



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
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July 29, 2008

Attorney Ryan Benson
24161 Highway 35 North
P.O. Box 370
Siren, WI 54872

COPY

Subject: Former Webster Quick Wash

Dear Mr. Benson:

Phil Richard in the Department's Park Falls Office has asked me to respond to the legal issues raised in your letter to him dated July 16, 2008. In that letter you question how your client, Mr. Jerrold Rand, who is the current owner of property at 26507 Lakeland Avenue North, in Webster, can be a responsible party for contamination existing on and migrating from that property.

As you cited in your letter, s. 292.11(3), Wis. Stats. identifies the person (or persons) who may be responsible for taking action to remedy the discharge of a hazardous substance. Although Mr. Rand did not cause the contamination, as the owner of the property he is in possession or control of the contamination that is continuing to migrate or discharge from the property. In the 1985 case *State v. Mauthe*, the Wisconsin Supreme Court interpreted s. 144.76, Wis. Stats. (now renumbered as s. 292.11, Wis. Stats.) and concluded that a current property owner may be a responsible party even if they did not cause the discharge and it is unrelated to any current activity of the owner.

I understand that Mr. Richard has supplied you with information about a possible funding source, the drycleaner remediation fund. The Department is interested in working with you and Mr. Rand to obtain the information needed to bring this matter to a conclusion. I encourage you to continue your discussions with Mr. Richard about the various ways to move forward on this case. If you have any legal questions, please feel free to contact me at the address above, or at telephone (608) 267-0846, or Deborah.Johnson@Wisconsin.gov.

Sincerely,

Deborah Johnson
Attorney
Bureau of Legal Services

C: Phil Richard - Park Falls