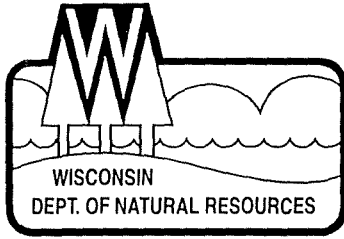


Eric Amadi 588/mil



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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August 30, 2001

Diane M. Marchik
Godfrey & Kahn
780 North Water Street
Milwaukee, WI 53202-3590

Subject: Lender Liability Clarification Letter; Former Mobile Blasting Property, Village of West Milwaukee, WI

Dear Ms. Marchik:

On August 27, 2001, you submitted a letter to the Department of Natural Resources ("DNR") requesting clarification of the potential liability of M & I Marshall & Ilsley Bank ("M & I") for the environmental conditions at the above-referenced property, which is located at South 43rd Street and Mitchell Street ("the Property"). M & I is considering extending a construction loan to Mobile Blasting, LLC ("MBLLC"), the current owner of the Property, but needs several questions answered before proceeding with the loan.

As you indicated in your letter, DNR is issuing a separate letter to MBLLC to confirm that the first phase of the remedial action has been completed (see letter from Eric Amadi to Jeffrey Hall, dated August 30, 2001). That letter states that the Property appears to be ready for MBLLC to begin construction of the impermeable cover and explains the additional remedial activities that need to be performed at the Property.

This letter will address M & I's additional concerns regarding extending a construction loan to MBLLC. First, M & I would like clarification that M & I will not be liable for any of the environmental conditions at the Property if M & I takes title to the Property to protect its security interest. If M & I takes title, DNR assures M & I, under s. 292.21, Wis. Stats., that M & I will not be subject to s. 292.11(3), (4) and (7)(b) and (c) (relevant provisions of the Hazardous Substance Discharge Law) and will not be liable under chapters 281, 285, 289, and 291 to 299, Wis. Stats., for a discharge of a hazardous substance on the Property if all the following conditions are satisfied:

1. M & I does not intentionally or negligently cause a new discharge of a hazardous substance or exacerbate an existing discharge.
2. M & I notifies DNR of any known discharge of a hazardous substance.
3. M & I conducts an environmental assessment of the Property not more than 90 days after acquiring title to, or possession or control of, the Property and files a complete copy of the environmental assessment with DNR not more than 180 days after the date M & I acquires title to, or possession or control of, the Property. The guidelines for conducting an environmental assessment are found in s. 292.21(1)(c)2, Wis. Stats.

4. If a discharge of a hazardous substance occurs on or after the date on which M & I acquires title to, or possession or control of, the Property, M & I is not engaged in the operation of a business at the Property, completion of work in progress or other actions associated with conducting the conclusion of the borrower's business.
5. If a discharge of a hazardous substance occurs on or after the date on which M & I acquires title to, or possession or control of, the Property, M & I implements an emergency action under s. NR 708.05, Wis. Adm. Code, in response to the discharge of a hazardous substance.
6. M & I agrees to allow DNR, any authorized representative of DNR, any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance and any consultant or contractor of such a party to enter the Property to take action to respond to the discharge.
7. M & I agrees to avoid any interference with action undertaken to respond to the discharge and avoid actions that worsen the discharge.
8. M & I agrees to any other condition that DNR determines is reasonable and necessary to ensure that DNR or any responsible party can adequately respond to the discharge.

Second, M & I has asked DNR to affirm its intention and obligation to remediate the contaminated soils and groundwater at the Property so that a Certificate of Completion under the Voluntary Party Liability Exemption program (s. 292.15, Wis. Stats.) can be issued for the Property. DNR has entered into a s. 292.31, Wis. Stats., contract with MBLLC, which requires DNR "to remediate contaminated soils and groundwater at the property, to the extent that parties responsible for remediating contaminated soils and groundwater at the Property do not fulfill that responsibility and to the extent that WDNR has sufficient funding to complete the remedial action, except for the remedial action that MBLLC has taken or will be taking." The Department has substantially performed this obligation through the activities documented in the letter from Mr. Amadi to Mr. Hall. As that letter indicates, the remaining remedial work that must be completed by DNR is the following: the construction of a vapor barrier and venting system below the future building on the Property and the installation and sampling of groundwater monitoring wells to monitor the progress of the DNR-approved natural attenuation remedy for impacted groundwater at the Property. DNR will proceed in a timely fashion to perform the remedial work necessary so that the Property is eligible for closure and the Certificate of Completion can be issued in a reasonable and timely manner. The Department has adequate funding to cover the costs associated with the performance of the remedial work necessary to obtain closure.

Once DNR completes the remedial work outlined in the previous paragraph, MBLLC would be eligible to apply for a Certificate of Completion under the Voluntary Party Liability Exemption program (s. 292.15, Wis. Stats.), after MBLLC completes the following:

1. Constructs the impermeable cover over the portion of the Property that is delineated in the remedial action plan, which shall consist of the subfloor of a building on the Property, some landscaped areas, a parking lot for the building and other paved areas on the Property.
2. Reimburses DNR for a portion of the costs incurred by DNR for the remediation of the Property, if any reimbursement is required under the terms of the contract between DNR and MBLLC.

3. Obtains and maintains insurance, pursuant to the requirements under ch. NR 754, Wis. Adm. Code, to cover the costs of complying with s. 292.11(3) with respect to hazardous substances in the groundwater, in case natural attenuation fails.
4. Maintains and monitors the Property as required under rules promulgated by DNR and any contract entered into under those rules and does not engage in activities that are inconsistent with the maintenance of the Property.

Your third question relates to the timing of the issuance of the Certificate of Completion. It is anticipated that DNR will conduct quarterly rounds of groundwater monitoring for a minimum of one year before a determination can be made as to whether additional groundwater monitoring is required. Under s. NR 726.05(2)(b), Wis. Adm. Code, DNR's requirements for closing cases using natural attenuation as the remedy for groundwater contamination above the standards in ch. NR 140, Wis. Adm. Code, include the following requirements: that adequate source control measures have been taken (this requirement has been met by the first phase of the remedial action); that natural attenuation will bring the groundwater into compliance with ch. NR 140 groundwater quality standards within a reasonable period of time; that groundwater contamination exceeding ch. NR 140 preventive action limits will not migrate beyond the boundaries of the property; that a groundwater use restriction be recorded for the property (this requirement will be replaced by a Geographic Information System—GIS—Registry in November); and that there is no existing or anticipated threat to public health, safety or welfare or the environment. If these determinations cannot be made after one year of groundwater monitoring, then additional sampling would continue until these requirements have been met.

DNR wishes to thank M & I for participating in this Brownfield redevelopment project. Please contact me if you have any further questions.

Sincerely,



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cc: Jeffrey T. Hall
Maclay R. Hyde
Eric Amadi
Margaret Brunette
Anna Thomas
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