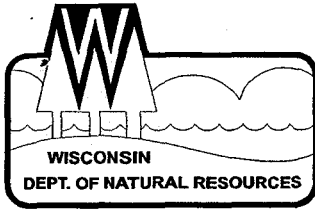


07-05-255586



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary
Ronald W. Kazmierczak, Regional Director

Northeast Region Headquarters
1125 N. Military Ave., P.O. Box 10448
Green Bay, Wisconsin 54307-0448
Telephone 920-492-5800
FAX 920-492-5913
TDD 920-492-5912

July 31, 2000

File Copy

Mr. Kevin M. Brunner
City Administrator
City of De Pere
335 South Broadway
De Pere, WI 54115

Subject: General Liability Clarification Letter for the former Better Brite Zinc Shop located at 315 South Sixth Street, De Pere, WI WDNR BRRTS # 02-05-000031

Dear Mr. Brunner:

Please find below the Wisconsin Department of Natural Resources' ("Department") response to the letter submitted by yourself on behalf of the City of De Pere ("City") regarding the former Better Brite Zinc Shop property located at 315 South Sixth Street, De Pere, Wisconsin (hereafter referred to as the "Property"). In the letter, you requested that the Department clarify the environmental liability involved if the City were to acquire and reuse the Property. The issue of future liability under Wisconsin state law and certain federal laws is addressed below. The Department is currently working with the US Environmental Protection Agency (EPA) in order to further clarify federal liability and outstanding cost recovery issues related to the ongoing remediation project primarily funded by EPA.

I. Site Information

The Better Brite Zinc Shop has been abandoned for over ten years. When it was in business, the facility primarily dealt with chrome and zinc plating of industrial equipment. The property is on the EPA's National Priorities List (NPL) and a state lead cleanup is being coordinated by Wisconsin DNR. The Better Brite Zinc Shop is one of two properties that make up the what is officially designated as the "Better Brite Plating Chrome & Zinc Shops Zinc Shops" NPL site. In 1990, EPA conducted an emergency removal action, which included shipping three hundred and fifty cubic yards of hazardous and solid waste off site. Currently, a pump and treat system and continued monitoring are addressing groundwater contamination on site.

II. Method of Acquisition

Under Wisconsin law, Local Governmental Units (LGUs) who acquire property through certain methods are not responsible to investigate or cleanup a hazardous substance discharge at a property. As provided in s. 292.11(9)(e)1m.b., Wis. Stats., an LGU is exempt from s. 292.11(3), (4) and (7)(b) and (c), Wis. Stats., of the Spill Law - which would otherwise require the person who possesses (i.e., owns) the property to conduct an investigation and cleanup of a discharge of a hazardous substance - if the LGU acquires a property through tax delinquency proceedings. It is the Department's understanding that the City is considering working with the County to acquire the Property through tax delinquency and would be eligible for the exemption under s.



292.11(9)(e)1m.b., Wis. Stats. Therefore, the City would not be responsible to investigate or cleanup any hazardous substances on the Property that were discharged before the City acquires title to the Property. While the LGU exemption would apply to the City, please note that the LGU exemption is not transferable to a private party if the City should choose to sell the Property in the future.

In addition to the exemption from state law, the City would also qualify for an exemption from federal Superfund clean up liability if the Property was acquired in a manner that is considered "involuntary" and if other conditions of that federal exemption are met. Federal law and policy indicate that tax delinquency proceedings would be considered an "involuntary" method of acquisition, and thus would allow an LGU to qualify for the exemption from liability under federal Superfund law. For additional information, please refer to the protections in ss. 101(20)(D) and 101(35)(D), of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund), and the "Handbook of Tools for Managing Federal Superfund Liability Risks at Brownfields and Other Sites", Publication Number: EPA 330-B-98-001, November 1998 regarding "involuntary acquisitions" of contaminated properties by government entities.

III. Third-Party or Civil liability

With respect to state law, the City would not be protected by the state civil liability provisions in s. 292.66, Wis. Stats., while they are owners of the Property. If the City were to sell the Property, then the third party or civil liability protections would apply to the City. The City may also qualify for federal Superfund protections concerning third-party liability.

IV. Off-site Contamination

The LGU liability exemption applies to contamination on the Property as well as contaminants migrating from the Property onto off-site properties. The Department is aware that the contamination from the Property has migrated into the right-of-way and onto adjacent properties (please refer to the attached map). Under s. 292.11(9)(e)1m, Wis. Stats., the LGU exemption would continue to apply unless a discharge was caused by some action taken by the City (s. 292.11(9)(e)2a, Wis. Stats.).

V. Intended Development and Use of the Property

The LGU exemption, which was established to encourage redevelopment of blighted areas, also addresses issues of public health and safety. If an LGU intends to retain ownership of a property and develop or use that property, s.292.11(9)(e)4., Wis. Stats., applies. Under that provision, WDNR may determine that action is necessary to reduce to acceptable levels any substantial threat to public health or safety when the property is developed or put to its intended use, and WDNR may direct the LGU to take actions necessary to address that threat. LGUs which do not take action as directed may lose the exemption. The City has indicated that it would like to pave the Better Brite Property for use as a parking lot. In general, paving contaminated properties similar to the Better Brite Property has been an effective way to redevelop while preventing direct contact threats and reducing the potential for the remaining soil contaminants to leach into groundwater. If the City does plan to acquire and pave the Property, a deed restriction may be required to ensure that the paved cap is maintained.

Furthermore, s. 292.11(9)(e)2.a, Stats., says that the LGU exemption does not apply to a discharge of a hazardous substance that is caused by any action taken by a LGU. This provision could apply if the City took actions at the property to exacerbate or cause an additional discharge at the Property. While it does not appear that your proposed use of the property would exacerbate discharges at the Property, we suggest that you continue to work with the WDNR to insure that any proposed actions at the Property do not exacerbate or cause additional discharges of the contamination. You should also be aware that s. 292.11(9)(e)6, Stats., requires that the City allow the WDNR or any party who is responsible for the hazardous substance discharge access to the Property for the ongoing monitoring and remedial actions at the Property. The Department

would work with the City to ensure that the final intended use would not interfere with ongoing remediation activities, exacerbate the existing contamination, or pose a threat to human health.

The WDNR encourages the City to work with us, especially if new environmental data becomes available or the City proposes to change the use of the Property, and the City has questions or concerns regarding how that new information may affect its LGU exemption status. The WDNR will be happy to review the proposed site redevelopment plan to ensure the City continues to qualify for the LGU exemption and any threats to public health and safety are addressed.

In closing, we would like to thank you for the outstanding efforts your community has made towards bringing this property back to productive use. We look forward to working with you in the future. If you have any questions about this letter, please contact me at (920) 492-5921 or Carrie Rackey at (920) 492-5842.

Sincerely,

Keld B. Lauridsen ^{CR}

Keld B. Lauridsen
Hydrogeologist
Remediation & Redevelopment Program

Carrie Rackey

Carrie Rackey
Brownfields Specialist
Remediation & Redevelopment Program

cc: Darsi Foss – RR/3