



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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June 16, 1999

Brauvin Real Estate
30 North LaSalle
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SUBJECT: Clarification of Environmental Liability for Property Located at
130 South Bluemound Road, Appleton, WI 54915

Dear Sir or Madam:

Purpose

The Department of Natural Resources ("the Department") has recently reviewed a request, submitted by Dorothy Watson of Metro Media Steakhouses Company, for an off-site exemption letter for the property located at 130 South Bluemound Road in Appleton, Wisconsin, which will be referred to in this letter as "the Property." Ms. Watson has requested that the Department determine whether Brauvin Real Estate, current owner of the Property, is exempt from s. 292.11(3), (4) and (7)(b) and (c), Wis. Stats. (commonly known as the "Hazardous Substance Spill Law"), with respect to the potential of a hazardous substance in the soil or groundwater that is believed to be migrating onto the Property from an off-site source.

Determination

S. 292.13(2), Wis. Stats., requires the Department to issue upon request, a written determination regarding a liability exemption for a person who possesses or controls **property that is contaminated by an off-site source**, when certain conditions are met. Specifically, the Department has reviewed the following reports in order to make a determination:

- Phase I Environmental Site Assessment for Ponderosa Restaurant #187 (September 10, 1998)
- Updated Environmental Database Search Report #8049915SR (April 22, 1999)
- Initial Soil and Groundwater Investigation at Hardee's Restaurant (June 11, 1998)
- Additional Soil and Groundwater Investigation at Hardee's Restaurant (August 18, 1998)
- Additional Investigation / Remedial Action Plan for Hardee's Restaurant (January 11, 1999).

Based upon this information, and in accordance with s. 292.13, Wis. Stats., the Department makes the following determination:

The Off-Site Discharge Exemption Request application states that criteria A through C must be satisfied. Criteria A states, "Document that there is hazardous substance contamination present in soil or groundwater on the Property." The application and supporting reports and documentation, listed above, show that there is no confirmed contamination in soils or groundwater on the Property at this time. **Therefore, criteria A of the application has not been satisfied and an off-site discharge exemption letter cannot be granted at this time.**



Background:

Twenty-three soil borings and 13 monitoring wells were installed on-site and off-site by OMNI & Associates for the investigation of a petroleum release on the Hardees property at 3225 West Commercial Street in Appleton. Soils and groundwater were analyzed for petroleum contamination.

Soils

A sample collected from soil boring nine (SB9) (adjacent to MW-5 and on the Hardees property) on July 8, 1998 shows benzene equaled 1800 ppb, which is above the residual contaminant level (RCL) for soils. SB10 (borehole for MW-5) shows benzene equaled 990 ppb and xylene equaled 5200 ppb, also above the RCL's. A sample collected from SB22 (borehole for MW-13) and SB23 (adjacent to MW-13), both located on the Property, on September 30, 1998, show no detects of petroleum contamination in soils.

Groundwater

Monitoring well five, MW-5, located on the Hardees property near the southern property line, was sampled on July 20, 1998. Analytical data shows benzene equaled 32 parts per billion (ppb), which is above the enforcement standard (ES) for groundwater. A sample analyzed on October 5, 1998, shows benzene equaled 2.5 ppb, which is below the ES. MW-13, located on the Property near the northern property line, sampled on July 20, 1998, shows no contaminants above ES's in groundwater.

OMNI is currently performing an approved remediation of contamination by excavating highly impacted soils on the Hardee's property and monitoring the groundwater to determine if the environment is naturally attenuating.

Issues:

During a conversation with Michael Fascina of Environmental Management Group, Inc., Mr. Fascina identified two issues that are of concern to Dorothy Watson of Metro Media Steakhouses Company and Brauvin Real Estate concerning the Property, which were:

- (1) the current owner's potential environmental liability under Wisconsin law for the Property if contamination were to migrate across the property line in soils or groundwater from the neighboring contaminated property, Hardees
- (2) the buyer's potential environmental liability once ownership of the Property is secured.

These issues are addressed in the remainder of this letter.

- 1. What is the potential environmental liability of Brauvin Real Estate, as the current owner of the Property, if contamination were to migrate across the property line in soils or groundwater from the neighboring contaminated property, Hardees, recognizing that Brauvin Real Estate did not cause the contamination?**

If contamination is shown to have migrated onto a property from an off-site source, the responsible party, Hardee's, is required to investigate and cleanup the contamination, so the neighbors do not assume the costs for the investigation and cleanup. As stated earlier, Hardees is currently working with OMNI Associates to remediate the contamination in soils and groundwater.

S. 292.13, Wis. Stat., states that a person who's property is affected by an off-site source is exempt from liability for soil and groundwater contamination if several conditions apply: (1) the discharge originated off-site; (2) the person did not possess or control the discharge; (3) the person allows the Department and the responsible party and any representative access to their property to investigate and remediate the contamination; (4) the person does not interfere with actions in regard to the discharge; (5) the person agrees to any other conditions determined by the Department. Please refer to the State Statute for complete language.

This means that IF contamination were to migrate onto the Property from Hardee's, and sufficient evidence shows that contaminant concentrations in soils or groundwater are above current Department RCL's or ES's, Hardee's is held responsible by the Department to investigate and remediate the contamination as long as the Property owner and any occupants allow access and do not interfere with the discharge, investigation or remediation.

2. What is the buyer's potential environmental liability once ownership of the Property is secured?

Once the buyer officially becomes the current owner of the Property, the new owner is considered the official current property owner and the conditions described above apply.

In closing, I hope that this letter has helped to clarify the environmental liability for the current owner of the Property if contamination were to migrate onto the Property. Please feel free to call me at the number below if you have any questions.

Sincerely,



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