ACTIVITIES.** Owner shall not be responsible for any costs or expenses incurred by the activities described herein.
13. **GOVERNING LAW.** This Agreement shall be governed by the laws of the state of Wisconsin.
14. **COUNTERPARTS.** This Agreement may be signed in two or more counterparts, each of which shall be treated as an original but which, when taken together, shall constitute one and the same instrument.

### **PROPERTY OWNER**

AUTHORIZED SIGNATOR: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

**ACCESS AGREEMENT TO ALLOW ENTRY TO PREMISES**

**CONSULTANT**

AUTHORIZED SIGNATOR: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**BAY TOWEL, INC.**

AUTHORIZE SIGNATOR: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_