

FILED
02-23-2021
Clerk of Circuit Court
Waukesha County
2021CV000342

STATE OF WISCONSIN

CIRCUIT COURT

WAUKESHA COUNTY

WISCONSIN MANUFACTURERS
AND COMMERCE, INC.,
501 East Washington Avenue,
Madison, WI 53703,

and

LEATHER RICH, INC.,
1250 Corporate Center Drive,
Oconomowoc, WI 53066

Plaintiffs,

v.

WISCONSIN DEPARTMENT OF
NATURAL RESOURCES,
101 South Webster Street,
Madison, WI 53707,

Case Type: Declaratory
Judgement

Case Code: 30701

WISCONSIN NATURAL
RESOURCES BOARD,
101 South Webster Street,
Madison, WI 53707,

and

PRESTON COLE, in his official capacity as
Secretary of the Wisconsin Department of Natural
Resources,
101 South Webster Street,
Madison, WI 53707,

Defendants.

SUMMONS

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THE STATE OF WISCONSIN

To Defendants named above:

You are hereby notified that the Plaintiffs named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this Summons, you must respond with a written Answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an Answer that does not follow the requirements of the statutes. The Answer must be sent, e-filed, or delivered to the Court, whose address is Dane County Clerk of Courts, 215 S. Hamilton St., Room 1000, Madison, WI 53703, and to Plaintiffs' attorneys: Reinhart Boerner Van Deuren, 22 E. Mifflin Street, Suite 700, Madison, WI 53703; and Wisconsin Manufacturers & Commerce, 501 East Washington Avenue, Madison, WI 53703. You may have an attorney represent you.

If you do not provide a proper answer within forty-five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgement may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future and may also be enforced by garnishment or seizure of property.

If you require the assistance of auxiliary aids or services because of disability, call (262) 548-7504 and ask for the Jury Coordinator.

Dated this 23rd day of February, 2021.

**WISCONSIN MANUFACTURERS &
COMMERCE, INC.**

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Defendants.

COMPLAINT

Wisconsin Manufacturers and Commerce, Inc. (“WMC”) and Leather Rich, Inc. (“LRI”),
(collectively “Plaintiffs”), through their undersigned counsel, hereby allege the following as their
complaint:

INTRODUCTION

1. This action seeks declaratory and injunctive relief from certain unlawfully adopted standards and policies of Wisconsin Department of Natural Resources (“DNR”), the Wisconsin Natural Resources Board (“NRB”), and Mr. Preston Cole, in his official capacity as Secretary of the DNR, (collectively, “Defendants”), regarding the administration and enforcement of Wisconsin’s Remediation and Redevelopment (“RR”) program and Voluntary Party Liability Exemption (“VPLE”) program.

2. LRI, a small, family-owned business, voluntarily began a remediation of its site almost three years ago in hopes of selling the property so the owner, Mrs. Joanne Kantor, could retire. LRI believed it was doing the right thing by entering the VPLE program, and taking responsibility for hazardous substance contamination attributable to the facility.

3. However, since LRI entered the RR program, Defendants’ have unilaterally and unlawfully changed the rules for LRI, and all other property owners in Wisconsin, including WMC members, who are involved, or may be subject to, the RR or VPLE program.

4. Now, Defendants are attempting to enforce un-promulgated standards, changing policies, and completely reinterpreting statutes and rules governing the RR and VPLE programs, all without following the rulemaking procedures codified in Chapter 227 of the Wisconsin Statutes.

5. Defendants freely change what substances and concentrations of substances are considered a “hazardous substance,” as defined in Wis. Stat. §292.01(5) (“Hazardous Substance”), without notice, and with no public input or legislative oversight. Despite the opaque and ever-changing nature of Defendants’ approach to regulating Hazardous Substances,

the public is expected to know exactly what Defendant DNR considered a Hazardous Substance at any given point in time, or face substantial penalties.

6. Defendants continue to create new policies, including what they refer to as “emerging contaminants” in the definition of Hazardous Substances, and implementing what they call an “interim decision” policy, which fundamentally changes the way the VPLE program is administered and enforced, again with no public input or legislative oversight.

7. Even more concerning, Defendants are enforcing testing and potential remediation of these substances at certain numeric thresholds without vetting the validity of those thresholds through the required rulemaking process.

8. Through these changes, Defendants continually move the goalposts for the regulated community, prolonging cases, and preventing closure and redevelopment of properties.

9. Defendants’ actions go well beyond the authority granted to them by the legislature. Defendants’ unilateral and unlawful behavior has prevented LRI from beginning remediation work, instead requiring LRI to invest significant resources in plans and reports, preventing Mrs. Kantor from selling the property, and indefinitely delaying her retirement.

10. Defendants’ unilateral and unlawful policy changes also impact WMC and its members by denying them the right to participate in regulatory development, as required by Wis. Stat. Chapter 227.

11. Accordingly, Plaintiffs ask this Court to declare Defendants’ behavior unlawful and prevent further enforcement of these illegal standards and policies.

PARTIES

12. WMC is Wisconsin's manufacturers' association and statewide chamber of commerce. WMC is a nonstock corporation organized under the laws of the State of Wisconsin. WMC maintains its principal place of business at 501 East Washington Avenue, in the City of Madison, Dane County, Wisconsin.

13. WMC members include businesses of all sizes in sectors throughout the state's economy. WMC's mission is to make Wisconsin the most competitive state in the nation in which to conduct business. To accomplish this mission, WMC provides input on policy at the state level by engaging with policy makers in administrative rulemaking proceedings and in the legislative process. WMC also engages in litigation to the extent the interpretation of the applicable rules or legislation is at issue.

14. LRI is a business corporation organized under the laws of Wisconsin with its principal place of business at 1250 Corporate Center Drive, in the City of Oconomowoc, Waukesha County, Wisconsin.

15. LRI is a family-owned and operated specialty dry cleaning company serving retail dry cleaners in the Midwest for over 43 years, and a small business pursuant to Wis. Stat. § 227.114.

16. Defendant DNR is an agency of the State of Wisconsin with its offices and principal place of business at 101 South Webster Street, in the City of Madison, Dane of Wisconsin. DNR established the policies challenged in this action.

17. Defendant NRB is an agency of the State of Wisconsin with its offices and principal place of business at 101 South Webster Street, in the City of Madison, Dane County, Wisconsin.

DNR established the policies challenged in this action. DNR is under the direction and control of the NRB pursuant to Wis. Stat. § 15.34.

18. Defendant Secretary Preston Cole is the Secretary of DNR and is named in his official capacity only. Defendant Secretary Cole maintains his principal office at 101 South Webster Street, in the City of Madison, Dane County, Wisconsin.

JURISDICTION AND VENUE

19. This Court has jurisdiction to hear this case pursuant to Wis. Stat. §§ 227.40 and 806.04(1)-(2).

20. Venue in this County is proper pursuant to Wis. Stat. §§ 227.40 and 801.50(3)(b) because Plaintiff LRI maintains its principal place of business in this County.

FACTUAL BACKGROUND

The RR Program

21. Wisconsin's environmental remediation program, the RR program, encompasses enforcement of Chapter 292 of the Wisconsin Statutes and Wis. Admin. Code. §§ NR 700-799, collectively referred to as the "Spills Law." The Spills Law authorizes the Defendants to regulate the discharge of Hazardous Substances into the air, water, and soil.

22. Hazardous Substance is defined in Wis. Stat. § 292.01(5) as:

[A]ny substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department.

23. Any person who possesses or controls a Hazardous Substance or causes discharge of a Hazardous Substance must notify Defendant DNR immediately of a Hazardous Substance

discharge. Defendants interpret this mandatory and immediate reporting requirement as applicable to any person who possesses or controls real property and is made aware of the existence of a Hazardous Substance in the air, soil, or water on that property.

24. Upon reporting the discharge of a Hazardous Substance or existence of a Hazardous Substance on property that a person controls or possesses, that person becomes subject to expansive remediation requirements, the extent and severity of which is largely dependent upon whether and how Defendants decide to enforce the Spills Law in that case. Defendants open a remediation case against that person and property, and publish associated records on the Bureau for Remediation and Redevelopment Tracking System (“BRRTS”), an online database accessible by the public.

25. Failure to report discharge or discovery of a Hazardous Substance, or to follow any subsequent investigation and remediation requirements prescribed by Defendant DNR, may result in an enforcement action by Defendants, and forfeitures up to \$5,000 per day. Wis. Stat. §292.99(1).

26. A remediation case remains open and subject to the Defendants’ discretionary enforcement until Defendant DNR declares the case closed and issues a case closure letter.

27. “Case closure” means a determination by Defendant DNR, based on the information available at the time of the review, that no further remediation action is necessary at the site. Wis. Stat. §292.12(1)(b).

The VPLE Program

28. The complex regulatory structure of the Spills Law includes a voluntary remediation program, the VPLE program, which is an environmental clean-up program

designed to help parties proactively identify and remediate contamination from Hazardous Substances on properties so those properties can be safely redeveloped.

29. A party who is interested can apply to participate in the VPLE program and seek a “Certificate of Completion” (“COC”), which goes above-and-beyond a mere case closure. A COC is issued when “the environment has been satisfactorily restored to the extent practicable with respect to the discharges and that the harmful effects from the discharges have been minimized.” Wis. Stat. § 292.15(2)(a)3. A COC ensures that Defendant DNR will not require the property owner, or future property owners, to conduct any additional investigation or cleanup for the discharge after the certificate is issued, as described on Defendant DNR’s website, a copy of which is attached as **Exhibit 1**.

30. Alternatively, Defendant DNR may issue a partial COC in some instances where “not all of the property has been satisfactorily restored or that not all of the harmful effects from a discharge of a hazardous substance have been minimized.” Wis. Stat. § 292.15(2)(am)1m.

31. As part of the VPLE program, the party will conduct an environmental investigation and then remediate any known Hazardous Substance contamination from the property, all at the party’s expense, and all under the oversight of Defendants. Upon entering the VPLE program, a remediation case is opened on BRRTS, and all documents related to the VPLE application and activity are published on the BRRTS website.

32. Under the VPLE program, after any identified Hazardous Substances have been remediated from the site, the party receives a COC, which grants the party an exemption from future environmental liability for historical contamination at the site under Wis. Stat. § 292.15(2)(a).

33. The COC, and the protection from future liability that it confers, is transferable to future owners. *See* **Exhibit 1**. This effectively allows the site to then be redeveloped and reused again. Once remediated, the property essentially gets a clean bill of health, and liability for Hazardous Substance discharges prior to the remediation shifts to the state.

34. The VPLE program is a public-private partnership program which is designed to benefit the state, the public and the private party. The state and the public benefit from the cleanup of these properties at the expense of the private party, and also benefit from any potential reuse or redevelopment of those properties. The private party benefits by transferring future environmental liability, including for existing but undiscovered Hazardous Substances present at the site, to the state.

The Definition of Hazardous Substance

35. The statutory definition of Hazardous Substance. Wis. Stat. § 292.01(5), is broad and open to varying interpretations. *See* ¶ 22 *supra*. Defendants acknowledge this broad understanding of Hazardous Substance, describing Hazardous Substances as “[a]ny substance that can cause harm to human health and safety, or the environment, because of where it is spilled, the amount spilled, its toxicity or its concentration.” *See* **Exhibit 2**.

36. Wisconsin statutes do not contain, and the Defendants have not promulgated by rule, a list of Hazardous Substances, or combinations or concentrations of substances that may make them Hazardous Substances.

37. In fact, there is no publicly available list of all substances the Defendants consider hazardous. Instead, Defendants assert that “common products such as milk, butter, pickle juice, corn, beer, etc., may be considered a hazardous substance.” *See* **Exhibit 2**.

38. The public truly has no definitive idea what substances, or what amounts of substances, are “hazardous” under state law. Defendants use a method not known to the public to determine which substances, or which combinations or concentrations of those substances, qualify as a Hazardous Substance and which do not, often on a case-by-case basis.

39. However, Defendants require that any person discharging a Hazardous Substance report it immediately, or be subject to *significant* environmental liability and penalties. Without knowing how Defendants define Hazardous Substance, it is impossible for a party to know when they are required to report the discharge or discovery of any particular substance as a Hazardous Substance spill. Defendants essentially expect the public to read their minds in order to determine what should be reported.

40. Because Defendants have not promulgated a list of substances, or combinations or concentrations of those substances, that they consider Hazardous Substances, Defendants freely, and of their own volition, change the substances regulated under the RR program.

41. Defendants recently made such a change. Defendants now include certain substances that they refer to as “emerging contaminants” in the definition of Hazardous Substance. It is unclear when this change occurred, and Defendants made the change without any notice, legislative oversight, or opportunity for comment from the public that state law requires as part of the administrative rulemaking process.

42. The term “emerging contaminants” does not exist in statute or rule, and Defendants have not promulgated any rule explaining how they identify substances as emerging contaminants.

43. However, Defendants have identified these “emerging contaminants” as Hazardous Substances and now require investigation, reporting, and potential remediation of emerging contaminants as a condition of approval during remediation under the RR and VPLE programs.

44. To implement this policy change, Defendants sent letters to nearly all parties responsible for open RR and VPLE cases, including LRI, requiring additional assessment of emerging contaminants. Defendants’ letter to LRI is attached as **Exhibit 3**. A letter from the publicly available BRRTS website that was sent in a VPLE case is attached as **Exhibit 4**.

45. Some examples of what Defendants consider emerging contaminants include PFAS. *See* **Exhibit 3, 4**. Defendant DNR defines PFAS, or perfluoroalkyl and polyfluoroalkyl substances, as a large group of human-made chemicals that have been used in industry and consumer products worldwide since the 1950s.

46. However, Defendants admit that they do not have enough knowledge of PFAS to determine which compounds are hazardous and to what degree. As described in another letter from the publicly available BRRTS website, attached as **Exhibit 5**, Defendants refuse to define specific requirements for remediation, explaining that “as knowledge surrounding PFAS continues to grow, further investigation may be necessary to define degree and extent of different compounds.”

47. Defendants are currently undertaking multiple rulemakings to set explicit numeric standards for certain PFAS compounds. However, none of those rulemakings are complete, and no enforcement standards or thresholds exist for any PFAS compound in statute or in rule.

48. Nonetheless, through this reinterpretation of the definition of Hazardous Substance to include emerging contaminants, Defendants now regulate PFAS, requiring testing at open remediation sites, and requiring exceedances of these unpublished standards to be reported. It

is unclear what constitutes an exceedance, though upon information and belief, Defendants rely on a recommendation by the Wisconsin Department of Health Services (“DHS”) for groundwater enforcement standards that have not yet been promulgated as a rule.

49. Despite the fact that there is no promulgated threshold or standards at which any PFAS compound becomes a Hazardous Substance, Defendants require that “persons who own properties that are the source of PFAS contamination, or who are responsible for discharges of PFAS to the environment, are responsible for taking appropriate actions. Those individuals must also immediately notify the state, conduct a site investigation, determine the appropriate clean-up standards for the PFAS compounds in each media impacted (e.g., soil, groundwater, surface water and sediment) and conduct the necessary response actions.” See **Exhibit 6**. In other words, any person who discovers any PFAS compound on property must report the discovery as a Hazardous Substance discharge.

50. According to Defendant DNR, a party reporting the existence of PFAS compounds must determine an appropriate remediation level for each compound. However, Defendants have no legally enforceable standards in any program related to PFAS, nor any statute or rule that explicitly allows Defendants to regulate PFAS compounds at a certain numeric threshold or standard. Accordingly, Defendants have no statutory authority to regulate investigation and remediation of PFAS compounds.

51. Defendants also have no statutory authority to invent a category of substances, namely “emerging contaminants,” and then regulate them as part of the RR or VPLE programs.

52. Moreover, Defendants’ decision to include emerging contaminants in the definition of Hazardous Substance represents a change in policy and reinterpretation of statute.

Defendants' VPLE "Interim Decision" Policy

53. As Defendants continually change what is considered a Hazardous Substance, parties seeking to enter the VPLE program have no way to definitively know which substances qualify as Hazardous Substances under the statute, nor any assurance that at some point in the future, a substance previously thought to be non-hazardous will not suddenly be declared hazardous by Defendants.

54. Defendants now assert that emerging contaminants pose a liability risk to the State because the State assumes liability for future discoveries of Hazardous Substances at completed VPLE sites. Accordingly, Defendants determined they would no longer offer the traditional blanket liability protection that the VPLE program historically has provided, and that is required pursuant to Wis. Stat. § 292.15(2)(a).

55. Instead, on January 4, 2019, through a post on the RR program news website attached as **Exhibit 7**, Defendants issued an "interim decision" policy, providing that VPLE COCs would no longer offer broad environmental liability protection for undiscovered, and previously unknown, Hazardous Substances.

56. Defendants' "interim decision" policy explained that "[t]he interim decision is to offer a voluntary party a COC for the Hazardous Substances that are investigated after all the VPLE requirements have been met. COCs will not be awarded that cover substances that were not investigated but could be discovered in the future." See **Exhibit 7**.

57. Defendant's "interim decision" policy means interested parties seeking VPLE protection can no longer receive the broad liability protection historically offered, and statutorily required, by the VPLE program, and can now only receive liability protection for those *individual* Hazardous Substances that were specifically investigated.

58. In announcing the “interim decision” policy, Defendants made clear that this “interim decision” represented a change in Defendants’ policy. This is supported by Defendants’ statement that parties who had already been issued a VPLE COC would not be impacted by this policy change. *See* **Exhibit 7**.

59. Defendants appear to maintain the previous VPLE COC interpretation for those who already completed the program, but apply the new interpretation to those who had not yet completed the VPLE program at the point of the announced policy change, as well as anyone entering the program after Defendants posted the policy change on the RR news website.

60. Parties who applied for entry to the program, but did not receive a COC prior to the “interim decision” are now forced to either take on the entire cost of the program without the benefit of the blanket liability protection at the end, or to withdraw from the program and lose the intended benefits of the program, as well as the application fees and any other investments made. However, even after withdrawing from the program, those parties will still have an open remediation case for which they are responsible, and will be required to remediate the property under the RR program.

61. In addition, those parties who did not receive a COC prior to the “interim decision” policy change will be forced to remediate emerging contaminants that were unknown to even be considered Hazardous Substances when they entered the program but have now been deemed to be such by Defendants. This is true regardless of whether the party withdraws from the VPLE program.

62. This “interim decision” policy change has resulted in parties who voluntarily and proactively began remediating property being left with significant and unanticipated environmental liability and expense.

63. Defendants have not followed the required rulemaking process, codified in Chapter 227 of the Wisconsin Statutes, to promulgate this “interim decision” policy despite it being a clear change in policy by Defendants.

LRI's Remediation

64. LRI is owned by Mrs. Joanne Kantor. Mrs. Kantor, along with her late husband, has owned and operated LRI for over 43 years. LRI has been operating at its current location since 1993.

65. In spring of 2018, after the passing of her husband of 57 years, Mrs. Kantor decided to sell the LRI property in order to retire.

66. Through the voluntary investigation performed to facilitate the property sale, LRI became aware that the property was potentially contaminated with certain Volatile Organic Compounds (“VOCs”) commonly found at dry cleaning locations and relatively easy to remediate. LRI immediately notified Defendant DNR, and a remediation case was opened against LRI, with all related documents published on BRRTS.

67. As required by the Defendant DNR, LRI hired an environmental consultant to begin investigating the extent of VOC contamination in anticipation of remediating the property in order to sell it. The investigation lasted from March to September, 2018, and a 511-page Sight Investigation Report (“SIR”) was published on the BRRTS website by Defendant DNR on November 20, 2018. The SIR, authored by LRI’s environmental consultant, recommended in-situ remediation for addressing the VOC contamination in groundwater.

68. Believing that the VOC remediation would be relatively straight forward, LRI applied to enter the VPLE program. On January 2, 2019, Defendant DNR received LRI’s application to enter the VPLE program. LRI hoped to proactively remediate the property, and

believed the VPLE program would help them accomplish this effectively and efficiently, shortening the time necessary for LRI to receive a COC from the Defendants for the property and releasing LRI from future liability.

69. LRI's VPLE application was approved by the Defendants and recorded on the BRRTS website on February 15, 2019. Defendants' "interim decision" policy change was made after LRI applied to the VPLE program. LRI's payment of the \$4,000 fee to participate in the program was recorded on the BRRTS website on March 4, 2019, at which point LRI was still unaware of the "interim decision" policy change by the Defendants prior to its application or approval to participate in the VPLE program.

70. On March 26, 2019, LRI submitted a 19-page Sight Investigation Work Plan ("SIWP") to Defendant DNR detailing the plan for investigating the LRI property for VOCs.

71. On June 13, 2019, Defendant DNR recorded approval of the SIWP and a Notice to Proceed with the investigation and remediation on its BRRTS website.

72. Between February 18 and July 19, 2019, LRI took several steps to move the remediation forward, including significant investigatory activity as described in the SIWP. During a meeting with Defendant DNR staff in June 2019, one staff member explained that LRI is required to incorporate PFAS into its testing and remediation. This is the first time LRI recalls Defendant DNR mentioning PFAS in relation to the remediation at the LRI facility.

73. On July 19, 2019, LRI's environmental consultant submitted to Defendant DNR another 273-page report detailing the status of the site investigation, and making recommendations for treating VOCs in soil and groundwater.

74. On November 21, 2019, LRI's environmental consultant submitted an 86-page report to Defendant DNR describing LRI's plan for remediating the property. LRI hoped that

Defendant DNR would approve moving forward with the remediation within 60 days, and anticipated beginning the remediation in late 2019.

75. Investigatory work continued, and on February 17, 2020, LRI's environmental consultant submitted a 46-page report detailing the planned scope of work for remediating the VOCs. LRI was eager to move forward with the remediation.

76. In a letter, attached as **Exhibit 8**, dated March 3, 2020 (nearly two full years after the LRI's remediation case began), Defendant DNR informed LRI that its plan to remediate the VOCs was not approved. The letter explained that LRI was a potential source for PFAS, an emerging contaminant, and also that the Defendant DNR has regulatory authority to ask LRI "to evaluate hazardous substance discharges and environmental pollution including emerging contaminants."

77. Defendant DNR's demand for PFAS testing was not based on information specific to PFAS use at LRI. Rather, Defendant DNR reasoned that PFAS has generally been associated with dry-cleaning operations. The letter required additional information on PFAS use, and that PFAS be included in the site investigation. *See* **Exhibit 8**.

78. On August 17, 2020, LRI, along with nearly every other party responsible for an open remediation in Wisconsin, received a letter, attached as **Exhibit 3**, explaining that all sites must be evaluated for "hazardous substance discharges and environmental pollution including emerging contaminants," such as PFAS.

79. Believing it had no choice, LRI tested groundwater on the site for two PFAS compounds for which Defendant DNR is currently undergoing rulemaking to determine enforcement standards. On August 24, 2020, LRI's environmental consultant submitted a 110-page Supplemental SIWP to Defendant DNR, which included those test results.

80. The Supplemental SIWP explained that the water repellent used by LRI does not contain PFAS, and that no PFAS-containing material products were used in carpet cleaning operations.

81. The Supplemental SIWP concluded by explaining that, although DNR was insisting that PFAS investigation and sampling were necessary before approval for VOC remediation would be granted, LRI is a small business and would like to move forward with the VOC remediation in support of a real estate transaction.

82. On October 28, 2020, over two and a half years after LRI began attempting to remediate its property, Defendant DNR provided conditional approval for the site investigation. The conditions included collecting and testing several additional soil samples for PFAS, and “that both individual and combined exceedances” for PFAS be identified. Defendant DNR refused to approve LRI’s remediation of VOCs unless/until LRI complied with the additional requirements related to PFAS, which would add significant time and expense to the remediation project. The conditional approval is attached as **Exhibit 9**.

83. Defendant DNR did not explain which of the more than 4,000 PFAS compounds LRI was required to test, nor the levels at which those substances would be considered in exceedance. The letter directed LRI to a website with “[a]dditional resources regarding PFAS investigation and cleanup.” However, the website, attached as **Exhibit 6**, provided no additional details on the testing and exceedance requirements for PFAS.

84. Defendant DNR also required as a condition of moving forward with the investigation that yet another revised SIWP be submitted by November 27, 2020, just 30 days after the conditional approval was sent. See **Exhibit 9**.

85. On November 18, 2020, LRI notified Defendant DNR of its withdrawal from the VPLE program. LRI believed that the Defendant DNR was acting beyond its authority and unnecessarily prolonging the site investigation.

86. On December 31, 2020, LRI submitted a 49-page report, including additional groundwater sampling results, to Defendant DNR. LRI only tested the groundwater samples for the VOCs known to be present near the site. Because Defendant DNR did not set clear expectations on the substances and concentrations of PFAS that were considered hazardous and did not appear to have legal authority to do so, LRI did not test for any PFAS compounds.

87. LRI has been actively attempting to remediate its property for nearly three years, and has not, to date, received approval from the Defendants to take any action to remediate the VOCs in groundwater.

88. LRI has submitted at least seven reports, totaling over 1,094 pages, to Defendants since beginning the remediation process. Each of these reports is prepared by an environmental consultant at great cost to LRI.

89. To date, LRI has invested \$235,398 toward investigating and hopefully remediating the LRI property. LRI estimates the final costs of Defendant's requirements will approach the total value of the property. LRI has been unable to identify sources to help fund this effort, and also unable to acquire insurance for additional future costs. The business must continue operating in order to attempt to offset the cost of the investigation.

90. LRI has not received clear guidance on the substances Defendants' consider emerging contaminants, nor the levels at which those substances must be reported. Accordingly, LRI has no understanding of what Defendants will require before issuing a closure letter for the site.

**CLAIM ONE: DECLARATION PURSUANT TO WIS. STAT. §§ 227.40(4)(a) AND 806.04
THAT DEFENDANTS' REGULATION OF EMERGING CONTAMINANTS AS
"HAZARDOUS SUBSTANCES" IS UNLAWFUL**

91. Plaintiffs re-allege and incorporate by reference all allegations made above as if fully set forth herein.

92. Defendants' new policy of regulating what it calls emerging contaminants, including PFAS compounds, as Hazardous Substances is a rule because it is a regulation or standard of general application issued by Defendants to implement, interpret, administer, and/or enforce the Spills Law. *See* Wis. Stat. § 227.01(13).

93. Additionally, Defendants' new policy of regulating emerging contaminants as Hazardous Substances is also a change in interpretation of a statute. Our Supreme Court has also long held that changes in interpretation of a statute by an agency must be promulgated as a rule. *See, e.g., Schoolway Transp. Co. v. Div. of Motor Vehicles, Dep't of Transp.*, 72 Wis. 2d 223, 240 N.W.2d 403 (1976).

94. Under Wis. Stat. § 227.10(1), "[e]ach agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute."

95. Chapter 227 of the Wisconsin Statutes includes multiple rulemaking procedures Defendants must follow in order for Defendants to properly promulgate a rule.

96. Defendants' new policy of regulating what it calls emerging contaminants, including certain PFAS compounds as Hazardous Substances, was not promulgated pursuant to the requirements of Chapter 227.

97. A court shall declare a rule invalid "if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was promulgated or adopted

without compliance with statutory rulemaking or adoption procedures.” Wis. Stat. § 227.40(4)(a).

98. Plaintiffs and Plaintiff WMC’s members have been substantially harmed by Defendants’ failure to comply with the statutory rulemaking procedures, including that they were denied the opportunity to participate in the statutorily mandated rulemaking process.

99. Defendants’ application and threatened future application of this rule interferes with the legal rights and privileges of Plaintiffs and Plaintiff WMC’s members.

100. Accordingly, Plaintiffs are entitled to a declaration that Defendants’ new policy of regulating emerging contaminants as Hazardous Substances in the RR and VPLE programs is an unlawfully adopted rule, and is invalid and unenforceable.

CLAIM TWO: A DECLARATION PURSUANT TO WIS. STAT. §§ 227.40(4)(a) AND 806.04 THAT DNR’S REGULATION OF EMERGING CONTAMINANTS AT CERTAIN CONCENTRATIONS IS UNLAWFUL.

101. Plaintiffs re-allege and incorporate by reference all allegations made above as if fully set forth herein.

102. Defendants’ do not have explicit statutory authority, nor an explicit statutory requirement, to implement or enforce any standard, requirement, or threshold related to emerging contaminants, including PFAS, in the RR and VPLE programs.

103. Defendants’ enforcement of certain standards, requirements, and thresholds for PFAS and related substances in the RR and VPLE program is a rule as that term is defined by Wis. Stat. § 227.01(13).

104. The Standards, requirements, and thresholds currently implemented and enforced by Defendants for emerging contaminants, including PFAS, were not promulgated pursuant to the requirements of Chapter 227 of the Wisconsin Statutes.

105. Under Wis. Stat. §227.10(2m), Defendants are prohibited from implementing or enforcing “any standard, requirement, or threshold...unless that standard, requirement or threshold is explicitly required or explicitly permitted by statute or by a rule” that has been promulgated in accordance with Chapter 227.

106. A court shall declare a rule invalid “if it finds that it violates constitutional provision or exceeds the statutory authority of the agency or was promulgated or adopted without compliance with statutory rule-making or adoption procedures.” Wis. Stat. § 227.40(4)(a).

107. Plaintiffs and Plaintiff WMC’s members have been substantially harmed by Defendants’ failure to comply with the statutory rulemaking procedures, including that they were denied the opportunity to participate in the statutorily mandated rulemaking process.

108. Defendants’ application and threatened future application of this rule interferes with the legal rights and privileges of Plaintiffs and Plaintiff WMC’s members.

109. Accordingly, Plaintiffs are entitled to a declaration that Defendants’ enforcement of any numeric standard, requirement, or threshold related to an emerging contaminant, including PFAS, in the RR and VPLE programs is an unlawfully adopted rule and otherwise beyond Defendant’s statutory authority, and is invalid and unenforceable.

CLAIM THREE: DECLARATION THAT THE “INTERIM DECISION” POLICY IS INVALID PURSUANT TO WIS. STAT. §§ 227.40(4)(a) AND 806.04

110. Plaintiffs re-allege and incorporate by reference all allegations made above as if fully set forth herein.

111. Defendants’ new “interim decision” policy is a rule as that term is defined by Wis. Stat. § 227.01(13).

112. Additionally, Defendants' new "interim decision" policy is a statement of general policy as to how they will issue VPLE program COC, and an interpretation of the VPLE program statute, Wis. Stat. § 292.15.

113. Defendant's "interim decision" policy is also a change in interpretation of a statute. Our Supreme Court has also long held that changes in interpretation of a statute by an agency must be promulgated as a rule. *See, e.g., Schoolway Transp. Co. v. Div. of Motor Vehicles, Dep't of Transp.*, 72 Wis. 2d 223, 240 N.W.2d 403 (1976).

114. Under Wis. Stat. § 227.10(1), "[e]ach agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute."

115. Chapter 227 of the Wisconsin Statutes includes multiple rulemaking procedures that must be followed in order for Defendants to properly promulgate a rule.

116. Defendants' new "interim decision" policy was not promulgated pursuant to the requirements of Chapter 227.

117. A court shall declare a rule invalid "if it finds that it violates constitutional provision or exceeds the statutory authority of the agency or was promulgated or adopted without compliance with statutory rule-making or adoption procedures." Wis. Stat. § 227.40(4)(a). Plaintiffs and Plaintiff WMC's members have been substantially harmed by Defendants' failure to comply with the statutory rulemaking procedures.

118. Defendants' application and threatened future application of this rule interferes with the legal rights and privileges of Plaintiffs and Plaintiff WMC's members.

119. Accordingly, Plaintiffs are entitled to a declaration that Defendants' "interim decision" policy is an unlawfully adopted rule, and is invalid and unenforceable.

CLAIM FOUR: DECLARATION UNDER WIS STAT. § 806.04

120. Plaintiff re-alleges and incorporates by reference all allegations made above as if fully set forth herein.

121. Plaintiffs seek a declaration that Defendants must promulgate as a rule a list of Hazardous Substances, and the quantities or concentrations of substances that make them hazardous.

122. Pursuant to Wis. Stat. § 806.04, any person whose rights are affected by a statute may have determined any question of construction arising under the statute and obtain a declaration of rights thereunder.

123. When Defendant determines that a substance or combination of substances or the location of a substance causes them to meet the statutory definition of Hazardous Substance it is engaging in statutory interpretation, and is specifically adopting an interpretation to govern its enforcement or administration of the statutory definition of Hazardous Substance.

124. Plaintiffs and Plaintiff WMC's members' rights are affected by this statute.

125. Plaintiffs therefore seek a declaration that under Wis. Stat. § 292.01(5), Defendants are required to promulgate as a rule a list of Hazardous Substances, and quantities or concentrations of the substances which make them hazardous.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court grant the following relief:

A. A declaration that Defendants' policy of regulating substances they refer to as emerging contaminants, including PFAS compounds, as Hazardous Substances in the RR and VPLE programs is an unlawfully adopted rule, and is invalid and unenforceable;

B. A declaration that Defendants' enforcement of any numeric standard, requirement, or threshold for substances they refer to as emerging contaminants, including

PFAS, in the RR and VPLE programs is an unlawfully adopted rule and otherwise beyond Defendant's statutory authority, and is invalid and unenforceable;

C. An order enjoining Defendants from attempting to regulate emerging contaminants as discussed herein;

D. A declaration that Defendants' "interim decision" policy is an unlawfully adopted rule, and is invalid and unenforceable;

E. An order enjoining Defendants from enforcing the "interim decision" policy;

F. A declaration that Defendants are required to promulgate as a rule a list of Hazardous Substances, or quantities or concentrations of substances which make them hazardous;

G. An order awarding Plaintiffs their reasonable costs and fees allowed by law;

H. Such other relief as the Court deems appropriate.

Dated this 23rd day of February, 2021.

Respectfully submitted,

**WISCONSIN MANUFACTURERS &
COMMERCE, INC.**

Electronically signed by Lucas T. Vebber

Lucas T. Vebber (WI Bar No. 1067543)

Corydon J. Fish (WI Bar No. 1095274)

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Attorneys for Plaintiff

Wisconsin Manufacturers & Commerce, Inc.

REINHART BOERNER VAN DEUREN SC

Electronically signed by Delanie M. Breuer

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Attorneys for Leather Rich, Inc.

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Waukesha County
2021CV000342

EXHIBIT 1



AN INTRODUCTION TO CLEANING UP CONTAMINATION

When you encounter contaminated soil or groundwater, the first step is to report the contamination to the DNR in accordance with the [Spills Law, ch. 292, Wis. Stats.](#) Property owners or the person who caused the discharge are responsible for reporting contamination, although an environmental consultant may make this report on behalf of the responsible person. The Spills Law applies equally to a recent spill and to old contamination that has been discovered. If the DNR determines that further investigation is needed, the responsible person will receive a letter from the DNR outlining the requirements.

A private consultant is usually hired to do an environmental investigation and to recommend cleanup options. The cleanup must address the full extent of contamination in soil and groundwater, even if it has gone beyond the property boundaries. The DNR is responsible for all environmental cleanups in the state, other than [agricultural-related cleanups](#) [exit DNR] which are the jurisdiction of the Department of Agriculture, Trade and Consumer Protection. In addition, the [One Cleanup Program Memorandum of Agreement](#) clarifies how the DNR and the U.S. EPA work together on cleanups in Wisconsin.

BASIC STEPS IN THE CLEANUP OF CONTAMINATED SOIL OR GROUNDWATER

- [NR 700 Process and Timeline \(RR-967\)](#) [PDF]
 1. [Notification](#) - Report the contamination to the DNR.
 2. [Professional help](#) - Find a qualified environmental consultant to guide you.
 3. [Site Investigation](#) - Define the extent and type of contamination.
 4. Remedial Action - Evaluate potential cleanup options; select the best one.
 5. Case Closure - Complete the cleanup and request state approval.
 6. [Post-Closure Obligations](#) - Sites with residual contamination have ongoing, long-term responsibilities.

BASIC INFORMATION ABOUT SOIL AND GROUNDWATER STANDARDS

The [NR 700 rule series](#) [exit DNR] governs the process of investigating and cleaning up contamination. Our rules allow development of [site-specific soil performance standards](#) [PDF] and the use of natural attenuation for groundwater, which means that the contamination is allowed to naturally break down

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02-23-2021
Clerk of Circuit Court
Waukesha County
2021CV000342

over time. [Chapter NR 140, Wis. Adm. Code](#) [PDF exit DNR] covers Wisconsin's groundwater standards. Most, but not all, of Wisconsin groundwater standards are the same as federal drinking water standards. For more information about drinking and groundwater, please visit [Drinking water](#).

CASE CLOSURE - AFTER INVESTIGATION AND REMEDIAL ACTION

After the responsible person and the consultant have completed an environmental investigation and cleanup, a [case closure request](#) [PDF] may be submitted to the DNR's regional office. If the criteria for closure have been met, the responsible party will receive a case closure letter.

Wisconsin, like most states, may allow some [residual contamination](#) to remain after an environmental cleanup. The DNR ensures long-term protection of public health and the environment in regard to those residuals by establishing continuing obligations in the state's cleanup approval document (closure letter). The most common obligations are obtaining DNR approval prior to constructing a water supply well and properly treating or disposing of any excavated contaminated soil. Other obligations may include property-specific land use controls, such as maintaining pavement over a specified area of soil contamination. The DNR adds these properties to the [Wisconsin Remediation and Redevelopment Database \(WRRD\)](#) to help inform the public and potential future property owners of these obligations. For more information, about continuing obligations established as part of the cleanup approval, please see our [residual contamination page](#).

TOOLS TO MANAGE ENVIRONMENTAL LIABILITY

A case closure with an optional, fee-based [certificate of completion](#) ensures that the DNR will not require the property owner, or future property owners, to conduct any additional investigation or cleanup for that incident after the certificate is issued. Other information about liability clarification tools may be found on [Environmental liability](#).

For information on the basics of brownfields redevelopment, see: [Brownfields Redevelopment in Wisconsin: Essential steps and resources for successful redevelopment of brownfields \(RR-933\)](#) [PDF].

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02-23-2021
Clerk of Circuit Court
Waukesha County
2021CV000342

EXHIBIT 2

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Wisconsin DNR - Hazardous Substance Spills

Remediation and Redevelopment Program

November 2016

Immediate Reporting Required for Hazardous Substance Spills

If you are aware of a hazardous substance spill notify the Department of Natural Resources (DNR). State law requires the IMMEDIATE reporting of hazardous substance spills and other discharges to the environment.

**CALL 800-943-0003
TO REPORT SPILLS**

Use **DNR Form 4400-225** to report other hazardous substance discharges



Other hazardous substance discharges, including historical contamination and contamination caused by an ongoing long-term release, discovered during an environmental assessment or laboratory analysis of soil, sediment, groundwater or vapor samples, should be reported to the DNR by filling out and submitting DNR Form 4400-225, "Notification for Hazardous Substance Discharge (Non-Emergency Only)," which is available at dnr.wi.gov.

- ✓ Report hazardous substance discharges as soon as visual or olfactory evidence confirms a discharge or laboratory data is available to document a discharge. **Do not wait to complete a Phase II environmental assessment, or other similar report, to notify the DNR.**

Reporting is everyone's responsibility

Individuals and entities that cause a hazardous substance spill or discharge to the environment are required by state law to notify the DNR immediately - as soon as the spill or discharge is identified. Individuals and entities that own or control property where the spill or discharge occurred must report the discharge immediately if it is not reported by the person or entity that caused the discharge.

For public health and safety, the DNR encourages everyone to report known hazardous substance discharges. Reporting a spill or other discharge, in itself, does not make a person or entity liable for the contamination.

Proper spill containment, cleanup, and disposal is always required

Every person/entity (including lenders and local governments) that causes a hazardous substance discharge, or owns or controls property at which a discharge occurred, must comply with the response action requirements in [Wis. Admin. Chs. NR 700 to 754](#). No spill or discharge is exempt from the duty to properly contain, clean up and dispose of the substance and associated contaminated media, such as soil, water and other affected materials.

Spill reporting exemptions

All spills must be cleaned up, but it is generally not necessary to report recent spills that are:

- less than 1 gallon of gasoline
- less than 5 gallons of any petroleum product other than gasoline
- any amount of gasoline or other petroleum product that is completely contained on an impervious surface
- individual discharges authorized by a permit or program approved under Wis. Stats. Chs. 289 - 299
- less than 25 gallons of liquid fertilizer
- less than 250 pounds of dry fertilizer
- pesticides that would cover less than 1 acre of land if applied according to label instructions
 - * NOTE: Reporting is required if the ongoing, long-term release or application of a permitted pesticide, fertilizer or other substance accumulates to levels that exceed current health or safety standards.
- less than the federal reportable quantities listed in 40 C.F.R. §§ 117 or 302
 - * NOTE: U.S. EPA (federal) spill reporting requirements are outlined on the internet at <https://www.epa.gov/emergency-response/when-are-you-required-report-oil-spill-and-hazardous-substance-release>.

Spill reporting exemptions do not apply (and reporting is required) when:

- the spilled substance has not evaporated or been cleaned up in accordance with Wis. Admin. chs. NR 700 - 754
- the spilled substance is a potential fire, explosion or safety hazard
- the spilled substance causes, or threatens to cause, chronic or acute human health concerns
 - * NOTE: If you are unsure about potential human health effects, consult with local or state health officials.
- the spilled substance adversely impacts, or threatens to impact, the air, lands or waters of the state (as either a single discharge or when accumulated with past discharges) - even if the degree of the impact has not yet been thoroughly evaluated
 - * NOTE: If the substance causes sheen on surface water, has entered or is on the verge of entering the waters of the state, DNR will consider the spilled substance a threat to impact, or to have adversely impacted, waters of the state and reporting is required.

Terms, definitions, statutes and rules

Hazardous substance — Any substance that can cause harm to human health and safety, or the environment, because of where it is spilled, the amount spilled, its toxicity or its concentration. Even common products such as milk, butter, pickle juice, corn, beer, etc., may be considered a hazardous substance if discharged to a sensitive area.

Discharge — Spilling, leaking, pumping, pouring, emitting, emptying, dumping, etc., to land, air or water.

Spill — A discharge that is typically a one-time event or occurrence, and usually inadvertent.

Wis. Stat. § 292.11(2) and Wis. Admin. § NR 706.05 — Require individuals and entities that possess or control a hazardous substance, or that cause the discharge of a hazardous substance to the environment, to notify the DNR immediately about the discharge.

Wis. Stat. § 292.99 — Authorizes penalties up to \$5,000 for each violation of the notification requirement.

Consult [Wis. Stat. Ch. 292](#) and [Wis. Admin. §§ 700 – 754](#), and dnr.wi.gov for further information on hazardous substance spill and discharge reporting, investigation and cleanup.

DNR contact information

To report a discharge call 1-800-943-0003. For more information on the spills program, including [contact information](#), visit dnr.wi.gov, search “Spills”.

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EXHIBIT 3

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
Box 7921
Madison WI 53707-7921

Tony Evers, Governor
Preston D. Cole, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



August 17, 2020

DONALD GALLO
AXLEY BRYNELSON, LLP
N20 W22961 WATERTOWN RD
WAUKESHA WI 53186

Subject: **Reminder to Include Evaluation of Emerging Contaminants in Site Investigation**
LEATHER RICH INC
1250 CORPORATE CENTER DR
BRRTS# 02-68-581237
FID# 268414850

Greetings:

This letter is being sent to all Responsible Parties (RPs) that currently have an open contamination site on the DNR's Bureau for Remediation and Redevelopment Tracking System (BRRTS). The purpose of this letter is to remind RPs to assess emerging contaminants and their potential impacts as early in the cleanup process as possible, preferably during the site investigation phase. Emerging contaminants include perfluoroalkyl and polyfluoroalkyl substances (PFAS), 1,4-dioxane and others. While many RPs and their consultants have been assessing emerging contaminants, there have been several situations where these substances had not been evaluated at the time a case closure request was submitted. In some cases, this resulted in the need for additional field work which ultimately delayed case closure.

It is the responsibility of RPs to evaluate hazardous substance discharges and environmental pollution including emerging contaminants under the Wis. Admin. Code NR 700 rule series. Emerging contaminants discharged to the environment, including certain PFAS, meet the definition of hazardous substance and/or environmental pollution under Wis. Stat. § 292.01:

- Wis. Stat. § 292.01 (3) "Discharge" means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping.
- Wis. Stat. § 292.01 (4) "Environmental pollution" means contaminating ... air, land, or waters of the state or making the same injurious to public health ...
- Wis. Stat. § 292.01 (5) "Hazardous substance" means any substance ... which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics ...

Per Wis. Admin. Code § NR 716.07 and Wis. Admin. Code § NR 716.09, site investigation scoping and work plans should include an evaluation of potential PFAS compounds and other applicable emerging contaminants that were historically or are presently produced, used, handled, or stored at the site. The evaluation should include any available information on whether any products containing PFAS were used in any process services, the duration of PFAS-containing product use, the type of PFAS contained in the product, and any areas of the site where PFAS-containing products may have been used, stored, managed, or discarded. Site investigation work plans should also include a sampling and analysis strategy to be used during field investigation that considers all information in the evaluation conducted under Wis. Admin. Code § NR 716.07.

Responsible parties should also be aware that case closure decisions issued under Wis. Admin. Code ch. NR 726 are based on information on file at the time of the closure request and apply only to the hazardous substance discharge or environmental pollution that was investigated and remediated under the Wis. Admin. Code NR 700 rule series. If DNR receives new evidence about a closed site which indicates a PFAS discharge occurred at the site prior to case closure, and the discharge was not evaluated in the site investigation, please be aware that DNR may evaluate the site under the Wis. Admin. Code § NR 727.13 criteria for reopening of closed cases.

DNR can provide technical assistance at any point throughout the investigation and cleanup process for a fee. These services can be requested using the [Technical Assistance and Environmental Liability Clarification Form \(4400-237\)](#) by visiting dnr.wi.gov, search “4400-237.” Requesting technical assistance from DNR early in the process can help save time and money during the cleanup process.

DNR has developed guidance to help RPs and their consultants comply with the requirements described above. The guidance can help select the appropriate chemicals for analysis when conducting a Wis. Admin. Code ch. NR 716 site investigation. The [Site Investigation Scoping Guidance \(RR-101\)](#) can be found by visiting dnr.wi.gov, search “RR-101.”

Additional information on PFAS is available from The Interstate Technology Regulatory Council (ITRC) at: <https://pfas-1.itrcweb.org/fact-sheets/>.

DNR appreciates your efforts to restore the environment at this site. If you have any questions regarding anything outlined in this letter, or would like to arrange a meeting, please contact the DNR Project Manager assigned to your site.

TIMOTHY ALESSI
(414) 263-8563
timothy.alessi@wisconsin.gov

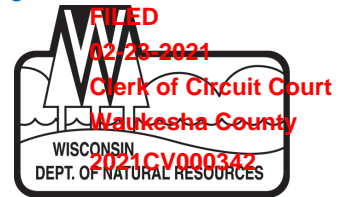
Sincerely,



Christine Haag
Program Director
Remediation & Redevelopment Program

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
Box 7921
Madison WI 53707-7921

Tony Evers, Governor
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August 17, 2020

LEATHER RICH MC
PO BOX 23
1250 CORPORATE CENTER DR
OCONOMOWOC WI 53066

Subject: **Reminder to Include Evaluation of Emerging Contaminants in Site Investigation**
LEATHER RICH INC
1250 CORPORATE CENTER DR
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TIMOTHY ALESSI
(414) 263-8563
timothy.alessi@wisconsin.gov

Sincerely,



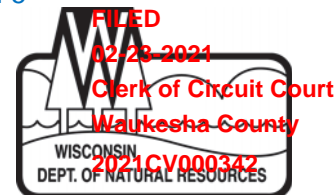
Christine Haag
Program Director
Remediation & Redevelopment Program

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EXHIBIT 4

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
Box 7921
Madison WI 53707-7921

Scott Walker, Governor
Daniel L. Meyer, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



September 21, 2018

BRRTS # 06-68-547708

Ryan Richfield Way LLC
Jonathon Blaha
50 S 10th St, Ste 300
Minneapolis MN 55403-2012

Subject: Request for Supplemental Environmental Site Investigation Information for Properties Pursuing a Certificate of Completion Through the Voluntary Party Liability Exemption Program

Dear VPLE Applicant:

This letter is being sent to all Voluntary Parties (“VP”) and their consultants that are pursuing a Certificate of Completion (“COC”) through the Voluntary Party Liability Exemption (“VPLE”) program for a contamination site. Our records indicated that you are designated as a VP for Western Industries Inc located at W156 N9073 Stopler Road, Menomonee Falls (the “VPLE Property”), pursuant to Wis. Stat. § 292.15. The purpose of this letter is to request that you provide supplemental site investigation information about the VPLE Property to determine whether or not the environmental investigation of the VPLE Property is complete, in accordance with Wis. Admin. Code chs. NR 716 and 750. This request applies whether or not the DNR has previously issued an approval of the environmental investigation of the VPLE Property.

Emerging Contaminants

As you may be aware, concerns have arisen nationally and in Wisconsin about a group of chemicals, called per- and polyfluoroalkyl substances (“PFAS”). PFAS are a group of man-made chemicals that includes PFOA, PFOS, GenX, and many others. PFAS have been manufactured and used in a variety of industries since the 1940s. Some PFAS are environmentally persistent and bioaccumulative and may pose human health risks. Recent high-profile cases involving human exposure across the United States have further focused both public and regulatory scrutiny on PFAS. This group of chemicals has been found in the environment but has not typically been included as part of an environmental investigation or cleanup. These chemicals are beginning to be identified in Wisconsin in groundwater and soils.

VPLE Requirements

A VPLE COC provides liability protections for the owner and future owners of a VPLE property such that the DNR cannot reopen the case and request additional investigation or cleanup work in the future for past releases of hazardous substances. If additional contamination (e.g. PFAS) is found in the future after the exemption is issued and no one is responsible for addressing a priority health or environmental situation, the state may have to expend taxpayer funds to address the contamination.

To obtain the VPLE COC, Wis. Stat. §§ 292.15(2)(a)(1) and (ae)(1) requires that an environmental investigation of the VPLE property is conducted in compliance with Wis. Admin Code chs. NR 716 and 750 and is approved by the DNR. In order for the environmental investigation of the VPLE Property to be complete, a Phase I and Phase II environmental site assessment must be conducted that identifies all known and possible discharges of hazardous substances to the environment that may have occurred on the VPLE Property from historical practices.

To confirm that adequate environmental site investigation has been conducted based on past land use practices and operations, the DNR will evaluate the information previously provided on your site. In addition, we are requesting that supplemental information be provided to the DNR to determine if discharges of PFAS chemicals may have occurred on the VPLE Property and pose a potential concern. This information will include, at a minimum, the attached PFAS Manufacturing and Use Information sheet. Upon receipt of this information, the DNR may request a supplemental Phase I assessment report and if necessary, additional sampling, including soil, sediment, surface water, leachate and/or groundwater.

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2021CV000342

Evaluation for PFAS

The DNR has started evaluating the potential for historic discharges of PFAS chemicals at properties enrolled in VPLE that have not received a COC. Specifically, we are evaluating whether one or more industries on the VPLE Property may have used or manufactured PFAS chemicals or if waste or historic fill from industries that used PFAS chemicals has been disposed of on the VPLE Property. Please complete the enclosed PFAS Manufacturing and Use Information sheet within 30 days of receipt of this letter and return it in the enclosed envelope.

You may also provide a supplemental Phase I environmental assessment that specifically addresses whether any industries that used PFAS chemicals have operated on the VPLE Property. Supplemental Phase I environmental assessment information should provide documentation to show whether PFAS chemicals were manufactured, used in the industry or disposed of on the VPLE Property, and should include your recommendation about whether sampling for PFAS chemicals is warranted. If you determine that PFAS chemicals have not been manufactured, used, discharged or disposed at the property and DNR agrees, no additional actions related to PFAS may be needed. Additional information including sampling, including soil, sediment, surface water, leachate and/or groundwater may be needed if there were potential PFAS discharges on the VPLE Property.

Enclosed is a fact sheet on the history and use of PFAS from the Interstate Technology Regulatory Council, which is a program of the Environmental Research Institute of the States. Also, several states and the U.S. Environmental Protection Agency have made available publications about the use of PFAS chemicals that are readily available on the internet that you and your consultant may review to assist with evaluating past PFAS use.

The DNR will be working with VPs and their consultants on a site-by-site basis to evaluate PFAS at VPLE properties. This analysis must be conducted prior to the issuance of a certificate of completion or DNR approval of site-specific steps (e.g. site investigation work plan, site investigation report, remedial action options and plans, and case closure). We anticipate that we will contact you within 30 days of receiving your PFAS Manufacturing and Use Information sheet to discuss your submittal and the proposed next steps.

If you wish to provide supplemental Phase I assessment information related to the potential use of PFAS on your VPLE property, please contact Michael Prager at (608) 261-4927 or Michael.Prager@Wisconsin.Gov. He will work with you on the process for submittal.

If you have any questions regarding this letter, or no longer wish to pursue a COC through the VPLE program, please contact Christine Haag at (608) 266-0244 or Christine.Haag@Wisconsin.Gov or Judy Fassbender at (608) 266-7278 or Judy.Fassbender@Wisconsin.Gov.

Thank you for your cooperation.

Sincerely,



Darsi Foss, Director
Remediation & Redevelopment Program

Enc. *PFAS Manufacturing and Use Information
History and Use of Per- and Polyfluoroalkyl Substances (PFAS), ITRC, November 2017*

Cc Dave Volkert - SER
KPRG And Associates, Patrick Allenstein, 14665 West Lisbon Rd, Ste 2B, , Brookfield, WI 53005

State of Wisconsin
 Department of Natural Resources
 P.O. Box 7921, Madison WI 53707-7921
 dnr.wi.gov

Voluntary Party Liability Exemption (VPLE) Program
PFAS Manufacturing and Use Information

Notice: Personally identifiable information collected will be used for administrative purposes and may be provided to requesters as required by Wisconsin's open records law, ss. 19.31-19.39, Wis. Stats.

Instructions: Provide the following information regarding potential use of PFAS chemicals at your VPLE property. You may also submit a supplemental Phase I assessment or other information that documents whether one or more industries may have used or manufactured PFAS chemicals on the VPLE property or if waste from industries that have used PFAS chemicals has been disposed of or discharged on the VPLE Property. The DNR may request additional information if discharges of PFAS chemicals on the VPLE Property are identified as a potential concern, including supplemental Phase I assessment documentation and/or additional site characterization/sampling. The DNR requests this information pursuant to Wis. Stat. §§ 292.15 and 292.31, as well as Wis. Admin. Code chs. NR 716 and 750.

Contact Information for Voluntary Party	
Name of Voluntary Party	
Mailing address	
Phone	Email

Contact Information for Voluntary Party's Environmental Consultant	
Name of Consultant	
Mailing address	
Phone	Email

VPLE Property Information			
VPLE Property Name		BRRTS Number:	
VPLE Property Address			
County	City	State	Zip code

1. Property usage from 1940 to present (Enter "P" for past use and "C" for current use; select all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Chemical Use or Manufacturing ____ | <input type="checkbox"/> Textile Manufacturing ____ |
| <input type="checkbox"/> Waste Water Treatment Plant Biosolids/Sludges ____ | <input type="checkbox"/> Paper and Cardboard Packaging Manufacturing ____ |
| <input type="checkbox"/> Sludge spreading ____ | <input type="checkbox"/> Medical Uses ____ |
| <input type="checkbox"/> Cookware Manufacturing ____ | <input type="checkbox"/> Wire Manufacturing ____ |
| <input type="checkbox"/> Personal Care Product Manufacturing ____ | <input type="checkbox"/> Photographic Industry ____ |
| <input type="checkbox"/> Industrial Surfactants Use or Manufacturing ____ | <input type="checkbox"/> Semiconductor Manufacturing ____ |
| <input type="checkbox"/> Resins, Molds, Plastics Use or Manufacturing ____ | <input type="checkbox"/> Licensed or Unlicensed Landfill ____ |
| <input type="checkbox"/> Metal Plating or Etching ____ | <input type="checkbox"/> Historic Fill Site ____ |
| <input type="checkbox"/> Cleaning Products Use or Manufacturing ____ | <input type="checkbox"/> Fire Fighting Foam Training or Manufacturing ____ |
| <input type="checkbox"/> Coating, Paint and Varnish Use or Manufacturing ____ | <input type="checkbox"/> Fire Fighting Foam in Fire Suppression System ____ |
| <input type="checkbox"/> Adhesives Use or Manufacturing ____ | <input type="checkbox"/> Fire Fighting Foam Used to Suppress a Fire ____ |
| <input type="checkbox"/> Cement Additives Use or Manufacturing ____ | <input type="checkbox"/> Leather Use or Manufacturing ____ |
| <input type="checkbox"/> Dry Cleaning ____ | <input type="checkbox"/> Antifogging Use or Antifogging Manufacturing ____ |
| <input type="checkbox"/> Automobile and Parts Manufacturing ____ | <input type="checkbox"/> Oil Industry ____ |

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2. Provide the following information to the DNR:

PFAS Use and Manufacturing - If any of these facilities or commercial or industrial uses operated on the property, provide an attachment with detailed description of the type of manufacturing or uses related to PFAS. Describe the types of products manufactured and the processes involved. Include the type of PFAS or PFAS-containing substances used or manufactured, and quantity generated, used, or stored. Please reference the ITRC fact sheet: *History and Use of Per- and Polyfluoroalkyl Substances (PFAS)*, November 2017.

Landfills and Historic Fill Sites - If waste was disposed of on the property, provide an attachment detailing the type and source of the PFAS-related waste material and when the disposal occurred. Describe whether the PFAS waste disposed of on the property was generated from a specific industrial process or processes and identify the generators.

Firefighting Foam - If firefighting foam was manufactured, stored or tested at the property or if it was used in fire training or to extinguish frequent fires at the property, please provide an attachment with a detailed description of the location, frequency, and timeframe of its use.

Self-Certification

I certify that information in this form and all information attached is true and correct and in conformity with applicable Wisconsin and Federal Statutes.

I acknowledge, pursuant to Wis. Stats. 292.15(2)(a)6, that a voluntary party may not obtain the certificate of completion by fraud or misrepresentation, by the knowing failure to disclose material information or under circumstances in which the voluntary party knew or should have known about more discharges of hazardous substances than were revealed by the investigation conducted.

Print Name of Voluntary Party

Signature of Voluntary Party

Date

Submit this completed form and all attachments to:

Wisconsin Department of Natural Resources
Remediation and Redevelopment Program
Brownfields and Outreach Section Chief, RR/5
PO Box 7921
Madison, WI 53707-7921

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EXHIBIT 5

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
2300 N. Dr. Martin Luther King, Jr. Drive
Milwaukee WI 53212-3128

Tony Evers, Governor
Preston D. Cole, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



June 12, 2020

Mr. Greg Failey
Airport Environmental Manager
5300 S. Howell Ave.
Milwaukee, WI 53207

Subject: Review of *Site Investigation Work Plan*
General Mitchell International Airport PFAS, 5300 S. Howell Ave., Milwaukee, WI
BRRTS #: 02-41-584547, FID #: 241280270

Dear Mr. Failey:

On March 30, 2020, the Wisconsin Department of Natural Resources (DNR) received the *Site Investigation Work Plan* (SIWP) prepared on your behalf by your consultant, AECOM, for the property described above. On May 1, 2020, a technical assistance fee was received for DNR review and a written response.

Background

In October 1926, the Milwaukee County Board purchased the current airport land. Prior to 1926, the land was undeveloped. General Mitchell International Airport (GMIA) received its name in 1986 and has completed many expansions and renovations since the 1926 land purchase. Since around 1970, firefighting foams have been commonly employed by military and municipal fire departments. Per- and polyfluoroalkyl substances (PFAS) have been used in many aqueous film forming foams (AFFF) used by the military and at airports for their ability to extinguish petroleum-related fires. Historically, GMIA has used PFAS-containing firefighting foams per Federal Aviation Administration (FAA) requirements.

GMIA has a shared history with military aviation, including the 128th Air Refueling Wing, which has operated since 1947 on the East Ramp of the property, and the 440th Airlift Wing, which operated from the 1950s until 2008 at the South Ramp of the property. The 128th Air Refueling Wing and the former 440th Airlift Wing both have individual investigations for PFAS due to the historical use of firefighting foams at their respective bases.

GMIA was required by the DNR as part of a Wisconsin Pollution Discharge Elimination System process to conduct an initial survey of PFAS in surface waters at GMIA. The initial characterization, conducted by GMIA and the United States Geological Survey (USGS), indicated the presence of PFAS at all sampling points and surface water discharge locations. On October 17, 2019, the DNR issued a responsible party letter requesting a complete site investigation to determine the nature, degree, and extent of PFAS contamination at GMIA.

SIWP Summary & Review

GMIA is planning to complete investigative activities to test specific media for the presence of PFAS. This SIWP describes the initial investigation activities in the phased approach that has been proposed. This initial phase will cover a broad range of potential sources and the second phase, if necessary, will further investigate areas with detected PFAS. The current scope of work will be composed of three tasks to collect soil, surface water, and groundwater at various locations based on past use, storage, or releases of AFFF. The SIWP indicates that

General Mitchell International Airport PFAS (BRRTS #: 02-41-584547)
June 12, 2020

samples will be analyzed using Environmental Protection Agency Method 537-Modified, which includes the State of Wisconsin 36-compound list.

Based on information gathered by AECOM, the following potential source areas will be included within this scope of the investigation:

- Cargo Ramp
- Far West
- West Pad/West Ramp
- Southeast Area
- Bailey's Pond
- Burn Pit
- Fire Department

These potential release locations were selected for sampling based on criteria including testing of AFFF suppression systems in hangars, accidental or purposeful release of AFFF from hangars, fire training, annual testing of equipment, fire suppression from live fires, and disposal of AFFF.

The DNR has reviewed the SIWP for compliance with Wis. Admin. Code §§ NR 716.07 and 716.09, which contain the requirements for site investigation scoping and site investigation work plans. The DNR has determined that the SIWP is in general compliance with Wis. Admin. Code §§ NR 716.07 and 716.09 and provides the following general comments:

- The responsible party shall report all sampling results to the property owner and the DNR within 10 days of receipt, per Wis. Admin. Code § NR 716.14. The sampling results should also be shared with the 128th and the 440th.
- The initial samples collected by the USGS should be displayed on future site figures.
- Consider whether sediment samples should be collected in a future phase(s) of the investigation.
- The DNR does not have any established guidance on how to properly dispose of PFAS-contaminated investigation derived waste (IDW). AECOM should develop a procedure to address IDW.
- The DNR understands that hydraulic conductivity data may be collected in a later mobilization.
- Property boundaries and buildings should be labeled on future site figures.
- As site investigation activities commence, evaluate the need for remedial actions. If remedial actions are deemed necessary, ensure that the appropriate information to select a remedial action is collected and provided.
- Ensure to properly assess any off-site sources for migration of PFAS contamination onto the GMIA property.

The DNR also provides the following comments related to specific study areas:

- Cargo Ramp:
 - Consider collecting an additional surface water sample closer to the hangar.
 - Due to the apparent topographic tilt of this area, consider an additional sampling location in the grassy oval area to the southeast of the hangar.
- West Pad/West Ramp:
 - Consider collecting an additional surface water sample in the channel to the north of the hangar.
 - Consider moving sampling location WP-MW-19 to the grassy area at the southwest corner of the hangar or consider collecting adding an additional sampling location in that area.
- Burn Pit:

General Mitchell International Airport PFAS (BRRTS #: 02-41-584547)
June 12, 2020

- Consider rearranging the currently proposed monitoring well network to include well on the east side of the burn pit.

The site investigation can be an iterative process. Future sampling may indicate that further assessment is needed to define the degree and extent of contamination. Additionally, as knowledge surrounding PFAS continues to grow, further investigation may be necessary to define degree and extent of different compounds.

The DNR appreciates the efforts you are taking to address the contamination at GMIA. If you have any questions about this letter, please contact me, the DNR Project Manager, at (414) 750-7030 or via email at riley.neumann@wisconsin.gov.

Sincerely,



Riley D. Neumann
Hydrogeologist / Project Manager
Remediation & Redevelopment Program

cc: Kenneth Brown, AECOM (electronic)
Joel Mackinney, AECOM (electronic)
Timothy Detzer, Milwaukee County (electronic)

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EXHIBIT 6



PFAS INVESTIGATION AND CLEANUP

Perfluoroalkyl and polyfluoroalkyl substances (PFAS) may enter the environment and result in contamination to groundwater, surface water, soil and/or sediment. In Wisconsin, persons who own properties that are the source of PFAS contamination, or who are responsible for discharges of PFAS to the environment, are responsible for taking appropriate actions. Those individuals must also immediately notify the state, conduct a site investigation, determine the appropriate clean-up standards for the PFAS compounds in each media impacted (e.g., soil, groundwater, surface water and sediment) and conduct the necessary response actions.

State definitions of "environmental pollution" and "discharge" of a "hazardous substance" are not the same as the definition of a hazardous substance in the federal Superfund law and in some other states' laws. When discharged to the environment, PFAS compounds meet the definitions of a hazardous substance and/or environmental pollution under state statutes ([s. 292.01, Wis. Stats.](#) [PDF exit DNR]). Discharges of PFAS to the environment are subject to regulation under ch. 292, Wis. Stats., and chs. NR 700-754, [Wis. Adm. Code.](#) [exit DNR]

SOIL

PFAS in soil may pose a direct contact risk to humans or result in chemicals entering the groundwater and surface water. The DNR's Remediation and Redevelopment (RR) Program maintains a [web-based spreadsheet with soil residual contaminant levels \(RCLs\)](#) that were calculated using U.S. EPA's regional screening level (RSL) web calculator, and following the procedures in NR 720.12, for determining soil direct-contact RCLs protective of human health.

The non-industrial direct contact RCL for both PFOA and PFOS is 1.26 mg/kg. The industrial direct contact RCL for both PFOA and PFOS is 16.4 mg/kg. There is no pre-determined, groundwater protective soil RCL for these compounds. Responsible parties would be required to propose a site-specific groundwater protection number.

WATER QUALITY

The DNR's Water Quality Program, in cooperation with the Fisheries Program and other partners, is developing a statewide monitoring project to sample fish tissue and water chemistry at select sites around the state near known or probable sources of PFAS. This project will help develop a baseline of PFAS contamination within the state and help to identify action areas and provide the necessary data for the appropriate response.

Water Quality's wastewater program has begun requiring testing for PFAS in certain general permit applications near known or suspected PFAS sites prior to granting coverage for new dischargers.

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Read more about [Water quality PFAS initiatives](#).

OTHER MEDIA (GROUNDWATER, SURFACE WATER AND SEDIMENT, AIR, ETC.)

With respect to groundwater, federal maximum contaminant levels (MCLs) and state groundwater quality standards have not been established for PFAS compounds. The DNR has requested that DHS recommend a PFOA and PFOS groundwater health standard in Wisconsin. Lacking a groundwater health standard, the DNR has authority to require that the responsible party develop a site-specific clean-up standard for all contaminated environmental media in accordance with NR 722.09, if no numeric clean-up standard otherwise exists. This includes discharges and environmental pollution impacting the air, lands and waters of the state.

SITES WITH REPORTED PFAS CONTAMINATION IN WISCONSIN

If sites are discovered that have PFAS contamination, the DNR will work with responsible parties to investigate the contamination and take any other necessary actions (i.e., provide emergency drinking water or cleanup of soil).

To view information on sites where PFAS contamination has been reported to the DNR, please go to the DNR's [Remediation and Redevelopment Program database \(BRRTS on the Web\)](#), then go to the "Advanced Search" tab and under "Substances" search for "PFAS."

Specific resources for [PFAS contamination in the Marinette and Peshtigo area](#) are available.

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EXHIBIT 7



DNR Interim Decision on Voluntary Party Liability Exemption (VPLE) Program and Emerging Contaminants

Posted on January 4, 2019

Wisconsin's Voluntary Party Liability Exemption (VPLE) program allows a person to clean up a property and receive an exemption from future liability for historic contamination. Once cleanup is complete, the VPLE Certificate of Completion (COC) provides liability protection for the owner of the property. It is also transferrable to future owners. Since 1995, the DNR has issued 186 COCs. Eighty-three voluntary parties are currently pursuing a VPLE COC.

Recent concerns over emerging contaminants, particularly per- and polyfluoroalkyl substances ("PFAS") chemicals in Wisconsin and nationally have prompted the DNR to evaluate the potential for historical discharges of PFAS and other emerging contaminants at properties enrolled in the VPLE program that are pursuing a COC.

As part of this evaluation, the DNR reviewed the most recent national guidance documents on the types of materials, industries,

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Categories

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- Redevelopment
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Brownfields
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and manufacturing sectors, that historically used PFAS chemicals, from both the U.S. Environmental Protection Agency (EPA) and the Interstate Technology and Regulatory Council (ITRC). The DNR also requested supplemental site investigation information for properties enrolled in VPLE.

The DNR is aware that the fate and transport of PFAS and site characterization for PFAS are complicated by the number and diversity of substances involved, their frequent occurrence in complex mixtures that can change over time, and by the variety of PFAS source material. Based on these concerns, the DNR has concluded that the risk of a PFAS release cannot be ruled out at a VPLE property without confirmation testing.

A VPLE Certificate of Completion, once issued under Wis. Stat. § 292.15(2), transfers to state taxpayers an expectation to remediate health and safety threats that were not identified if the department determines that there is a priority concern, and there are no other responsible parties to address the potential or actual threat posed. The department would be remiss in its responsibility to protect public health and safety, and serve as good stewards of state taxpayer dollars, if it issued a Certificate of Completion for PFAS contamination that was not sampled given the national and state dialogue on this concern.

The interim decision is to offer a voluntary party a COC for the individual hazardous substances that are investigated after all the VPLE requirements have been met. DNR will not issue a COC that covers all potential hazardous substances, including substances that were not investigated but could be discovered in the future. The agency has the legal authority to offer this interim approach under Wis. Stat. § 292.15(2)(am).

This interim decision does not affect properties that have already received a Certificate of Completion.

Questions on hazardous substance specific COC may be directed to Christine Haag, Brownfields and Outreach Section Chief.

BRRTS
Cleanup
Closure
Conferences
and
trainings
Contaminated
sediments
Continuing obligations
Data and
Databases
Emerging
Contaminants
Employment
opportunities
Environmental
liability
Environmental
site
investigations
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Brownfields Redevelopment

Cleanup Tools

Brownfields

Cleanup

Environmental liability

VPLE

Petroleum

and
PECFA

PFAS

Publications

and forms

Public input

Ready for Reuse

Reporting

Residual

contamination

RR Program

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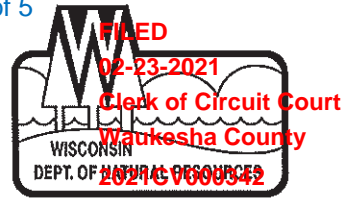
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EXHIBIT 8

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
2300 N. Dr. Martin Luther King, Jr. Drive
Milwaukee WI 53212-3128

Tony Evers, Governor
Preston D. Cole, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



March 3, 2020

Ms. Joanne Kantor
Leather Rich Inc.
PO Box 23
Oconomowoc, WI 53066

Subject: Interim Remedial Action Work Plan - Review and Comments
Leather Rich Inc.
1250 Corporate Center Drive, Oconomowoc, Wisconsin
DNR BRRTS# 02-68-581237/ 06-68-582959 FID# 268414850

Dear Ms. Kantor:

The Wisconsin Department of Natural Resources (DNR) received the November 25, 2019 Interim Remedial Action Work Plan (Report) for the above-referenced site. The Report was submitted on behalf of Leather Rich Inc. by GZA GeoEnvironmental, Inc. (GZA). DNR reviewed the site for the potential of per- and polyfluoroalkyl substances (PFAS) contamination due to the dry-cleaning and fabricare operations at the site and for concurrence with the Voluntary Party Liability Exemption (VPLE) process.

The DNR identified the Leather Rich Inc. site as a potential source for PFAS. The DNR believes this emerging contaminant may be present in soil and groundwater on your property identified above. The DNR has regulatory authority to ask responsible parties to evaluate hazardous substance discharges and environmental pollution including emerging contaminants:

- Wis. Stat. § 292.01 (3) "Discharge" means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping.
- Wis. Stat. § 292.01 (4) "Environmental pollution" means contaminating ... air, land, or waters of the state or making the same injurious to public health ...
- Wis. Stat. § 292.01 (5) "Hazardous substance" means any substance ... which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics ...

Background

This site has been occupied by a dry-cleaning and fabricare facility since 1993. An open contamination case with the DNR's Remediation and Redevelopment Program titled Leather Rich Inc. is tracked as BRRTS # 02-68-581237 and 06-68-582959. Results of site investigation activities completed to-date have identified soil and groundwater contamination from a hazardous substance discharge of volatile organic compounds (CVOCs). The use of PFAS has been associated with dry-cleaning and fabricare operations both nationally and in Wisconsin; this site may be a source of PFAS contamination.

Site Investigation

Site investigation scoping (Wis. Admin. Code § NR 716.07) and a site investigation work plan (Wis. Admin. Code § NR 716.09) require an evaluation of the history of the facility, previous discharges, and uses on the site that may be associated with discharges of hazardous substances. According to Wis. Admin. Code § NR 716.09, the DNR requires that you submit a site investigation work plan that includes an assessment of PFAS, and per Wis. Admin. Code § NR 716.07 (4), all environmental media affected or potentially affected by the contamination must be evaluated.

As stipulated in Wis. Admin. Code § NR 716.07 and Wis. Admin. Code § NR 716.09, the work plan should include a written evaluation of potential PFAS compounds that were historically or are presently produced, used, handled, or stored at the site. The evaluation should include any available information on whether any products containing PFAS were used in any process services, the duration of PFAS use, the type of PFAS used, and any areas of the site where PFAS may have been used, stored, or discarded. The site investigation work plan shall follow Wis. Admin. Code § NR 716.09 and shall include a sampling and analysis strategy to be used during field investigation that considers all information in the evaluation conducted under Wis. Admin. Code § NR 716.07.

VPLE Review:

DNR completed a comprehensive review of the Report for concurrence with the VPLE process and provides the following comments:

Sources

- Prevent further discharges. Provide information on how systems and operations are being or will be upgraded to prevent future discharges, as required under Wis. Stat. § 292.11(4)(a), since it appears that the current contamination may have originated in the containment area.
- Provide locational information on storage areas and utilities within the building such as floor drains, sewer laterals and other potential pathways for discharges.
- Identify and explain the use of the shed that is north of the building in the fenced area adjacent to the containment area.
- The Leather Rich Inc. website indicates “Scotchgard™, water repel, and stain guard treatments” are offered at this location. The products used in these treatments contain PFAS. Identify and explain operations in the spray room and carpet cleaning room as related to PFAS, and any other operations related to potential PFAS-containing products as described above at this site.

Soil

- The Report identifies the containment area and the area to the west of the containment area as inaccessible. Please be aware that a VPLE Certificate of Completion (COC) cannot be issued unless a complete site investigation to fully identify and delineate contaminants is completed.

Groundwater

- GZA installed two additional monitoring wells and one piezometer.
 - DNR requests that the location of Piezometer PZ-3 have vertical aquifer profiling (VAP) conducted prior to installation of another piezometer. The data will allow the plume to be delineated vertically and will guide the appropriate depth or depths to set the piezometer. A multiport piezometer may be appropriate at this location.
 - DNR requests that a second VAP location be completed near the source. This data will define the plume vertically in the source area.
 - Monitoring well MW-17 at the property line has concentrations that are well above the enforcement standard for both tetrachloroethylene (PCE) and trichloroethylene (TCE); offsite delineation will be required.

- The monitoring well network needs to be surveyed into datum, not a temporary benchmark.
- GZA suggested using the proposed Cycle 10 groundwater quality standards for PCE of 20 µg/L for the enforcement standard (ES) and 0.2 µg/L for the preventive action limit (PAL) in lieu of the current standards in Wis. Admin. Code Ch. NR 140. The proposed Cycle 10 standards are at least two years away from being a published rule and changes may occur prior to implementation. Also, note that Cycle 10 recommends lowering the TCE standards from 5 µg/L to 0.5 µg/L for the ES and from 0.5 µg/L to 0.05 µg/L for the PAL. DNR is unable to recognize any of the recommended levels until the rule is published and in effect. Use the current and applicable groundwater quality standards in Wis. Admin. Code Ch. NR 140.

Vapor

Further vapor assessment is needed.

- Use the sampling data from all media to determine appropriate sampling locations.
- The current office space needs to be evaluated. The TCE concentrations were above industrial vapor risk screening levels (VRSLs) at samples collected next to the office. TCE vapor action levels (VALs) are low due to short-term exposure risks to sensitive populations. See the attached "TCE in the Air" fact sheet from the Wisconsin Department of Health Services.

Migration Pathways

- Provide any as-built drawings for the building that document the containment area details as well as any utilities inside or underneath the building.
- Provide the locations of utilities outside of the footprint of the building, on the property, and those in adjacent rights-of-way.

Receptors

- Identify off-site properties that are potential receptors.
- Identify down-gradient potable wells. Provide documentation of their location and construction.

Other comments

- In all future submittals provide the ch. NR 712 certification page signed by the appropriately licensed individuals as outlined in Wis. Admin. Code § NR 712.09.

Although the site investigation is not complete, GZA proposed to implement an interim action. The DNR concurs with the pilot test of a soil vapor extraction system but suggests waiting on the proposed injection until the information requested above is collected and evaluated.

Schedule

- Proceed with the SVE pilot test and submit results to DNR when the test is complete within as required by Wis. Admin. Code § NR 716.14(2).
- Provide a Site Investigation Work Plan with the above requested information within 60 days of this letter, by May 2, 2020 as required under Wis. Admin. Code § NR 716.09 (1).
- After the additional site investigation activities are approved and completed, DNR expects to receive a comprehensive Site Investigation Report and Remedial Action Plan within 60 days of completion as required by Wis. Admin. Code § NR 716.15(1)(a).

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02-23-2021 Page 4

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DNR appreciates the efforts Leather Rich Inc. has taken to remediate and investigate this property. Please contact me at 414-263-8563 or at timothy.alessi@wisconsin.gov with any questions or concerns regarding this letter.

Sincerely,



Timothy G. Alessi, P.G.
NR Region Program Manager
Remediation and Redevelopment

Cc: Donald P. Gallo, Axley Brynson LLP, N20 W22961 Watertown Road, Waukesha, WI 53186
Heidi Woelfel, GZA Environmental, 20900 Swenson Drive, Suite 150, Waukesha, WI 53186

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EXHIBIT 9

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
2300 N. Dr. Martin Luther King, Jr. Drive
Milwaukee WI 53212-3128

Tony Evers, Governor
Preston D. Cole, Secretary
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October 28, 2020

Ms. Joanne Kantor
Leather Rich Inc.
PO Box 23
Oconomowoc, WI 53066

Subject: Supplemental Site Investigation Work Plan – Conditional Approval and Comments
Leather Rich Inc.
1250 Corporate Road, Oconomowoc, Wisconsin
DNR BRRTS# 02-68-581237/ 06-68-582959 FID# 268414850

Dear Ms. Kantor:

The Wisconsin Department of Natural Resources (DNR) has received the August 24, 2020 Supplemental Site Investigation Work Plan (SIWP) for the above-referenced site. The SIWP was submitted on behalf of Leather Rich Inc. by GZA GeoEnvironmental Inc. (GZA). The submittal of a SIWP is required per Wis. Admin. Code § NR 716.09, as this site is subject to regulation under Wis. Stat. § 292. The DNR reviewed the SIWP for consistency with Wis. Admin. Code §§ NR 716.07 and 716.09. The SIWP was also reviewed for concurrence with the Voluntary Party Liability Exemption (VPLE) process.

Background

This site has been occupied by a dry-cleaning and fabricare facility since 1993. An open contamination case with the DNR's Remediation and Redevelopment Program titled Leather Rich Inc. is tracked as BRRTS # 02-68-581237 and 06-68-582959. Results of site investigation activities completed to-date have identified soil and groundwater contaminated with chlorinated volatile organic compounds (CVOCs) and groundwater contaminated with per- and polyfluoroalkyl substances (PFAS) from a hazardous substance discharge.

It is the responsibility of Responsible Parties to evaluate hazardous substance discharges and environmental pollution including emerging contaminants under the Wis. Admin. Code NR 700 rule series. Emerging contaminants discharged to the environment, including certain PFAS, meet the definition of hazardous substance and/or environmental pollution under Wis. Stat. § 292.01:

- Wis. Stat. § 292.01 (3) "Discharge" means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping.
- Wis. Stat. § 292.01 (4) "Environmental pollution" means contaminating ... air, land, or waters of the state or making the same injurious to public health ...
- Wis. Stat. § 292.01 (5) "Hazardous substance" means any substance ... which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics ...

Per Wis. Admin. Code § NR 716.07 and Wis. Admin. Code § NR 716.09, site investigation scoping and work plans should include an evaluation of potential PFAS compounds and other applicable emerging contaminants that were historically or are presently produced, used, handled, or stored at the site. Site investigation work

Leather Rich Inc.
BRRTS# 02-68-581237; 06-68-582959

plans should also include a sampling and analysis strategy to be used during field investigation that provides information in the evaluation conducted under Wis. Admin. Code § NR 716.07.

Discharges of PFAS to the environment are subject to regulation under ch. 292, Wis. Stats., and chs. NR 700-754, Wis. Adm. Code.

The SIWP is conditionally approved pending the additional work outlined below:

Soil

- The DNR will require a soil sample be collected and analyzed for PFAS in the source area at the proposed vertical aquifer profiling (VAP) location proposed between MW-6 and MW-7.

Groundwater

- GZA has proposed the installation of two VAP borings and two additional off-site monitoring wells.
 - The SIWP proposes the VAP borings to be sampled for CVOCs only. The DNR requires that samples collected from the VAP borings also be analyzed for PFAS.
 - Two monitoring wells are proposed off-site in the downgradient direction on the Hein Electric property. The proposed borings are spaced approximately 40 and 120 feet downgradient from the property line. The currently known extent of the chlorinated plume is most of the Leather Rich property. The DNR requests that one of these well locations be moved further downgradient either to the western edge of the Hein Electric property or into the Executive Drive right-of-way near its intersection with Valley Road. The purpose of this is to determine if there are impacted potable wells in an expedited manner.
 - Off-site piezometers may be needed to delineate the groundwater plume. This will be addressed with a review of the future proposed groundwater sampling results from the existing well network and the VAP borings.
- In future reports, both the individual and combined exceedances need to be identified for PFAS.

Vapor

- The SIWP states that no vapor sampling is planned until after dry cleaning operations cease and the soil vapor extraction (SVE) system is operational.
 - The DNR requests an assessment of the HVAC system to determine the connectivity of the air spaces in the operational area and the offices.
 - If office air spaces are not isolated from the operational area, sub-slab and indoor air samples will be warranted in the office space.
 - The SVE system will need to demonstrate that it will impact sub-slab vapors across the footprint of the building.

Receptors

- Identify down-gradient potable wells. Provide documentation of their location and construction. The DNR recommends placing these in cross-sectional view with the known contamination plume after the additional investigation is completed.

Schedule

The SIWP does include a schedule for conducting the field investigation and reporting the results, per Wis. Admin. Code § NR 716.09(2)(h). Furthermore, the DNR is requesting implementation of the following schedule:

FILED
02-23-2021
Clerk of Circuit Court
Waukesha County

Leather Rich Inc.
BRRTS# 02-68-581237; 06-68-582959

- The DNR is requesting the submittal of a revised site investigation work plan by November 27, 2020, to address the comments identified above. The work plan must comply with all the requirements identified in Wis. Admin. Code § NR 716.09(2).
- Results of the site investigation activities must be submitted to the DNR in a comprehensive Site Investigation Report (SIR) that meets the requirements in Wis. Admin. Code § NR 716.15. The SIR shall be submitted to the DNR within 60 days after completion of the field investigation and receipt of laboratory data.

Please be aware that if the above requirements are not met, a notice of noncompliance (NON) may be issued for the site. 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.

Additional resources regarding PFAS investigation and cleanup can be found on the DNR webpage <https://dnr.wisconsin.gov/topic/PFAS/Cleanup.html>.

The DNR appreciates the efforts Leather Rich Inc. has taken to remediate and investigate this property. Please contact me at 414-881-1015 or at timothy.alesi@wisconsin.gov with any questions or concerns regarding this letter.

Sincerely,



Timothy G. Alessi, P.G.
Southeast Region Program Manager
Remediation and Redevelopment Program

Cc: Donald P. Gallo, Axley Brynelson LLP, N20 W22961 Watertown Road, Waukesha, WI 53186