

# Sampling of PFAS Responsible Parties

*Prepared on May 10th, 2024*

## Background and Narrative

This document contains a list of parties that arguably should not be held liable for contamination given that they didn't create the hazard, or in some cases, were legally permitted to perform operations that created the hazard, or even were obligated to create the hazard. The DNR and Governor have time and time again asserted that innocent parties are not subject to enforcement from the DNR, but the evidence shows otherwise. While there are many such cases on here for parties that could, or perhaps should not be held liable, this list is not fully conclusive as some parties may be missing. Additionally, not all the facts are fully available on BRRTS, so it's possible, even if unlikely, that a party listed below may have additional facts in their case that may lend credence to their culpability in the contamination event.

Instead of a fully definitive case by case list for innocence, this list should be viewed in aggregate to show that the DNR doesn't always only find guilty parties and make them address their harm. Instead, too often, they just find the party of easiest convenience to assess as responsible, then threaten them with the long arm of enforcement, including up to and perhaps over \$10,000 per day in fines per violation if they do not comply in a timely manner. Even if an entity wants to remove their status as a Responsible Party, the DNR requires a form to be submitted with a \$700 fee and scientific evidence from a certified professional to point the finger at a different entity. The evidence can often only be found with access to that property of the potentially culpable party, which for obvious reasons often poses a barrier in this process. If another party cannot be found, or even in some cases when they were found and had ample evidence of that party's culpability and of their own innocence, the DNR will still typically keep that innocent entity as a Responsible Party. In the end, it's about the parties of easiest convenience.

## Various Examples

Charles and Marilyn Perry, the owners of Ashview Terrace Apartments in Ashwaubenon

- “The investigation was initiated after it was discovered, during a search of Brown County records, that a lease agreement had been signed in 1952 between Hattie Willard, former owner of property on the north side of Willard Drive and the former Fort Howard Paper Company (now Georgia Pacific). The lease allowed the paper company to dispose of mill or other refuse or waste into a "borrow pit" located on Willard property. Your property (Ashview Terrace apartments) at 988-1020 Willard Drive was part of the Willard property and is at the location of the "borrow pit." ... Under Wis. Stats. § 292, you may ultimately be responsible for investigating and restoring the environment on the above referenced property as the person in "possession" of the contamination. ... Given this, the Department is presently pursuing another person as the responsible party (RP) for this contamination with the intent of having them move forward with the investigation and remediation of your property. Therefore, the Department is exercising its enforcement discretion in this situation, and will not require you to hire an environmental consultant at this time, as long as the other party cooperates with the Department to address the environmental issues.”

– DNR RP Letter, August 10th, 2015

- In other words, *if* Georgia Pacific chose not to pay, or ran into financial problems removing their ability to pay, the DNR is directly saying that they may hold these property owners liable for environmental remediation from contaminants they did not cause, allow, or likely even know about. In the meantime, they're still being designed as a Responsible Party regardless of fault.

#### City of Chilton

- The City was deemed a Responsible Party for TCE in 1981 due to intrusion from an industrial spill into a high capacity drinking water well in their municipal system. PFAS contamination was added in the last few years, with other compounds also added over time, including heavy metals and VOCs. The compounds were found in soils at the Chilton Planting Company, but while their industrial contamination site has closed on the DNR's website and their responsibility is over, the City of Chilton is still being held responsible for contamination they didn't cause.

#### Sean Fraser, the head of Fraser Properties, LLC for a property in Chilton

- “Based on the information available to the Wisconsin Department of Natural Resources (DNR), we believe that Fraser Properties, LLC, is the owner of the above-referenced property. The purpose of this letter is to inform you that a hazardous substance discharge occurred on the property. As the property owner, you are in possession or control of the hazardous substance discharge or other environmental pollution (contamination) at the above-described site, and as such, you may be held responsible under Wisconsin Statutes (Wis. Stat.) ch. 292 for the investigation and cleanup of the contamination at the site. ... The DNR is exercising its discretion to pursue the person who caused the contamination at this time, as outlined in the enclosed letter to Newell Rubbermaid, Inc., dated January 22, 2004. If the causer continues to make sufficient progress under Wis. Admin. Code chs. NR 700 – 799, the DNR will not seek your involvement in investigation and cleanup; however, if at any time the causer is no longer able or willing to continue progress the DNR may require that you take the appropriate response actions.”

– DNR RP Letter, May 25th, 2022

- Similar to the Ashview Terrace Apartments in Ashwaubenon, Mr. Fraser is only off the hook for addressing this contamination if Newell Brands continues to make progress in addressing the environmental contamination. If at any point they choose to stop or cannot continue, the DNR has noted that Mr. Fraser did not cause the contamination, but he will nonetheless be held liable.

#### American Transmission Company, Madison

- While it was an ATC site that was the location of a fire, ATC did not use foam to put out the fire. Additionally, there are no accusations of negligence in the cause of the fire in the information available online. Instead, simply owning the equipment that sparked a fire was enough to deem them responsible for an expensive remediation process from contaminants they didn't spread.

#### City of Eau Claire

- “Evaluate potentially responsible parties (PRPs) and take such enforcement actions as may be warranted. The DNR shall not consider the City a PRP for voluntary cooperative actions taken by the City under this Agreement in an attempt to mitigate the effects of PFAS on the municipal water supply.”

- Intergovernmental Agreement between Eau Claire and DNR, August 5th, 2021
- Instead of being added as a Responsible Party, Eau Claire appears to have had their hand forced into signing an Intergovernmental Agreement with the DNR which assigned many of the same burdens as a Responsible Party to the City. These include eight conditions such as private well testing, additional permitting, design reports, monitoring well network, additional sampling, and more. While the City was able to avoid enforcement for the time being thanks to this agreement, the agreement can be voided if the DNR determines that Eau Claire may be a Responsible Party, a decision that could be likely given the DNR's inability to find other RPs to date.

#### Carol Garnder, Dodgeville

- "Information submitted to the department regarding this site indicates you are responsible for the discharge of a hazardous substance or other environmental pollution (hereafter referred to as "contamination") at the above-described site."
  - DNR RP Letter, May 21st, 2021
- Ms. Garnder owns a 22 acre farm property in the City of Dodgeville. The DNR has not disclosed what resulted in the designation of a Responsible Party for this property, but did note that in December 2020 there were non-actionable levels of PFAS detected in soil, groundwater, and firefighting debris. This non-actionable levels report was followed by a RP designation just five months later. It's unclear if this designation was as a result of a fire on the property, nor what the exact factors of such a fire would be (accidental, negligent, arson, etc.). However, if it was a fire that caused this designation, it was highly unlikely that the property owner caused the contamination, but rather the fire department made the decision to protect human life and property in the surrounding neighborhoods by using firefighting foam. Additionally, it's possible that nearby industrial land uses caused the contamination, and Carol is a victim of circumstance.

#### Eaton Corporation, Watertown

- While pollution from other contaminants were likely caused by this manufacturing facility (such as heavy metals, TCEs, PCEs, CVOCs, etc.), environmental consultants noted "The potential for off-site impacts and sources exists. PFAS changes and trends, especially at the downgradient and upgradient site boundaries, will be evaluated by continued groundwater monitoring." in their January 2024 report, the most recent update. In other words, levels in downgradient and upgradient wells were similar, unlike the other contaminants, meaning they may not be culpable for this contamination. However, unless another party can be found and proven by the Corporation to be liable, they will not get off the hook for PFAS. Unfortunately, potentially due in part to the DNR's approach to investigation and notice of violations for this facility (though timing of these events could purely be a coincidence), the corporate entity made the decision to shut down this plant in September 2021, causing 56 employees to lose their jobs.

#### City of Manitowoc

- Statements given to a warden in December 2013 note that Aluminum Specialty, a company in Manitowoc, was very likely responsible for dumping waste oil and benzene into the gravel pit under the cover of night. The warden's reports had firsthand accounts of these events. Another party, Newell Brands, the parent company of Mirro Corporation which owned Aluminum Specialty, has been identified as a Potentially Responsible Party along with the City for this contamination at the Former Newton Town Gravel Pit. Based on all appearances, the City has no

connection to this contamination beyond property ownership. However, despite the illegal nature of Aluminum Specialty's dumping, the City is still being held as a Responsible Party given that they are the "possessor" of the contamination, which includes PFAS.

#### River North, LLC, Manitowoc

- "On September 8, 2021, Harris Byers of Stantec Consulting Services Inc., on behalf of River North, LLC, notified the Wisconsin Department of Natural Resources (DNR) that the Community Development Authority of the City of Manitowoc (CDA) transferred the parcel of land with address 1000 River Point Drive, Parcel ID # 052-000-173-100.00, to River North, LLC on August 27, 2021, for the purpose of Brownfield redevelopment as a multifamily apartment complex. This parcel of land was formerly part of the Riverpoint District open environmental case, BRRTS # 02-36-585491, and has been split into a separate environmental case for redevelopment purposes. Since the CDA's local governmental unit (LGU) environmental liability exemption under Wis. Stat. §292.11(9)(e) does not transfer to private parties, River North, LLC is now considered a responsible party as the new possessor of the above-described site that has known hazardous substance discharges or other environmental pollution (hereafter referred to as "contamination")."
  - DNR RP Letter, September 30th, 2021
- While the contamination and potential responsibility was likely disclosed to River North, LLC prior to transfer, unlike many property transactions prior to recent decades, the underlying problem of the City having potentially been liable prior to this transfer is still undue given the historic industrial uses of this property. There is no evidence the City was responsible for the contamination, and certainly that River North, LLC was responsible for the contamination. Instead of finding the party truly responsible, the DNR has determined that River North, LLC is a convenient solution for addressing liability, given that they are now the possessor of the PFAS.

#### West River Lofts, Two Rivers

- Despite Mirro Aluminum Company, now owned by Newell Brands, being determined to also be a Responsible Party in this case due to the site being a former manufacturing site for nonstick cookware, West River Lofts – a multi-dwelling unit housing company that owns the property – was also determined to be a Responsible Party as the possessor of the contamination. As a result, it is "recommended" that they hire a qualified environmental consultant, complete and submit reports, and begin remedial action steps, or face enforcement actions. Unlike Ashview Terrace Apartments in Ashwaubenon or Fraser Properties in Chilton, West River Lofts is not having their enforcement deferred pending other parties completing the cleanup efforts. West River Lofts is being held liable, despite facts found of another party causing contamination.

#### City of Wausau

- On a former industrial property owned by Conner Forest Industries, manufacturing of cabinetry was done in the 1950s to the 1980s. The DNR previously considered this a contamination site, with the company that caused the contamination being held responsible, but the site was closed in the 1990s. The City of Wausau eventually took control of the property, and the DNR decided to require it to be reopened to test for PFAS. Unfortunately, PFAS were found on the property at levels above detection, so the property was fully reopened. Now, the City of Wausau is on the

hook for cleanup at this property, despite it previously being a closed by the DNR and despite the City not being responsible for the contamination, but instead simply being the “possessor.”

#### Village of Thiensville

- According to a report by the DNR, in February, 1991, vandals unlatched lids from 55 gallon drums and tipped over these drums to where they spilled on Village-owned highway department property during the nighttime. Despite the vandals being the cause of this contamination, with the contaminants previously safely contained, and despite the Village taking immediate voluntary action to notify the DNR and begin mitigating any environmental damage with a backhoe, the DNR choose to make the Village the Responsible Party for this contamination which includes petroleum, VOCs, and more recently, PFAS. While the vandals caused this damage in the course of only a few minutes, the Village has been on the hook for more than thirty years’ worth of environmental consulting fees, remediation and testing expenses, legal costs, administrative fees for the DNR, and other costs, taking away this taxpayer money that could otherwise be used to fund other governmental functions like roads or the fire department.

#### Wisconsin Department of Administration

- In a turn of events, not only is the DNR using the Spills Law to go after the Wisconsin National Guard and Air National Guard, but they’ve assessed the Wisconsin Department of Administration as a Responsible Party for a leak in an underground gasoline storage tank removed in 1991 at the Hill Farms Heating Plant. According to site documentation, the tanks were present from the previous owner of the property, which was held as farmland prior to becoming a state office building. Additionally, there was a fire at the property in 2017, and it’s possible that PFAS-containing firefighting foal was used to put out the fire. While the exact source of the contamination is unknown, it is not speculated that DOA caused the contamination event. Yet, as the possessor of the contamination, they’re being held as responsible.

## **Landfill Examples**

Landfills accept waste, they don’t create it. Landfills, even ones dating back fifty years, have their construction, operation, and closure plans reviewed and approved by the DNR. They are required to operate with a license and in accordance with up-to-date regulations. And yet, despite not creating the waste that caused the contamination, and despite operating fully within all applicable regulations, landfills are still often the targets of enforcement orders through contamination found overtime.

#### City of New Richmond

- The City’s landfill site was opened in 1976 and ran through 1982. It was constructed, operated, and closed in accordance with DNR regulations, and had an active license to operate throughout the process. Despite the DNR allowing the acceptable of waste into this landfill, waste largely not created by the local government itself, the DNR opened an investigation in 2000 and has since assigned the City of New Richmond alone as the Responsible Party. Initially, this included several pollutants, including two VOCs. Later, PFAS was added, with levels detected around 20 ppt in monitoring wells, just barely above the state’s proposed groundwater standard. The City is being held responsible for cleanup, despite no known evidence that the landfill was not fully compliant with DNR regulations, and a DNR license, for the duration of its operations.

### City of Hayward

- Similar to the City of New Richmond, the City of Hayward had a landfill license from the DNR and opened, operated and closed their landfill which operated from the mid-1960s to 1985 in accordance with DNR regulations. Despite waste being accepted that was created by other parties, the DNR assigned the City as the Responsible Party after an investigation starting in 1995, with PFAS being discovered more recently.

### Lemberger Landfill Sites, Franklin (Manitowoc County)

- This remediation site was opened in 1981. The Responsible Party, designated as its owner, Kenneth Lemberger, passed away in 2022 at the age of 78. He spent the last 41 years, over half of his life, dealing with the DNR and EPA on contamination he accepted but didn't cause. This very likely included hundreds of thousands of dollars spent on testing wells, remediation, environmental engineers, hydrologists and other professionals, and legal compliance fees. Given that he was held personally responsible, not responsible through the business, these costs may have had to come out of his own pocket, depending on the business's legal structure. Despite Mr. Lemberger's passing, he is still listed as the only known Responsible Party for this landfill site.

## **Airport Examples**

The FAA has for decades required public-use airports, particularly public-use commercial airports, to use PFAS-containing firefighting foam not only for emergency response operations, but also for training. In fact, up until June 20th, 2019, any public-use commercial airport in the United States seeking FAA certification or recertification required the use of this foam not only in training, but also during FAA Airport Certification Safety Inspections when a member of the FAA was on site and supervising these drills. It wasn't until December 2022 that commercial airports could legally get rid of PFAS-containing firefighting foam in favor of options with little to no PFAS. Similar regulations have also been in place for the Department of Defense, which covers National Guard and Air National Guard training and emergency response. Despite the use of this foam not only being necessary in emergencies, but required by the federal government for regular training and certification, these airports are still being held liable for the contamination by the DNR, and in some cases, are being put into enforcement.

### City of La Crosse

- “On April 18, 2019, the Remediation and Redevelopment program of the Wisconsin Department of Natural Resources (WDNR) was made aware that Polyfluoroalkyl Substances (PFAS) have been routinely detected in municipal well 23, located on the east side of French Island. After discussing the matter with Utilities Manager, Bernard Lenz, and Water Superintendent, Lee Anderson, and after reviewing the file of the above-mentioned site that investigated VOC impacts to municipal wells 23 and 24, the WDNR has determined that contamination on or from the above-described site poses a threat to public health, safety, welfare or the environment. The volatile organic compound (VOC) release for which the City of La Crosse was responsible was closed by WDNR on May 5, 2010. Based on the information that has been submitted to WDNR regarding this site, we believe that this newly reported PFAS contamination is related to firefighting foam that was used at the same fire training burn pits which were the source of VOC contamination in municipal wells 23 and 24. The WDNR also believes that a response action in

the form of additional investigation and possible remedial action is needed due to the known impacts above the health advisory level to municipal well 23, and the potential for impacts to municipal well 24. As owner of the property where the residual contamination is found, and the entity that caused the discharge of the hazardous substance, the City of La Crosse is responsible for restoring the environment at the above-described site under s. 292.11, Wis. Stats., known as the hazardous substances spills law.”

– DNR RP Letter, May 10th, 2019

#### City of Rhinelander, Oneida County, and Rhinelander/Oneida County Airport

- “This letter is to advise you that the Department of Natural Resources (department) has reason to believe that the Rhinelander-Oneida County Airport, the City of Rhinelander, and Oneida County responsible party (RP Group) is in violation of the state hazardous substance spill law, Ch. 292, Wisconsin Statutes (Wis. Stats.), at the facility located at 3375 Airport Road, Rhinelander, Oneida County, Wisconsin (the Site). ... Please be advised that the department is authorized under Chapter 292, Wisconsin Statutes to seek injunctive or other appropriate relief for violations of spill pollution laws, including forfeitures of not more than \$5,000 per day of violation. Each day of violation is considered a separate offense. In addition, the department has the authority under s. 292.94, Wis. Stats., to assess non-reimbursable fees as specified in ch. NR 749, Wis. Admin. Code, to parties involved in enforcement actions. This Notice of Violation constitutes a Notice of Claim and Fulfills the requirements of s. 893.80, Wis. Stats.”
  - DNR Notice of Violation and Notice of Claim Letter, September 22nd, 2022
- The Responsible Parties were required to find an environmental professional, construct a plan for monitoring wells and testing schedules, contract with a certified lab for testing (of which there are few), and get FAA approval prior to any construction in the airport property. The DNR sent the Notice of Violation letter prior to FAA approval being granted in February 2023, and yet the DNR threatened fines of up to \$20,000 per day for the firefighting training activities not only allowed under law, but required under federal law up until 2019.

#### Chippewa Valley Regional Airport, Eau Claire

#### City of Madison, Dane County Regional Airport, Truax Field, and Wisconsin Air National Guard

#### General Mitchell International Airport and Wisconsin Air National Guard, Milwaukee

#### Volk Field and Wisconsin Air National Guard, Camp Douglas