



December 29, 2022

BNSF RAILWAY  
ATTN: STEVEN MUELLNER  
PO BOX 961089  
FORT WORTH TX 76161

**KEEP THIS LEGAL DOCUMENT WITH YOUR PROPERTY RECORDS**

SUBJECT: Continuing Obligations and Property Owner Requirements for  
BNSF Property, Superior Wisconsin  
Parcel Identification Number: 1280164/02-802-06648-01 & 1280320/02-802-07101-01  
Remedial Action Approval for Superior Water Light and Power  
Former Manufactured Gas Plant, Winter Street and USH 53, Superior, Wisconsin  
BRRTS ID: 02-16-275446

Dear Mr. Muellner:

The purpose of this letter is to notify you that you are responsible for certain continuing obligations applied to your property near 800 Hill Avenue, Superior, Wisconsin, parcel ID numbers 1280164/02-802-06648-01 & 1280320/02-802-07101-01 (Property) due to contamination remaining on the Property. The continuing obligations are part of the remedial action conditionally approved by the Wisconsin Department of Natural Resources (DNR) for the Superior Water Light and Power (SWL&P) Former Manufactured Gas Plant site, located at Winter Street and USH 53, Superior (Site). The Site is referenced by the location of the source of contamination, i.e., the property where the original hazardous substance discharge or environmental pollution occurred, prior to contamination migrating to the Property. The continuing obligations that apply to the Property are stated as conditions in the remedial action conditional approval (attached) and are consistent with Wisconsin Statute (Wis. Stat.) § 292.12 and Wisconsin Administrative Code (Wis. Admin. Code) chs. NR 700-799. Continuing obligations are intended to limit exposure to environmental contamination at the Property. These continuing obligations will also apply to future owners of the Property, until the conditions no longer exist.

It is common for properties to have continuing obligations as part of remedial action approvals when contamination remains in the environment for a specific reason. Information on the continuing obligations associated with this Site, including the remedial action approval letter, is available in the DNR's Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web (BOTW) at [dnr.wi.gov](http://dnr.wi.gov), search "BOTW." Enter 02-16-275446 in the **Activity Number** field and then click **Search**. The Site may also be seen on the map viewer, RR Sites Map. RR Sites Map can be found online at [dnr.wi.gov](http://dnr.wi.gov), search "RRSM."

The DNR reviewed and conditionally approved the remedial action for contamination from the former manufactured gas plant and gas distribution activities in soil, groundwater, and sediment at this Site, based on information submitted by SWL&P and their consultant, Foth Infrastructure & Environment, LLC. Per an email from Brooke Gaede of BNSF Railway to DNR Project Manager John Sager dated June 3, 2022, BNSF Railway acknowledged receipt of notification about the requested case closure from the person conducting the cleanup; the notification is required by state law. The approval of the remedial action is conditioned upon long-term compliance with the continuing obligations at the Property.

### Continuing Obligations Applicable to the Property

Continuing obligations associated with the Site and the Property are described in the attached remedial action approval letter to SWL&P, dated December 29, 2022. The continuing obligations specified in the remedial action approval letter apply to the portion of the Property contaminated from hazardous substance discharges from the former manufactured gas plant and gas distribution activities.

### Pre-Approval is Required for Well Construction (Wis. Admin. Code § NR 812.09 (4) (w))

DNR approval is required before well construction or reconstruction for all sites identified as having residual contamination and/or continuing obligations. This requirement applies to private drinking water wells and high capacity wells. To obtain approval, the property owner is required to complete and submit Form 3300-254, "Continuing Obligations/Residual Contamination Well Approval Application," to the DNR Drinking and Groundwater program's regional water supply specialist. A well driller can help complete this form. The form can be obtained online at [dnr.wi.gov](http://dnr.wi.gov), search "3300-254." Additional casing may be necessary to help prevent contamination of the well.

### Property Owner Responsibilities (Wis. Stat. § 292.12 & § 709.02, Wis. Admin. Code § NR 727.05)

The Property owner (you and any subsequent Property owner) is responsible for compliance with the continuing obligations in the remedial action conditional approval letter, pursuant to Wis. Stat. § 292.12. You are required to notify anyone who purchases the Property from you of the responsibility to comply with the continuing obligations, in accordance with Wis. Admin. Code § NR 727.05 (2). For residential property transactions, you are required to make disclosures under Wis. Stat. § 709.02.

If you lease or rent the Property to an occupant who will be responsible for maintaining a continuing obligation, you must include that responsibility in a lease agreement, in accordance with Wis. Admin. Code § NR 727.05 (3).

Please be aware that failure to comply with the continuing obligations may result in enforcement action by the DNR. The DNR intends to conduct periodic inspections to ensure that the conditions included in this letter are met.

### DNR Notification (Wis. Admin. Code §§ NR 727.07)

The Property owner is required to notify the DNR at least 45 days before taking the following actions. The DNR may require additional investigation and/or cleanup actions if necessary to be protective of human health and the environment.

- Before removing a structural impediment
- Before changing the use of the property to a non-industrial use, when industrial soil standards were applied for closure
- Before changing the use or occupancy to a different commercial use or to a residential exposure setting
- Before changing the property or land use, for sites where commercial or industrial exposure settings were used to determine vapor risk screening levels.
- Before constructing a building and/or modifying the construction of an existing building

Please send written notifications and documents to the DNR using the RR Program Submittal Portal at [dnr.wi.gov](http://dnr.wi.gov), search "RR submittal portal" (<https://dnr.wi.gov/topic/Brownfields/Submittal.html>). Questions on using this portal can be directed to the contact below or to the environmental program associate (EPA) for the regional DNR office. Visit [dnr.wi.gov](http://dnr.wi.gov), search "RR contacts" and select the EPA tab (<https://dnr.wi.gov/topic/Brownfields/Contact.html>). More information on submitting electronic documents can be found in the DNR publication "Guidance for Electronic Submittal for the Remediation and Redevelopment Program" (RR-690), which can be found at [dnr.wi.gov](http://dnr.wi.gov), search "RR-690."

The DNR fact sheet, RR-819, “Continuing Obligations for Environmental Protection” explains a property owner’s responsibility for continuing obligations on their property. This fact sheet should have been sent to you when you received a notification letter before the case closure request was submitted to the DNR. You may obtain a copy at [dnr.wi.gov](http://dnr.wi.gov) by searching “RR-819.”

Under Wis. Stat. § 292.13, owners of properties affected by contamination from another property are generally exempt from investigating or cleaning up a hazardous substance discharge that migrated onto a property from another property. However, the exemption under Wis. Stat. § 292.13 does not exempt the property owner from the responsibility to maintain a continuing obligation placed on the property in accordance with Wis. Stat. § 292.12. To maintain this exemption, that statute requires the current property owner and any subsequent property owners to meet the conditions in the statute, including:

- Granting reasonable access to the DNR, responsible party, or their contractors;
- Avoiding interference with response actions taken; and
- Avoiding actions that make the contamination worse (e.g., demolishing a structure and causing or worsening the discharges to the environment).

The DNR appreciates your cooperation to restore the environment at this site. If you have any questions regarding this decision or anything stated in this letter, please contact the DNR Project Manager, John Sager at (715) 919-7239 or [John.Sager@Wisconsin.gov](mailto:John.Sager@Wisconsin.gov). You may also contact me at (715) 208-4004 or [Christopher.Saari@Wisconsin.gov](mailto:Christopher.Saari@Wisconsin.gov).

Sincerely,



Christopher A. Saari  
Northern Region Team Supervisor  
Remediation and Redevelopment Program

Attachment

- Remedial Action Design Report Approval Letter, DNR, December 29, 2022

cc: Greg Prom – SWL&P  
John Sager – DNR Superior (via email)  
Erin Hughes – Foth (via email)