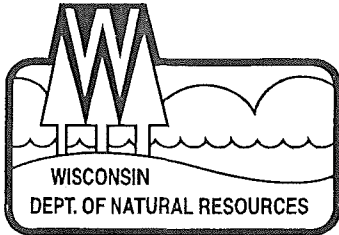


General Property
Chrono



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Scott McCallum, Governor
Darrell Bazzell, Secretary
Ronald W. Kazmierczak, Regional Director

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December 3, 2002

Mr. Jerry Hanson
City of Green Bay
100 North Jefferson Street, Room 200
Green Bay, WI 54301-5026

SUBJECT: General Liability Clarification Letter for City of Green Bay regarding the H&R Landfill, Green Bay, Wisconsin
WDNR Case # 07-05-358680 (General Liability Clarification)
WDNR Case # 02-05-000080 (H&R Landfill Contamination Case)

Dear Mr. Hanson:

On July 29, 2002, the Wisconsin Department of Natural Resources (DNR) received a formal request and fee payment from Jerry Hanson, on behalf of the City of Green Bay (City), for a General Liability Clarification Letter under the authority of section 292.55, Wis. Stats. The City requested a liability clarification letter regarding the H & R Landfill property located at Huron and Finger Road in Green Bay. As the subject property is a landfill with a lengthy and involved history it has taken some time to review the file in order to ensure a proper response to the City.

The purpose of this letter is to provide answers to the following questions from the City regarding the H&R Landfill, Huron and Finger Road, SW 1/4 of the SE 1/4, Section 2, T23N, R21E, Green Bay, Wisconsin.

1. Is the DNR aware of, or have record of, any material placed in the site by the City other than the demolition material noted above from the "Port Plaza Expansion Project"?

DNR records indicate the H&R Landfill (DNR License # 850) is an inactive 50,000 to 500,000 cubic yard solid waste landfill that accepted demolition, noncombustible, paper and wood matter from the early 1970's to approximately 1983. Records regarding the type and exact quantities of material disposed of at the H&R Landfill from this time period are rather sparse. From what DNR can tell, the City appears to have disposed of only demolition material in the H&R Landfill.

2. Does the DNR consider the material placed in the site by the City to be a "hazardous substance" under State of Wisconsin or Federal law?

Hazardous substance is defined under section 289.01(11), Wis. Stats. Since detailed records of the types and amount of waste material that were disposed of at the H&R

Landfill are limited, the DNR is unable to make a determination on the extent of the hazard presented by these wastes.

3. Does the DNR consider the City a "Potential Responsible Party" (PRP) under State of Wisconsin or Federal law?

The DNR considers the City to be a responsible party under federal law as the City disposed of waste in the H&R Landfill. Currently, the DNR does not consider the City a responsible party under state law.

4. If the DNR does consider the City a PRP, what is the City's percentage contribution of materials to the site compared to the total of all material at the site?

Due to the poor recording keeping practices in the early 1970's and 1980's the DNR is unable to determine the percentage of material the City disposed of in the H&R Landfill compared to other responsible parties. The City is welcome to review DNR files in effort to make their own percentage determination.

5. Does the City's liability change in any way if the City were to purchase the property?

As mentioned above in Question # 3, the DNR considers the City to be a responsible party for the H&R Landfill under federal law and it is liable for minimizing any threats to human health and the environment. The City would assume additional responsibility for the H&R Landfill as an owner under state law if it purchased the property. Since this landfill appears to be a solid waste disposal facility regulated under ch. 289, Stats., whoever acquires ownership of the land containing it is subject to license requirements under s. 289.46(1), Stats. "Any person [term includes "municipality" under the definition in s. 289.01(27), Stats.] acquiring rights of ownership, possession or operation in a licensed solid or hazardous waste facility at any time after the facility begins to accept waste is subject to all the requirements of the license approved for the facility including any requirements relating to long-term care of the facility." So, if the City acquires the land containing the H & R Landfill, as facility owner it would be subject to all the license requirements.

6. Is there added liability protection for the City if it were to purchase the property using its condemnation power?

If the City chooses to purchase the H&R Landfill using its condemnation power they will be not be exempt from section 292.11 Wis. Stats. as landfill sites are not eligible for the Local Government Unit exemption. Currently, no such exemption exists for landfills under solid waste laws.

7. Does the DNR believe the City of Green Bay has a legal obligation with respect to the future operation and maintenance of H&R Landfill's leachate or gas collection system?

The DNR considers the City to be a responsible party under federal law and assumes the City will continue to operate and maintain the leachate collection system as it has for the past several years. At some point in the future it is the DNR's hope that the City would also be willing to take over responsibility for the operation and maintenance of the gas collection system. The DNR greatly appreciates the level of cooperation and

attention the City has provided to the DNR in working through the various issues at the H&R Landfill. It is our hope that this level of cooperation will continue.

8. Does the DNR believe that Proctor & Gamble has a legal obligation with respect to the future operation and maintenance of H&R Landfill's leachate or gas collection system?

The DNR considers Proctor & Gamble to be a responsible party under federal law as they disposed of waste in the H&R Landfill. Proctor & Gamble has been working cooperatively with the DNR and U.S. EPA - Region V over the past year to address elevated methane levels which exist adjacent to and on the H&R Landfill. It is our hope that the methane issue will be remediated sometime this fall. Proctor & Gamble has clearly pointed out to the DNR that they have no interest in operating and maintaining the leachate or gas collection systems once the methane issue is resolved. The City should be aware that the DNR is committed to working with U.S. EPA - Region V in effort to keep Proctor & Gamble involved with the H&R Landfill project in the event that additional problems arise.

If you have any questions regarding the content of this letter, please contact Kristin DuFresne in Green Bay at 920-492-5943.

Sincerely,

A handwritten signature in black ink, appearing to read "B. G. Urben", with a large, stylized initial "B" and "G".

Bruce G. Urben
Northeast Region Team Supervisor
Remediation & Redevelopment Program

Attachment

cc: Joe Renville - LS/5
Len Polczinski - NER
Kathy Erdmann - NER
Kristin DuFresne - NER