



Tommy G. Thompson, Governor
George E. Meyer, Secretary
William R. Selbig, District Director

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Chunow
02-45-00563

Lake Michigan District Headquarters
Solid & Hazardous Waste Program
1125 N. Military Avenue, PO Box 10448
Green Bay, WI 54307-0448
TELEPHONE: (920)492-5916
TELEFAX: (920)492-5859

December 4, 1997

Mr. Michael Schiedermayer
Village of Hortonville
118 N. Mill
Hortonville, WI 54944

Mr. Joe Guidote
Corporate Counsel
Outagamie County
410 South Walnut Street
Appleton, WI 54911

Gentlemen:

The purpose of this letter is to address environmental liability concerns of Outagamie County and the Village if title to the approximately 15 acres associated with the American Toy facility (American Toy Property) is acquired through foreclosure.

Specifically, s. 292.11(9)(e), Wis. Stats., [formerly s. 144.76(9)(e), Wis. Stats.] was created to exempt municipalities (counties, cities, villages, etal) from liability for any hazardous substance discharges at a property that is acquired by the municipality through tax delinquency proceedings or as a result of an order by a bankruptcy court. In other words, neither Outagamie County nor the Village of Hortonville would be required to investigate or clean up a hazardous substance discharge at the American Toy facility if Outagamie County takes title to the property and later transfers the title to the Village of Hortonville.

This exemption from liability protects a municipality unless the spill is caused by an action taken by the municipality or failure of the municipality to take "limited actions" to prevent further spills. Those "limited actions" are to:

- sample and analyze unidentified substances in above-ground containers;
- remove or properly store any hazardous substances in above-ground containers that are leaking or likely to leak;
- restrict access to trespassers if there is a danger; and
- immediately report the presence of hazardous substances on the property to the Department of Natural Resources (DNR)

Based on current information, the Department believes the above conditions have been met.

One provision in Governor Thompson's 1997-1999 Biennial Budget states that if a municipality qualified for the liability exemption provided under s. 292.11(9)(e), Wis. Stats., [formerly s. 144.76(9)(e), Wis. Stats.] and decided to redevelop a property for an intended public or private use, the liability exemption would not apply if the Department of Natural Resources determined that action is necessary to reduce to acceptable levels any substantial threat to public health or safety and the local government refused to take that action.

The Department does not feel that there are any substantial threats to public health or safety at this time based on DNR's current knowledge of the condition of the property. Our knowledge of the property includes the Environmental Property Assessment Report by Robert E. Lee & Associates Inc. dated May 6, 1984 which contains Foth & Van Dyke's Environmental Audit prepared July 1989 including Appendices thereto, as well as laboratory results from the groundwater sample collected from MW-1 on May 16, 1994.

If you have any additional questions please do not hesitate to call me in Green Bay at (920) 492-5798.

Sincerely

A handwritten signature in cursive script, appearing to read "Kathy Erdmann", followed by a long horizontal line extending to the right.

Kathy Erdmann, P.G.
Hydrogeologist, Bureau for
Remediation & Redevelopment

cc: Chris Sitzmann - Sitzmann Associates & Ltd., 103 East College Avenue, Suite 301,
Appleton, WI 54911
Sam Essak - RR/3
Dino Tsauris - Oshkosh