


**State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES**

Tommy G. Thompson, Governor  
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June 16, 2000

Mr. Thomas Dequaine  
 6235 Main Street  
 Abrams, WI 54101

Subject: General Liability Clarification Letter for (former) New Linwood, Inc. Property  
 (Closed ERR Site), BRRTs ID # 03-43-000351, County Hwy P, Town of Underhill  
 Oconto County

Dear Mr. Dequaine:

You recently contacted me and asked me a number of questions concerning your environmental liability for a property, located at County Hwy P, in the Town of Underhill (hereinafter "the Property"). As the Department of Natural Resources ("Department") project manager for this site, I agreed to provide you with a letter clarifying your potential environmental liability - as well as a lender's environmental liability - for the property you currently own. Please find listed below a brief summary of the Property's environmental condition.

**Background:**

*The following are excerpted from several documents contained in the closed New Linwood file.*

Robert E. Lee & Associates letter dated December 16, 1996: A brick building, used as a general store in the Village of Moslin, was constructed on the property 140 years ago. The store was in operation until the 1920's or 1930's, at which time it became a dairy. In the early 1940's the dairy was converted to a veneer factory. The veneer factory operated until approximately 1992.

The processes used in veneer manufacturing at New Linwood, Inc. included log preparation, veneer cutting, and veneer gluing. The glue was mixed on site in a three step process. It is our understanding that the gluing equipment was washed or steam cleaned daily and the water was discharged on site.

STS Consultants, Inc., conducted a site investigation on behalf of the Department's Environmental Repair Program. The investigation, conducted in the fall of 1994, included the installation of temporary wells, a soil vapor survey, sediment and soil sampling, and an electromagnetic survey.

Eight monitoring wells were installed at the Property sometime in either late 1994 or 1995. All of these wells were monitored through May 14, 1996 whereupon the monitoring requirements were reduced to two wells, MW -7 and MW -8. On July 2, 1996 the Department required that these two wells needed to be monitored on a quarterly basis for one year to establish trends in specific contaminants. If there were no increases in Preventive Action Limits or exceedances of the Enforcement Standards in these wells

after one year, the Department stated that an NR 140 exemption could be granted, the wells could be abandoned and the site could be closed. Additional monitored continued until October 18, 1996 at which time no contamination was detected in the wells for two consecutive sampling periods. The wells were abandoned and the site was submitted for closure in December of 1996. It was approved for closure without any restrictions on January 9, 1997.

**Issues:**

1. **What is the environmental liability of Thomas P. Dequaine, as the current owner of the Property recognizing that he did not cause the contamination and the fact that the site was closed with no restrictions?**

The Department recognizes that the state's hazardous substance discharge law, s. 292.11, Stats., imposes potential liability on the owner of a contaminated property where a hazardous substance discharged contaminants to the environment even if the contamination was caused by another person. However, the Department has determined that it is in the public interest to exercise its enforcement discretion in situations where appropriate response actions have been conducted, in this case by Oconto County and the Department and the buyer has no direct or indirect relationship with the person who caused the hazardous substance discharge.

For this particular Property, the Department agrees to exercise its enforcement discretion, given the site-specific circumstances. The Department can assure Thomas P. Dequaine and any lender that it will take no legal action to compel it to take responsibility for all or a portion of the environmental contamination that was present on the Property prior to the date of purchase. As long as Thomas P. Dequaine or any future purchaser does not exacerbate any known or unknown contamination that may have been left on the Property after the site was closed out on January 9, 1997, the Department is not interested in seeking monetary contribution or action from Thomas P. Dequaine or future purchasers.

2. **Can a lender or representative who may be engaged in secured lending with the Property or your business be held liable for environmental contamination caused prior to or after the purchase of a property?**

As of May 13, 1994, lenders and representatives were provided with a clear release from environmental liability under Wisconsin's hazardous substance discharge law, if they were involved in lending activities at a property contaminated by a hazardous substance discharge. Subject to certain limited conditions, lenders involved with a contaminated property cannot be held environmentally responsible for a property if the lender:

- (a) engages in normal lending activities, such as executing mortgages, providing financial assistance, or advancing funds;
- (b) acquires the property and conducts an environmental assessment;
- (c) inspects the property before acquiring it;
- (d) enforces a security interest in personal property or fixtures; or
- (e) acts as a representative

These five situations are further explained in the enclosed fact sheet: "Fact Sheet 5: Environmental Liability Exemption for Lenders and Representatives (10/95)." At your Property, the Department cannot hold a lender responsible for the environmental cleanup, except in the rare situation where the lender would directly or indirectly (i.e., through tortious conduct) cause a discharge of a hazardous substance. Therefore, any lender engaged in normal lending activities with your

Property or business could not be held liable under Wisconsin's Hazardous Substance Discharge law for the cost of investigating and cleaning up the Property. Your lender can also request a letter from the Department clarifying their liability.

3. **What is the Department criteria for reopening a site closed under ch. NR 726?**

The Department has issued a "no further action" closure letter for the Property. This letter states that the Department has determined that no further cleanup action is necessary, based on information available to the Department at the time. The Department can only require the property owner or the party that caused the contamination to take further action to address a previously closed out area of the property if information regarding site or facility conditions not previously known to the Department "indicates that contamination on or from the site or facility poses a threat to public health, safety or welfare or the environment." (See s. NR 726.09(1), Wis. Adm. Code)

In order to require further work at a site following the issuance of a closure letter, Chapter NR 726, Wis. Adm. Code, places the burden on the Department to demonstrate that residual contamination that existed prior to the issuance of such a letter still poses a threat to public health or the environment and requires further action. Out of the approximately 8,500 plus cleanup cases closed by the Department to date, very few have been reopened.

In closing, I hope that this letter has helped to clarify Thomas P. Dequaine's environmental liability, as well as any lender's liability for your business and Property. Please don't hesitate to call me at (715) 582 - 5048.

Sincerely,



Mike Netzer, P.G., Hydrogeologist  
Remediation & Redevelopment Program

Enclosures

CC: Joe Renville-LS/5  
Percy Mather - RR/3  
Bruce Urben - NER  
Kathy Erdman - NER  
Mark Teuteberg - Oconto County