

From: Donald Gallo <dongallolaw@outlook.com>
Sent: Friday, October 21, 2022 6:43 AM
To: Adam Kersten
Cc: Schultz, Josie M - DNR; Dillon Plamann; John Butz; Silje Roalsvik; nreid@resolutemgmt.com; jtarvin@ramboll.com
Subject: RE: Access agreement for conducting vapor ports for obtaining vapor samples at 445 S. Adams Street, Green Bay, Wi.
Attachments: Fehr Graham Access agreement Signature form - Bay Towel - 445 South Adams Street - third Request.docx

Follow Up Flag: Follow up
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Adam;

Please find attached a revised access agreement for your review and execution. This access agreement limits sampling and lab testing to PCE and its daughter products of TCE to vinyl chloride. The access agreement also addresses the installation of a vapor mitigation system if the vapors are caused by migration from the Bay Towel property.

Donald P. Gallo

Attorney
Gallo Law, LLC

Direct: 414-507-6350
Email: dongallolaw@outlook.com
Web: www.dgallolaw.com
1386 State Road 83
Hartford, WI 53027

From: Adam Kersten <kerstenrealty@yahoo.com>
Sent: Tuesday, October 18, 2022 12:16 PM
To: Donald Gallo <dongallolaw@outlook.com>
Cc: josie.schultz@wisconsin.gov; Dillon Plamann <dplamann@fehrgraham.com>; John Butz <jbutz@baytowel.com>; Silje Roalsvik <sroalsvik@resolutemgmt.com>; nreid@resolutemgmt.com; jtarkin@ramboll.com
Subject: Re: Access agreement for conducting vapor ports for obtaining vapor samples at 445 S. Adams Street, Green Bay, Wi.

Hi Mr. Gallo,

My apologies for not responding to the email earlier in the thread requesting an answer by 10/14. I looked through my inbox and spam and I don't think I received it.

If we can limit the field sampling and laboratory testing to PCE and its daughter products of TCE to vinyl chloride and also address if vapors are detected coming into an off-site building, then a sub-slab vapor mitigation system would likely be installed by Bay Towel to abate this issue in the access agreement I think we can move forward.

Please make the changes in the agreement and we will review from there.

Thank you,
Adam

Adam Kersten

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On Tuesday, October 18, 2022 at 07:46:56 AM CDT, Donald Gallo <dongallolaw@outlook.com> wrote:

Steve and Adam;

Josie Schultz/WDNR is on vacation this week. I believe returning next week, October 24, 2022. This past week I spoke with Josie and she stated that we can limit the field sampling and laboratory testing to PCE and its daughter products of TCE to vinyl chloride, i.e. we are not looking beyond these dry-cleaning chemicals. Further, the law requires the causer of the release to the environment to restore the environment to the extent practical. If there are vapors entering the 445 S. Adams Street property, then Bay Towel will be responsible for restoring the environment to the extent practical. In many cases, if vapors or detected coming into an off-site building, then a sub-slab vapor mitigation system would likely be installed by Bay Towel to abate this issue. We could address this fact in the access agreement. Does that work for you to sign the access agreement. I will make these changes and send it to you for review.

Donald P. Gallo

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1386 State Road 83

Hartford, WI 53027

From: Donald Gallo

Sent: Tuesday, October 11, 2022 7:49 AM

To: Kerstenrealty@yahoo.com

Cc: josie.schultz@wisconsin.gov; Dillon Plamann <dplamann@fehrgraham.com>; John Butz <jbutz@baytowel.com>; Silje Roalsvik <sroalsvik@resolutemgmt.com>; nreid@resolutemgmt.com; itarvin@ramboll.com

Subject: Access agreement for conducting vapor ports for obtaining vapor samples at 445 S. Adams Street, Green Bay, Wi.

Steve and Adam Kersten;

Your mark up to the proposed access agreement is not acceptable to Bay Towel, Inc. You have one last opportunity to agree to a reasonable access agreement.

We have attempted to gain access for our mutual benefit to determine whether harmful vapors are entering the subject property at no cost to the property owner for the proposed site investigation. We have provided WDNR guidance documents that explain the process and procedures for conducting this site-specific investigation and the risks that the occupants may be exposed to. If you continue to be unreasonable the WDNR may draw the conclusion that Bay Towel is no longer required to conduct such site investigation on your property and conclude that if there is a problem at this property, you will be solely responsible for conducting the site investigation.

If Bay Towel conducts the described site investigation on your property with your permission and the source of the problem is emanating from the 501 S. Adams Street property, then Bay Towel will be responsible for addressing this issue by installing a vapor mitigation system on the property which will require additional future monitoring. However, if the 501 S. Adams Street property is not the source of environmental impacts to your property, then Bay Towel will not be responsible for conducting such remedial activities. That is the way this works under Wisconsin law. If you have any questions, I encourage you to contact Josie Schultz/WDNR at the above email address or by telephone at: 920-366-5685.

I am also available to discuss any concerns that you may have.

You have until Friday, October 14, 2022 at 4:00 pm CST to respond to the proposed access agreement. If this is not acceptable to you, Bay Towel will request that WDNR relieve Bay Towel from this task and send you a responsible party letter so that you can voluntarily conduct this site investigation.

Donald P. Gallo

Attorney

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1386 State Road 83

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Direct: 262-354-5222 | Email: angela.dgallolaw@gmail.com

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.
 - » Sampling and analyses will be for CVOCs only, i.e. PCE and daughter products.
 - » If the analytical test results support a sufficient exceedance of State vapor intrusion pathway standards and a remedial activity is approved by WDNR and the source of the sub-slab vapor impacts is the former Bay Towel site located at 501 South Adams Street, Green Bay, WI 54301 (BRRTS #02-05-237064) see NR 726,15(2)(h); then Bay Towel will install as a remedial activity a sub-slab vapor mitigation system pursuant to WDNR vapor guidance documents RR 800.
 - » DNR NR 726, Wis. Adm. Code Case (WAC) Closure Continuing Obligations for Vapor Intrusion per WDNR guidance RR-042, RR-953 and RR-800. Post-closure actions related to continuing obligations are provided in NR 727, WAC.
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.

ACCESS AGREEMENT TO ALLOW ENTRY TO PREMISES

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.
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: _____

ACCESS AGREEMENT TO ALLOW ENTRY TO PREMISES

DATE: _____

PHONE NUMBER: _____

EMAIL ADDRESS: _____

CONSULTANT

AUTHORIZED SIGNATOR: _____

SIGNATURE: _____

DATE: _____

BAY TOWEL, INC.

AUTHORIZE SIGNATOR: _____

SIGNATURE: _____

DATE: _____