

April 23, 2019

Heather Bestler
Olmsted County
151 Fourth St SE
Rochester MN 55904

RE: No Association Determination
Penz Property, 4613 70th Avenue Northeast, Rochester
MPCA Site ID: BF0000919
Billing ID: 125043
PIN: 73-14-41-033390

Dear Heather Bestler:

This letter is in response to the your request for a determination under Minn. Stat. § 115B.178 that certain actions proposed to be taken by Olmsted County at the Penz Property site, located at the address referenced above (the Site), will not constitute conduct associating Olmsted County with the release or threatened release of hazardous substances, pollutants, or contaminants at the Site for the purpose of Minn. Stat. § 115B.03, subd. 3(4).

The Minnesota Pollution Control Agency (MPCA) staff in the Voluntary Investigation and Cleanup (VIC) Program has reviewed the documents submitted for the Site. The 22.2-acre Site was used as agricultural land since at least 1937. In 1954, the Site was purchased by the United States (US) Government and developed as the 808th Aircraft Control and Warning Station. In 1957, the Site was purchased by the Minnesota State Department of Health, Education, and Welfare and used as a juvenile detention center and then as an automotive maintenance training facility. From 1961 to 2017, the Site had various owners that used it as agricultural land and for maintenance of farm equipment. In addition, the Site was used for storage and/or dumping of shredded tires, domestic waste, old farm equipment, petroleum storage tanks, and tanks and drums of agricultural chemicals. During the 1990s, the former barracks were used as residential rental units.

Three former barrack buildings were known to contain asbestos building materials and two were burned in 2009. During Site reconnaissance, small containers were observed to be actively leaking materials to the environment. The MPCA had issued an Administrative Order requiring the previous Site owner to dispose of asbestos-containing demolition debris and asbestos-containing ash and soil; not to dispose of solid waste by burning; and to properly remove and dispose of accumulated solid waste. There is no evidence the owner complied with that order. The Site was tax-forfeited on June 1, 2017 and came into the possession of Olmsted County. Olmsted County has fenced off a majority of the buildings with a six-foot security fence. Olmsted County contacted the MPCA for assistance which, in turn, contacted the United States Environmental Protection Agency (EPA) for assistance in assessing and addressing hazardous conditions on the Site.

In May 2018, the EPA Emergency Response Section performed a Removal Site Evaluation, prepared a Sampling and Analysis Plan, and collected samples of potential asbestos containing materials (ACM), potentially contaminated soil, and potentially hazardous, containerized liquids. The EPA Emergency Response Section determined that a time-critical removal action by the EPA was not necessary at the time. The MPCA Emergency Management Unit hired a contractor to containerize and stage the drums and chemical containers in the former Mess Hall Building. Several of the unknown liquids contained chlorinated solvents, including tetrachloroethene (PCE). In August 2018, Olmsted County hired a contractor to remove the drums, totes, and boxes of waste to the appropriate disposal facilities. In November 2018, Olmsted County hired a contractor to properly abate the ACM identified in the former Mess Hall Building.

A limited number of soil samples were collected and analyzed for volatile organic compounds (VOCs), the eight Resource Conservation and Recovery Act (RCRA) metals, and herbicides and/or pesticides. 1,4-dioxane was detected in the soil at a concentration of 2.8 milligrams per kilogram (mg/kg), which is less than the draft chronic soil reference value (SRV) of 14 mg/kg for residential land use. For the purpose of this determination, the *threatened release* at the Site consists of PCE in soil and the *identified release* at the Site consists of 1,4-dioxane in the soil (Identified Release).

Based upon a review of the information provided to the MPCA VIC Program, and subject to the conditions set forth in this letter, a determination is hereby made pursuant to Minn. Stat. § 115B.178, subd. 1 that the Proposed Actions listed below will not associate Olmsted County with the Identified Release for the purpose of Minn. Stat. § 115B.03, subd. 3(4). This determination applies only to the following Proposed Actions:

- Purchase of the Site;
- Conducting subsurface environmental investigations at the Site in accordance with an MPCA-approved work plan;
- Pre-demolition abatement of regulated/hazardous substances in the Site buildings in accordance with state and federal rules;
- Removal of solid waste in accordance with a Management Plan;
- Implementation of environmental response actions at the Site under an MPCA-approved Response Action Plan;
- Entering into a long-term lease with People's Energy Cooperative for the development of a solar installation on the southern portion of the Site.

This determination is made in accordance with Minn. Stat. § 115B.178, subd. 1, and is subject to the following conditions:

1. The Proposed Actions shall be carried out as described herein;
2. Olmsted County shall cooperate with the MPCA, its employees, contractors, and others acting at the MPCA's direction, in the event that the MPCA takes, or directs others to take, response actions at the Site to address the Identified Release or any other as yet unidentified release or threatened release of a hazardous substance, pollutant, or contaminant, including, but not limited to, granting access to the Site so that response actions can be taken;

3. Olmsted County shall avoid actions that contribute to the Identified Release or that interfere with response actions required under any MPCA-approved response action plan to address the Identified Release;
4. In the event that any suspected hazardous substances are encountered during Site activities (i.e., demolition, grading, redevelopment, etc.), Olmsted County shall notify the MPCA project staff immediately in order to determine appropriate handling, sampling, analysis, and disposal of such wastes; and
5. Institutional controls, such as an Affidavit Concerning Real Property Contaminated with Hazardous Substances or an Environmental Covenant and Easement will likely be required on a portion or portions of the Site once a Response Action Plan has been implemented. The MPCA will discuss the options/requirements with the property owner when appropriate.

Pursuant to Minn. Stat. § 115B.178, subd.1, when Olmsted County takes the Proposed Actions in accordance with the determination in this letter, subject to the conditions stated herein, the Proposed Actions will not associate Olmsted County with the Identified Release for the purpose of Minn. Stat. § 115B.03, subd. 3(4).

The determination made in this letter applies to Olmsted County's successors and assigns if the successors and assigns: 1) are not otherwise responsible for the Identified Release at the Site; 2) do not engage in activities with respect to the Identified Release which are substantially different from the activities which Olmsted County proposes to take, as described herein; and 3) comply with the conditions set forth in this letter.

Please be advised that the determination made in this letter is subject to the disclaimers found in Attachment A and is contingent on compliance with the terms and conditions set forth herein, including the submittal of the copy of the recorded Environmental Covenant documents.

If you have any questions about the contents of this letter, please contact Shanna Schmitt, Project Manager, at 651-757-2697 or by email at shanna.schmitt@state.mn.us.

Sincerely,

Gary L. Krueger

This document has been electronically signed.

Gary L. Krueger
Supervisor, East Metro Unit
St. Paul Office
Remediation Division

GLK/SS:ld

Enclosure

cc: Steve Jansen, Braun Intertec Corporation (electronic)

Disclaimers

Penz Property

MPCA Site ID: BF0000919

1. Reservation of authorities

The Minnesota Pollution Control Agency (MPCA) Commissioner reserves the authority to take any appropriate actions with respect to any release, threatened release, or other conditions at the Site. The MPCA Commissioner also reserves the authority to take such actions if the voluntary party does not proceed in the manner described in this letter or if actions taken or omitted by the voluntary party with respect to the Site contribute to any release or threatened release, or create an imminent and substantial danger to public health and welfare.

2. No MPCA assumption of liability

The MPCA, its Commissioner and staff do not assume any liability for any release, threatened release or other conditions at the Site or for any actions taken or omitted by the voluntary party with regard to the release, threatened release, or other conditions at the Site, whether the actions taken or omitted are in accordance with this letter or otherwise.

3. Letter based on current information

All statements, conclusions and representations in this letter are based upon information known to the MPCA Commissioner and staff at the time this letter was issued. The MPCA Commissioner and staff reserve the authority to modify or rescind any such statement, conclusion or representation and to take any appropriate action under his authority if the MPCA Commissioner or staff acquires information after issuance of this letter that provides a basis for such modification or action.

4. Disclaimer regarding use or development of the property

The MPCA, its Commissioner and staff do not warrant that the Site is suitable or appropriate for any particular use.

5. Disclaimer regarding investigative or response action at the property

Nothing in this letter is intended to authorize any response action under Minn. Stat. § 115B.17, subd.12.

6. This approval does not supplant any applicable state or local stormwater permits, ordinances, or other regulatory documents.