



July 23, 2020

EMAIL  
CERTIFIED MAIL  
RETURN RECEIPT

Mr. Daniel Joseph Burns III, Member  
Oliver Fiontar, LLC  
N105 W7585 Chatham Street  
Cedarburg, WI 53012-3255  
Email: [djburns@drakecg.com](mailto:djburns@drakecg.com)

FID #: 246003780 / 246175820  
BRRTS #: 02-46-583162, 02-46-583163, 02-46-583164  
Remediation – Ozaukee County

Subject: **NOTICE OF VIOLATION**

Dear Mr. Burns:

The Department of Natural Resources (department) has reason to believe that Oliver Fiontar, LLC is in noncompliance with state Remediation and Redevelopment laws ch. 292, Wisconsin Statutes (Wis. Stats.) and ch. NR 716, Wisconsin Administrative Code (Wis. Adm. Code). The alleged noncompliance / violation is associated with the properties known as the Amcast North Property and Amcast South Property (Properties). These violations are based on the failure of Oliver Fiontar, LLC to mitigate and halt the migration of PCB contamination beyond the boundaries of the Properties and failure to submit a comprehensive Site Investigation Work Plan. The Department alleges the following violations:

- **Section 292.11(3), Wis. Stats.: 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 this state.**

To date, Oliver Fiontar, LLC has conducted minimal and inadequate activities to mitigate and halt the migration of PCB contamination beyond the boundaries of the Properties. Information provided in the required monthly reports note there are actions being taken to reduce off-site discharge but does not provide any detail on what those actions are, what actions have been taken to address movement off-site, or evaluation of their effectiveness.

- **Section NR 716.09, Wis. Adm. Code: Site investigation work plan.**
  - (1) **GENERAL. Unless otherwise directed by the department, in cases where a site investigation is required under s. NR 716.05, responsible parties shall submit a work plan to the department within 60 days of receiving notification that a site investigation is required, describing the intended scope and conduct of a field investigation. One paper**

**copy and one electronic copy of the plan shall be submitted to the department, unless otherwise directed by the department, in accordance with s. NR 700.11(3g).**

**(2) CONTENTS. The work plan shall include all of the following information, unless otherwise directed by the department: (see attachment for full language)**

**(3) DEPARTMENT REVIEW OF SUBMITTED WORK PLANS.**

**(a) The department may instruct responsible parties to proceed without departmental review of work plans submitted under this section.**

**(b) Responsible parties that are not instructed to proceed under par. (a) shall wait before initiating the field investigation until the department has approved or conditionally approved the work plan, except that if the department has not reviewed the work plan within 30 days after its receipt by the department, the responsible parties shall proceed with the field investigation.**

**(c) If the department disapproves a work plan submitted under this section, the department shall provide the responsible parties, in writing, the basis for disapproval and a deadline for providing a revised work plan.**

**(d) The lack of a response from the department, after the department's receipt of a work plan, may not be construed to mean that the department has approved the work plan.**

- **Section NR 716.11, Wis. Adm. Code: Field Investigation (see attachment for full language)**

Drake Consulting Group, LLC (Drake), on behalf of Oliver Fiontar, LLC, submitted Work Plan for Additional Brownfield Redevelopment Related Soil, Groundwater and Vapor Assessment Activities at the Former Amcast Facility, City of Cedarburg, Ozaukee County, Wisconsin, Drake Project Number J16001, dated April 18, 2019. A review of the submittal deemed it to be insufficient to meet the requirements of s. NR 716.09, Wis. Adm. Code for the minimum contents for a site investigation work plan. The department issued a letter to Oliver Fiontar, LLC and Drake dated August 27, 2019 outlining the deficiencies and requesting a revised workplan be submitted within 45 days of the letter. To date, Oliver Fiontar, LLC has not submitted a revised workplan. To date, Oliver Fiontar, LLC has not conducted a field investigation at the Properties meeting the requirements of state law.

In order to come into compliance, a site investigation work plan addressing the criteria in ch. NR 716, Wis. Adm. Code must be submitted immediately.

Please note that it is the department's position that the dispute resolution process outlined in Negotiated Agreement #1, dated August 2, 2018 has ended based on the failure of Oliver Fiontar, LLC to submit a Statement of Position within twenty (20) days after receipt of the department's Statement.

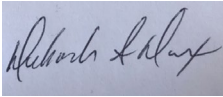
Please be advised that violations of ch. 292, Wis. Stats., may be referred to the Department of Justice to obtain court ordered compliance and penalties up to \$5,000 per violation. Each day of continued violation is a separate offense.

If you have questions or would like to schedule an Enforcement Teleconference to discuss the alleged violations and your perspective on the circumstances surrounding this matter, please contact me at (715) 421-9914 or via email at [Deborah.Dix@wisconsin.gov](mailto:Deborah.Dix@wisconsin.gov) within 14 days of receipt of this letter.

Alternatively, you may provide information in writing that you would like the department to consider in its decision.

The department's enforcement decision will be based upon available information if you do not schedule an Enforcement Teleconference or provide written information within 14 days of receipt of this letter.

Sincerely,

A handwritten signature in black ink on a light blue background, appearing to read "Deborah S. Dix".

Deborah S. Dix  
Environmental Enforcement Specialist

Enc. Environmental Enforcement Conference

cc: Pam Mylotta, WDNR  
Christine Haag, WDNR  
William J. Nelson, LS/8  
Krista McKim, EPA ([mckim.krista@epa.gov](mailto:mckim.krista@epa.gov))  
Daniel Joseph Burns III, President, Drake Consulting Group, LLC,  
118 North Green Bay Road, Suite 2, Thiensville, WI 53092-1623  
([djburns@drakecg.com](mailto:djburns@drakecg.com))



## Environmental Enforcement Conference

An Enforcement Conference (EC) is a meeting between Department of Natural Resources (Department) staff and representatives of a person or business that the Department believes has violated an environmental law. The Department issues a Notice of Violation (NOV) when it has reason to believe that a violation of a permit condition, administrative rule or statutory requirement has occurred. The NOV either offers or schedules an EC.

### Why Should I Attend?

The EC is an important opportunity to discuss the Department's basis for the alleged violation(s) and learn more about what happened, why it may have happened, and any factors you believe the Department should consider, such as steps that have been or will be taken to stop the violation, correct any effects of the violation, and prevent violations from occurring in the future. It is also your opportunity to explain why you might disagree with the factual and legal conclusions underlying the NOV.

Historic data shows that most violations are resolved at the EC level, without the need for court ordered compliance and/or penalties. In situations where the significance of the violation warrants further enforcement action, your cooperative efforts to resolve the violation and prevent future violations will help minimize your legal and financial liability.

### Who Should Attend the EC?

Department staff involved in the EC typically consists of an Environmental Enforcement Specialist and regulatory staff that are familiar with the issues identified in the NOV.

While not required, you may seek representation by legal counsel or the assistance of an environmental consultant to prepare for and/or attend the EC. The EC is most productive when all involved are well-prepared to discuss the allegations and any corrective actions that may be necessary.

To ensure a productive candid discussion, participation in the EC is limited to the person or business involved and others with the legal or technical expertise necessary to understand, evaluate, mitigate and correct the violation. The EC is not an open meeting under state law and the Department will limit participation to those directly involved in the resolution of the matter.

### What Happens if I don't Attend the EC?

If a party is unable to attend the EC, they should immediately contact the Environmental Enforcement Specialist at the phone number in the NOV to reschedule. When a party refuses to attend the EC and provides no further information to the Department, the Department's enforcement decision will be based upon available information.

### What Happens Following the EC?

The EC is part of the Department's stepped enforcement process. At the EC, Department staff will explain the process and options available to address the alleged violation. Generally, the options range from closing the matter with no further action to referral to the Wisconsin Department of Justice (DOJ) or to U.S. EPA, for further enforcement action. In limited circumstances, the Department can issue citations, which are handled in local court similar to traffic offenses. If a case is referred to DOJ, the DOJ may initiate an action in court on behalf of the State. The State typically asks the Court to impose financial penalties and order completion of any necessary corrective actions. In most of the Department's cases, a cooperative return to compliance with any necessary restoration results in close out of the case. At close out, the Department will send a letter advising of no further enforcement action.