



CERTIFIED MAIL

March 6, 2019

Oliver Fiontar, LLC
Daniel Joseph Burns III – Member
N105 W7585 Chatham St.
Cedarburg, WI 53012-3255

Subject: **Notice of Non-Compliance: Action Required Immediately.**
Amcast Industrial and Amcast Automotive Sites; Cedarburg, Wisconsin;
BRRTS 02-46-583164, 02-46-583162, 02-46-583163 and 07-46-581557

Dear Mr. Burns:

This letter is to notify you that Oliver Fiontar, LLC, is not in compliance with several terms of Negotiated Agreement #1 (the "Agreement"), identified below, which was executed by you, acting on behalf of Oliver Fiontar, LLC (the "Company"), and the Wisconsin Department of Natural Resources ("DNR"), on August 2, 2018. A copy of the executed Agreement is enclosed.

Please note that, per your request, the DNR has created new Bureau for Remediation and Redevelopment Tracking System (BRRTS) numbers for this site, as listed in the "subject" section above. These new parcel-specific BRRTS #s are:

- "Amcast Industrial" – BRRTS 02-46-583164. A new Facility ID number, FID 246175820, was created for the property located at address N37 W5684 Hamilton Road, Cedarburg, WI. An associated BRRTS number was created for the site at Ozaukee County tax parcel 13-051-01-05-000. This new BRRTS case file includes a note to also see BRRTS 02-46-00795 for Superfund activities and 07-46-581557 for the Agreement associated with all three referenced tax parcels.
- "Amcast Automotive" – BRRTS 02-46-583162, for Ozaukee County tax parcel 13-050-21-09-000; and "Amcast Automotive" – BRRTS 02-46-583163, for Ozaukee County tax parcel 13-050-21-08-000. These new BRRTS numbers were created in association with the existing FID 246003780. The purpose of these two new BRRTS case numbers is to differentiate actions required by state law and the Agreement from CERCLA/Superfund activities at the site.

A proposed amendment to the Agreement, to accurately identify the new BRRTS numbers is enclosed.

INFORMATION AVAILABLE TO THE DNR INDICATES THAT OLIVER FIONTAR, LLC, IS NOT IN COMPLIANCE WITH TERMS OF THE AGREEMENT

1. Section IV.E., which states: "Due Care. The Company shall be responsible for mitigating or halting all continuing discharges of hazardous substances migrating from the Properties, in particular the utility systems at the Properties."

DNR has not received any information from the Company, in monthly reports or otherwise, indicating that migrating discharges are being mitigated.

2. Item 1 in Addendum D, titled Schedule of Response Actions, which states: “The Company agrees to mitigate and halt the migration of PCB contamination beyond the boundaries of the Properties, per Wis. Stat. § 292.11(3). Sub. a. Schedule: Immediate and ongoing.”

DNR has not received any information from the Company, in monthly reports or otherwise, indicating that the PCB discharges are being mitigated.

3. Item 4 in Addendum D, titled Schedule of Response Actions, which states: “Submit the following documents to the Department, along with a request for technical assistance and the appropriate fee, using Department Form 4400-237, and take no related response actions at the Properties until receiving Department approval of the documents submitted. These documents should also be submitted to EPA for their review and approval.

Sub. a: A site investigation work plan for the Properties that meets Wis. Admin. Code ch. NR 716 requirements. The work plan may include references to the EPA’s Superfund Remedial Investigation (RI) Report if the RI satisfies parts or all of the ch. NR 716 site investigation requirements.

Sub. i. Schedule: No later than 60 days after acquiring title to the Properties.”

DNR has not received the site investigation workplan from the Company. The Company acquired the Properties from the City of Cedarburg effective September 17, 2018. Therefore, the schedule required a submittal of the site investigation work plan by November 16, 2018. The DNR granted an extension to this deadline to January 14, 2019. The DNR did not grant a second extension.

4. Section VII of the Agreement, which states: “The Company shall provide to the Department electronic versions of any reports, plans, notices or other documentation in addition to a paper version, consistent with the Wis. Admin. Code chs. NR 700 through NR 754 rule series and recommend that this be done so in accordance with Department publication RR-690, *Guidance for Submitting Documents to the Remediation and Redevelopment Program*.

DNR has not received hard copies or paper copies of any electronic documents you have submitted via email, nor have you submitted documents in accordance with Wis. Admin. Code § NR 700.11(3g) as illustrated by RR-690.

2018-2019 EMAIL CORRESPONDENCE BETWEEN DNR AND THE COMPANY:

1. On October 23, 2018, Oliver Fiontar, LLC was notified by DNR project manager Margaret Brunette about DNR’s concerns with the lack of action by the Company on the issue of halting or mitigating PCB migration in an email which specifically stated:

Also, Addendum D, *Schedule of Required Company Response Actions At The Properties* states: Mitigate and halt the migration of PCB contamination beyond the boundaries of the Properties, per Wis. Stat. sec. 292.11(3). Schedule: Immediate and on-going. Your current update did not address this specific action item. As stated in the past, the Department is specifically concerned

with potential continuing releases from the on-site sewers. Please be aware that as the current property owner you could be held responsible for any on-going releases from the properties.

2. On December 11, 2018, Oliver Fiontar, LLC was notified in an email from DNR project manager Margaret Brunette that DNR approved the Company's request for an extension to submit its Wis. Admin. Code ch. NR 716 site investigation workplan. DNR provided an extension to January 14, 2019. Ms. Brunette was responding to a November 21, 2018 email request from Mr. Burns.
 - a. Per the Agreement, the Company was to submit a site investigation work plan to DNR no later than 60 days after acquiring title to the Property. The Company acquired title to the Property on September 17, 2018. The original due date for the work plan was November 16, 2018.
 - b. By granting the Company's request for a submittal deadline extension and agreeing to accept a work plan as late as January 14, 2019, DNR gave the Company an additional 59 days to comply with this term of the Agreement.
3. On January 24, 2019, DNR project manager Margaret Brunette replied to a January 16, 2019 email from Mr. Burns, which requested an additional extension of time to submit the required site investigation work plan. Ms. Brunette replied as follows:
 - a. "The DNR requests that you submit the workplan based on the timeline in the previous extension. The workplan was due Jan. 14, 2019. The DNR will be consulting with the EPA project manager before issuing an approval. If you have any specific questions, please forward those to me and I will try to address them or determine if EPA input is warranted. An additional extension is not being granted at this time."

RESPONSIBILITY

In addition to the terms of the Agreement, 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 the state per Wis. Stat. § 292.11(3).

Wis. Stat. chapters 289, 291, 292, and Wis. Admin. Code chapters NR 700 through NR 754 establish requirements for response actions, public information, site investigations, design and operation of remedial action systems, and case closure. Chapter NR 708 includes provisions for immediate actions in response to limited contamination. Wis. Admin. Code chapter NR 140 establishes groundwater quality standards for contaminants that reach groundwater.

Please be aware that DNR may initiate enforcement action against you for failure to comply with various terms of the Agreement and state law. Your legal responsibilities are defined both in Wis. Stat. chapter 292 and Wis. Admin. Code chapters NR 700 through 754 and are also described in the negotiated agreement. In particular, Wis. Stat. § 292.11(3), states:

RESPONSIBILITY. 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 the state.

Our information indicates that you have not complied with the above-noted terms of the Agreement.

Section IX of the Agreement, titled Stipulated Penalties for Failure to Comply with Schedule of Response Actions, states (emphasis added):

- Pursuant to Wis. Admin. Code § NR 728.07(2), which requires that this Agreement include a provision for stipulated penalties if the response action is not completed in accordance with the Agreement schedule, the Company agrees to the following penalties for failure to complete the nonemergency Response Actions in Addendum D:
 - a. **For failure to complete a scheduled response action by a respective deadline, the Company shall forfeit \$1,000 for each violation**, pursuant to Wis. Stat. § 292.99(1);
 - b. **Each day of continued violation is a separate offense.**

Section XI of the Agreement, titled VIOLATIONS, states (emphasis added):

- Pursuant to Wis. Stat. § 292.11(7)(e), the **Department may refer violations of this Negotiated Agreement to the Wisconsin Department of Justice for enforcement under Wis. Stat. § 299.95**. The Company shall have, and retain, all remedies provided under law to contest any such alleged violation(s).

You are not currently complying with several terms of the Agreement and you will remain in noncompliance until you fulfill all appropriate terms and requirements of the Agreement. Failure to take and document the actions specified in the Agreement will cause the Department to review this case for enforcement actions.

SUMMARY OF NONCOMPLIANCE

In summary, Oliver Fiontar, LLC is not complying with the following terms of the Agreement:

- **Immediately mitigate all continuing discharges of hazardous substances migrating from the Properties.**
- **Immediately mitigate the migration of PCB contamination beyond the boundaries of the Properties.**
- **Submit a site investigation work plan for the Properties that meets Wis. Admin. Code ch. NR 716 requirements, to DNR within 60 days of taking title to the Properties.**
- **Provide to DNR electronic versions of any reports, plans, notices or other documentation in addition to a paper version, consistent with the Wis. Admin. Code chs. NR 700 through NR 754 rules.**

In addition to the Stipulated Penalties in the Agreement, please be advised that the Department is authorized under Wis. Stat. § 292.94 to assess non-reimbursable fees for any reports you are required to submit as part of additional enforcement actions. Without immediate action rectifying the specified noncompliance in this letter, the DNR will issue a notice of violation.

If you have other questions concerning the items listed above, please contact DNR project manager Margaret Brunette at margaret.brunette@wisconsin.gov. Thank you for your attention to this matter.

Sincerely,



Michele Norman
Team Supervisor – Remediation and Redevelopment Program - Southeast
Wisconsin Department of Natural Resources
2300 N. Martin Luther King Jr. Dr., Milwaukee, WI 53212
Michele.Norman@wisconsin.gov

Encl. - NEGOTIATED AGREEMENT #1: A WIS. STAT. § 75.106 AGREEMENT BETWEEN THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES AND OLIVER FIONTAR LLC, TO INVESTIGATE AND CLEAN UP ENVIRONMENTAL CONTAMINATION AT THE FORMER AMCAST INDUSTRIAL CORPORATION PROPERTIES IN CEDARBURG, WISCONSIN; OZAUKEE COUNTY PARCELS: 13-051-01-05-000, 13-050-21-09-000, and 13-050-21-08-000. U.S. EPA SUPERFUND SITE ID: WIN000510210.DNR BRRTS Numbers: 02-46-000795, 04-46-243223, 04-46-243336, 07-46-581557.

Encl. – Notice of Noncompliance

Encl. – Notice of Proposed Amendment to the Negotiated Agreement

cc. Krista McKim, P.E., Remedial Project Manager, U.S. EPA, McKim.Krista@epa.gov