

Thompson, Matthew A - DNR

From: Ashenfelter, Barry J - DNR
Sent: Monday, April 15, 2019 10:26 AM
To: Meyer, Jennifer - MUN; Thompson, Matthew A - DNR
Cc: Coogan, Thomas J - DNR
Subject: RE: contaminated land (potential WAM project site)

Jen –

I'm including our colleague Tom Coogan on this email, based on your recent message below.

Tom manages [DNR's Wis. Assessment Monies \(WAM\) program](#), which can conduct environmental assessment work at eligible sites. This could provide the information the Board is interested in.

It would probably be good for you, Matt, and Tom to discuss the potential use of WAM over the phone in the near future. I'll leave it up to you all to arrange that.

Your phone number is listed below, and Tom's phone number is 608-267-7560.

Thanks.

Barry

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Barry Ashenfelter

Phone: 608-267-3120

barry.ashenfelter@wisconsin.gov

From: townofpleasantvalley@gmail.com <townofpleasantvalley@gmail.com>
Sent: Monday, April 15, 2019 10:19 AM
To: Ashenfelter, Barry J - DNR <Barry.Ashenfelter@wisconsin.gov>; Thompson, Matthew A - DNR <MatthewA.Thompson@wisconsin.gov>
Subject: RE: contaminated land

Barry and Matt-

The Town Board would like to have some sort of site assessment and/or additional information prior to acquiring the property as maintaining the exempt status is a high priority to us.

At this time, we are aware of an underground fuel tank that was removed a number of years ago is the reason the Notice was placed on the deed. Prior to the building being a home/taxidermy business, it was a general store with a fuel pump. This would have been prior to 1970ish.

- [So, in summary, Matt can work with you and your contractors to evaluate the property condition and determine ahead of time what, if any, actions should be taken to protect public health given the](#)

property's new use. This is typically much less activity than a non-exempt property owner would be required to do.

Please let me know how we go about this.

Thanks,
Jen

Jennifer Meyer
Clerk/Treasurer
Town of Pleasant Valley
Pop. 3286
Eau Claire County, Wisconsin
www.townofpleasantvalley.com
townofpleasantvalley@gmail.com
715-878-4645

From: Ashenfelter, Barry J - DNR <Barry.Ashenfelter@wisconsin.gov>
Sent: Monday, April 15, 2019 10:03 AM
To: Meyer, Jennifer - MUN <townofpleasantvalley@gmail.com>
Subject: RE: contaminated land

Hi –

You're welcome. Call or email me anytime with these types of questions. I'm happy to help.

Best wishes,

Barry

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Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Barry Ashenfelter
Phone: 608-267-3120
barry.ashenfelter@wisconsin.gov

From: townofpleasantvalley@gmail.com <townofpleasantvalley@gmail.com>
Sent: Monday, April 15, 2019 9:22 AM
To: Ashenfelter, Barry J - DNR <Barry.Ashenfelter@wisconsin.gov>
Subject: RE: contaminated land

Thank you for the information.
Jen

From: Ashenfelter, Barry J - DNR <Barry.Ashenfelter@wisconsin.gov>
Sent: Thursday, April 11, 2019 12:33 PM
To: Meyer, Jennifer - MUN <townofpleasantvalley@gmail.com>
Cc: Thompson, Matthew A - DNR <MatthewA.Thompson@wisconsin.gov>; Haag, Christine T - DNR

<Christine.Haag@wisconsin.gov>

Subject: Fw: contaminated land

Hi again Jennifer -

I just noticed that I forgot to include some important text in my third bullet point under your second question. Sorry about that. Please see the new text added below in red.

Thanks again.

Barry

From: Ashenfelter, Barry J - DNR
Sent: Thursday, April 11, 2019 12:14 PM
To: Meyer, Jennifer - MUN
Cc: Thompson, Matthew A - DNR; Haag, Christine T - DNR
Subject: Re: contaminated land

Hi Jennifer -

Good questions.

In this particular situation, as you seem to know, the county immediately/automatically obtains the state's local government liability exemption, authorized by Wis. Stat. sec. 292.11(9)(e) - <https://docs.legis.wisconsin.gov/statutes/statutes/292/11/11/9/e>, when it takes title to property through tax delinquency proceedings. Further, the town will also obtain the liability exemption if it takes title to this foreclosed-upon property from the county, by any method, per the same statute.

I've reprinted your questions below, and my replies are in the blue-colored text. My replies are offered based on your statement that: "If we acquire the property, the Town's plan is to

properly raze the building to create a green space or parking area. We have already had the building tested for asbestos and are awaiting the results."

Questions -

1. By razing and creating green space, we still qualify for "Local Government Liability Exemptions", correct?
 - Yes, as long as the Town complies with conditions of the local government liability exemption, as listed in Wis. Stat. 292.11(9)(e). See especially subsections (2) and (4).
 - The two main ways to lose all or part of the local government liability exemption for a property are by causing contamination on the property (before or after taking title), and by not following DNR directions (if any) to make sure the next use of the property includes health and safety protections.
 - The local government exemption statute, cited above, also lists a few other conditions for maintaining the exemption, such as allowing DNR and its contractors, plus parties responsible for causing the contamination, on the property to do investigation and remediation work. But, the main thing is to make sure your activities on the property don't cause any new soil, water, sediment, etc., contamination, or make any existing contamination worse.
 - The best way to avoid doing something that might affect your exempt status is to keep DNR (in this case, Matt and me) informed of your, and your contractor's, plans at the property (as you are doing with this email).

2. Unless we were to construct a building (of which we have no intentions of doing since the space is small), there is nothing else we would need to do, correct?

- As noted above, the local government must make sure the property safe for the new use (e.g. protect public health and safety).
- Wis. Stat. sec. 292.11(9)(e)(4) states that the local government exemption does not apply if DNR directs the LGU to take certain actions "to reduce to acceptable levels any substantial threat to public health or safety when the property is developed or put to that intended use... and the local governmental unit does take that action as directed."
- So, the Town could lose its exemption if DNR determines that the environmental conditions at the property pose a significant threat to public health in conjunction with the new use of the property, and directs the Town to take certain actions to protect health and safety, and the Town does not take these actions and moves forward with it's new use for the property.
- For example, if there are hazardous soil contaminants near the surface that people could contact when using the park, DNR (Matt) may direct the Town to remove or cover that contamination. Or, if you did construct a building and there were hazardous soil gases on the property that could enter the building, DNR might direct you to construct the building in a way that keeps the soil gases out of it. Etc.
- Also, as noted above, the local government liability exemption is only for contamination that exists on a property prior to local government ownership, and that is not caused, through action or inaction, by the local government.
- So, in summary, Matt can work with you and your contractors to evaluate the property condition and determine ahead of time what, if any, actions should be taken to protect public

health given the property's new use. This is typically much less activity than a non-exempt property owner would be required to do.

3. Are you aware of any grant monies available to help raze the building and return the lot to green space?

- In general, unfortunately, no.
- DNR does not have any grant funding available for asbestos removal or building demolition.
- We do, however, have a program (called WAM, see <https://dnr.wi.gov/topic/brownfields/wam.html>), that could pay for (and manage) environmental assessment work at a property (this one or others). The town does not need to do environmental assessment work (e.g. property history research, visual inspection by an environmental professional, possibly soil and groundwater sampling, etc.) before taking title to a property, but it is often a good idea and a Phase I environmental site assessment performed before acquisition also has the (mostly unneeded, but still nice to have) benefit of providing some liability protection from the federal CERCLA/Superfund law. If you are interested in finding out if WAM services are a possibility for this property, please contact our colleague Tom Coogan at 608-267-7560.
- DNR's Stewardship Program, <https://dnr.wi.gov/topic/stewardship/>, may not be an option for this property, but could potentially be used at other properties, and Stewardship Funds can be used for some types of environmental assessment, investigation, and cleanup work.
- WEDC also offers a brownfields site assessment grant and a brownfields cleanup grant, along with their standard community development initiative grants, that can sometimes be used to help pay for demolition activities that help get at underground contamination. See <https://wedc.org/programs-and-resources/site-assessment-grant-program/> for the site assessment grant info.

4. Any other additional information you may have for me would be greatly appreciated.

- Please feel free to call or email me any time about these types of issues. I'm happy to help make sure the Town gets all the exemptions and protections that are available under state law. Matt is likewise available for questions and discussions about the environmental condition of the property and likely health and safety needs there.

In summary, it's relatively easy for a local government to obtain the state's environmental responsibility exemption by taking title to a property using a method or purpose listed in Wis. Stat. sec. 292.11(9)(e)(1m). Once acquired, though, there are some conditions listed in the statute that must be complied with to maintain the exemption. In addition, the exemption means that the local government is not required to do the standard site investigation and cleanup work required of other non-exempt property owners (and causers, who are always liable), but it doesn't cover everything. So, for example, the Town must still report identified environmental contamination to DNR per Wis. Stat. sec. 292.11(2), and the town must comply

with the Dept. of Ag., Trade and Consumer Protection's rules for above- and under-ground storage tanks, Wis. Admin. ch. ATCP 93 (if any exist on the property).

I hope this helps a little bit. Contact me with any follow-up questions.

Thank you.

Barry

608-267-3120

From: Keenan, Gina N - DNR
Sent: Thursday, April 11, 2019 10:17 AM
To: Meyer, Jennifer - MUN
Cc: Thompson, Matthew A - DNR; Ashenfelter, Barry J - DNR
Subject: RE: contaminated land

Jen,

I am no longer in the Remediation & Redevelopment program. The new project manager for this site is Matt Thompson. I have copied him on this email.

Because of the specific questions you have regarding the LGU process I would recommend that you talk to Barry Ashenfelter at 608-267-3120. I have also copied him on this email.

Thanks for reaching out and asking these questions before the acquisition process begins.

Good luck with the process.

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Gina Keenan
Natural Resources Financial Assistant Specialist
Phone: (715) 836-6574
gina.keenan@wisconsin.gov

From: townofpleasantvalley@gmail.com <townofpleasantvalley@gmail.com>

Sent: Wednesday, April 10, 2019 11:49 AM

To: Keenan, Gina N - DNR <Gina.Keenan@wisconsin.gov>

Subject: contaminated land

Gina-

The Town of Pleasant Valley has been working with Eau Claire County regarding possibly acquiring a piece of property thru tax delinquency proceedings. It is a property the DNR placed a Notice of Contamination onto in 2014. The property address is S 10405 Cty Rd HHI, Eleva, Wi. Owner is Dennis Kitelinger.

If we acquire the property, the Town's plan is to properly raze the building to create a green space or parking area. We have already had the building tested for asbestos and are awaiting the results.

I have a few questions for you:

1. By razing and creating green space, we still qualify for "Local Government Liability Exemptions", correct?
2. Unless we were to construct a building (of which we have no intentions of doing since the space is small), there is nothing else we would need to do, correct?
3. Are you aware of an grant monies available to help raze the building and return the lot to green space?

Any other additional information you may have for me would be greatly appreciated.

Thank you for your help.

Jen

Jennifer Meyer

Clerk/Treasurer

Town of Pleasant Valley

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