

DATE: November 23, 2009

FILE REF: 02-13-000849

TO: Refuse Hideaway Landfill File; Bob Strous – R&R Program Fiscal & Information
Technology Section Chief

FROM: Eileen Pierce – Air & Waste Media Leader, South Central Region

EFP

SUBJECT: Conditional Case-by-Case Grant of Exemption for the Development of a Property Where
Solid Waste has been Disposed

Tom Bennwitz, of the Waste Materials and Management Program, and Hank Kuehling have reviewed the plans for the installation of a small array of solar panels on the waste cover of Refuse Hideaway Landfill, which were received by me in an e-mail, dated October 21, 2009, from Bob Strous, the Remediation & Redevelopment (R&R) Program's Fiscal & Information Technology Section chief. Based on this evaluation, the South Central Region Remediation & Redevelopment Program is issuing this general grant of exemption from the prohibitions contained in s. NR 506.085, Wis. Adm. Code. Note that a formal exemption application for this project was not completed because of the extensive familiarity Department personnel have with the landfill through decades of Department management of it.

The solar panel project contractors must comply with the conditions of this grant of exemption in order to maintain the exemption for the R&R Program. This grant of exemption is limited to the proposed changes described in the submittal. All those DNR personnel and contractors involved in the solar panel project should review the information contained in the publication *Development at Historic Fill Sites and Licensed Landfills: Considerations and Potential Problems PUB-RR-685* as an aid in preventing environmental or safety problems during and after development. We would like to particularly emphasize the public safety risk posed by the explosive potential for methane gas that may be present on a property due to the presence of decomposing solid waste.

Note that this approval does not relieve the Department of obligations to meet all other applicable federal, state and local permits, as well as zoning and regulatory requirements. If any questions arise concerning this letter, contact Hank Kuehling at (608) 275-3286 or by email to harlan.kuehling@wisconsin.gov

BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

CONDITIONAL GRANT OF EXEMPTION
FOR
DEVELOPMENT ON A PROPERTY
WHERE SOLID WASTE HAS BEEN DISPOSED

FINDINGS OF FACT

The Department finds that:

1. No apparent owner exists for the former Refuse Hideaway, Inc. property located at 7562 USH 14, Middleton, Wisconsin.
2. Disposal of solid waste has occurred at this property and the waste remains at this property.
3. Bob Strous, Fiscal and Information Technology Section Chief, Remediation & Redevelopment Program, Department of Natural Resources, has submitted a request, dated October 21, 2009, for an exemption from the prohibition in NR 506.085, Wis. Adm. Code. This request includes a plan sheet showing the proposed location of the solar panels and their foundation and that of the subsurface wiring conduit, and also includes specifications and details of the project.
4. Based upon the information provided to the Department, the proposed development at the property is not expected to cause future exceedances of applicable soil and groundwater standards.
5. Additional facts relevant to the review of the grant of exemption modification request include the following: the Department staff members who have proposed the project are also very familiar with Refuse Hideaway Landfill and the current status of environmental impacts from this landfill along with the systems operating at the landfill (landfill gas collection and thermal destruction, leachate collection and treatment, and low-permeability cover over the waste) to mitigate and remediate the environmental impacts of the landfill.
6. If the conditions set forth below are complied with, the development of the property will not result in environmental pollution as defined in ss. 289.01(8) and 299.01(4), Wis. Stats.

CONCLUSIONS OF LAW

1. The Department has the authority under s. NR 500.08(4), Wis. Adm. Code to issue an exemption from the prohibition in s. NR 506.085, Wis. Adm. Code, if the proposed development will not cause environmental pollution as defined in ss. 289.01(8) and 299.01(4), Wis. Stats.

2. The Department has authority to approve a grant of exemption with conditions if the conditions are necessary to ensure compliance with the applicable provisions of chapters NR 500 to 538, Wis. Adm. Code, or to assure that environmental pollution will not occur.
3. The conditions set forth below are necessary to ensure compliance with the applicable provisions of chapters NR 500 to 538, Wis. Adm. Code, and to assure that environmental pollution will not occur.
4. In accordance with the foregoing, the Department has the authority under s. NR 500.08(4), Wis. Adm. Code, to issue the following conditional grant of exemption.

CONDITIONAL GRANT OF EXEMPTION

The Department hereby issues an exemption to the prohibition in s. NR 506.085, Wis. Adm. Code for development on a property which contains solid waste as proposed in the submittal dated October 21, 2009, subject to the following conditions:

1. No action related to the development of the property may be taken which will cause a detrimental effect on groundwater, as defined in s. NR 500.03(62), Wis. Adm. Code, or will cause or exacerbate an attainment or exceedance of any preventive action limit or enforcement standard at a point of standards application as defined in ch. NR 140, Wis. Adm. Code.
2. No action related to the development of the property may be taken which will cause a migration and concentration of explosive gases in any structures in excess of 25% of the lower explosive limit for such gases at any time. No actions may be taken which will cause a migration and concentration of explosive gases in the soils outside of the limits of solid waste disposal within 200 feet of the property boundary or beyond the property boundary in excess of the lower explosive limit for such gases at any time. No actions may be taken which will cause a migration and concentration of explosive gases in the air outside of the limits of solid waste disposal within 200 feet of the landfill boundary or beyond the landfill property boundary in excess of the lower explosive limit for such gases at any time.
3. No action related to the development of the property may be taken which will cause an emission of any hazardous air contaminant exceeding the limitations for those substances contained in s. NR 445.03, Wis Adm. Code.
4. This exemption shall transfer with changes in property ownership. In accordance with s.289.46(2), Stats., any person having or acquiring rights of ownership in land where a solid or hazardous waste disposal facility was previously operated may not undertake any activities on the land which interfere with the closed facility causing a significant threat to public health, safety or welfare. The Department of Natural Resources should be contacted to discuss any proposed changes to avoid activities that could violate the statute.
5. The excavation for the installation of the array foundation shall not penetrate the top of the clay layer of the landfill cap.

6. The trench for the electrical conduit installation shall not penetrate the top of the clay layer of the landfill cap. If the thickness of the soil overlying the clay layer is insufficient to accommodate the installation of the electrical conduit at the minimum depth to which it must be placed, the conduit may be placed at the appropriate depth below the top of the clay layer, but the trench must be filled with compacted clay to the top of the clay layer.
7. All disturbed areas of soil without topsoil must have 6 inches of topsoil applied, then be seeded and mulched. All areas of disturbed soil and/or vegetation with the remaining topsoil layer intact must be seeded and mulched. The seed mixture must be approved by the DNR project manager.
8. This grant of exemption is limited to the proposed changes described in the application. If additional changes beyond those described in the application are desired, a new application must be submitted to the Department for approval.

The Department reserves the right to require the submittal of additional information and to modify this grant of exemption at any time if, in the Department's opinion, modifications are necessary. Unless specifically noted, the conditions of this grant of exemption do not supersede or replace any previous conditions of approval for this property.

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes, administrative rules, and case law establish time periods within which requests to review Department decisions must be filed. To request a contested case hearing pursuant to section 227.42, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. All requests for contested case hearings must be made in accordance with section NR 2.05(5), Wis. Adm. Code, and served on the Secretary in accordance with section NR 2.03, Wis. Adm. Code. The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the time period for filing a petition for judicial review.

For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you must file your petition with the appropriate circuit court and serve the petition on the Department within the prescribed time period. A petition for judicial review must name the Department of Natural Resources as the respondent.

This notice is provided pursuant to section 227.48(2), Stats.

Dated:

Eileen Pierce
November 24, 2009

Eileen Pierce
Air & Waste Media Leader
South Central Region

Tom Bennwitz

Tom Bennwitz, Waste & Materials Management Program Engineer
South Central Region

Harlan H. Kuehling

Harlan Kuehling, Remediation & Redevelopment Program Hydrogeologist
South Central Region