



July 28, 2022

Mr. John Setter
Kenosha Unified School District
3600 52nd Street
Kenosha, WI 53144
Email only to – jsetter@kUSD.edu

Subject: Building on a Historic Fill Site Exemption Approval
2600 50th Street, Kenosha Wisconsin
BRRTS# 07-30-489576 FID# 230149590

Dear Mr. Setter:

On June 27, 2022, the Wisconsin Department of Natural Resources (Department) received your application for a grant of exemption from regulation under Wis. Admin. Code § NR 506.085. The proposed development consists of a 32.5 by 34.5 foot playground addition as depicted on the attached Figure 3 which was provided with the application. A portion of the existing soil cover will be excavated and replaced with a concrete slab, on which a rubber play surface and playground equipment will be installed. The application includes a methane gas assessment that concluded construction is being conducted in an area with little or no volatile organic compound contamination or putrescible waste, that no enclosed structures are being constructed, and that there is no expected risk of methane or vapor intrusion.

Documents and activities pertaining to the investigation, remedial actions, and closure conditions that apply to this site are tracked under Bureau of Remediation and Redevelopment Tracking System (BRRTS) activity # 02-30-522702. This includes the Post-Closure Modification request submitted on June 27, 2022.

The Department is issuing this conditional grant of exemption for the construction of the playground expansion as shown on the attached Figure 3. This conditional approval is limited to the proposed development described above. If you are considering additional changes beyond those described in the application, a new application must be submitted to the Department for approval.

Please review the information contained in the publication *Development at Historic Fill Sites and Licensed Landfills: Considerations and Potential Problems* PUB-RR-685 to assist you in preventing environmental or safety problems during and after development.

You are reminded that this approval does not relieve you of obligations to meet all other applicable federal, state and local permits, as well as zoning and regulatory requirements including those established at case closure under Wis. Admin. Code Chapter NR 726. If you have any questions concerning this letter, please contact Paul Grittner at (262) 405-0764 or paul.grittner@wisconsin.gov.

Sincerely,



Pamela A. Mylotta, Supervisor
Remediation and Redevelopment Program
Southeast Region

cc: Sean Cranley, Midwest Environmental Consulting – mwenvirocon@gmail.com
Thomas Buban, City of Kenosha Building Inspector – tbuban@kenosha.org

Attachments: Figure 3 of the *Development at Historic Fill Site or Licensed Landfill Exemption Application* prepared by Midwest Environmental Consulting

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. Midwest Environmental Consulting, on behalf of the Kenosha Unified School District, has submitted a request received June 27, 2022, for an exemption from the prohibition in Wis. Admin. Code § NR 506.085.
2. The proposed development consists of a 32.5 by 34.5 foot playground addition as depicted on the attached Figure 3 of the *Development at Historic Fill Site or Licensed Landfill Exemption Application* prepared by Midwest Environmental Consulting.
3. Historically the Site was filled with reworked soil containing foundry waste.
4. There are closed BRRTS activities on the site, BRRTS 02-30-001085 and 02-30-522702 and a VPLE Certificate of Completion under 06-30-269300.
5. A Post-closure modification request under Wis. Admin. Code ch. NR 727 was submitted for BRRTS activity 02-30-522702 on June 27, 2022.
6. If the conditions set forth below are complied with, the development of the Site will not result in environmental pollution as defined in Wis. Stat. §§ 289.01(8) and 299.01(4).

CONCLUSIONS OF LAW

1. The Department has the authority under Wis. Admin. Code § NR 500.08(4) to issue an exemption from the prohibition in Wis. Admin. Code § NR 506.085, if the proposed development will not cause environmental pollution as defined in Wis. Stat. §§ 289.01(8) and 299.01(4).
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 Wis. Admin. Code Chapters NR 500 to 538, 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 Wis. Admin. Code Chapters NR 500 to 538, and to assure that environmental pollution will not occur.
4. In accordance with the foregoing, the Department has the authority under Wis. Admin. Code § NR 500.08(4), to issue the following conditional grant of exemption.

CONDITIONAL GRANT OF EXEMPTION

The Department hereby issues an exemption to the Kenosha Unified School District from the prohibition in Wis. Admin. Code § NR 506.085, for development on a property which contains solid waste as proposed in the submittal received June 27, 2022, subject to the following conditions:

1. No action related to the development of the property may be taken which will cause a significant adverse impact on wetlands as provided in Wis. Admin. Code Chapter NR 103.
2. No action related to the development of the property may be taken which will cause a significant adverse impact on critical habitat areas, as defined in Wis. Admin. Code § NR 500.03(55).
3. No action related to the development of the property may be taken which will cause a detrimental effect on any surface water, as defined in Wis. Admin. Code § NR 500.03(62).
4. No action related to the development of the property may be taken which will cause a detrimental effect on groundwater, as defined in Wis. Admin. Code § NR 500.03(62), or will cause or exacerbate an attainment or exceedance of any preventive action limit or enforcement standard in Wis. Admin. Code Chapter NR 140.
5. 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 Wis. Admin. Code § NR 445.03.
6. No action related to the development of the property may be taken which will cause an exceedance of a soil clean up standard in Wis. Admin. Code Chapter NR 720.
7. No action related to the development of the property may be taken which will cause a discharge of contaminated storm waters or sediment.
8. This grant of exemption should not be construed as a site closure under Wis. Admin. Code Chapter NR 726.
9. This grant of exemption shall apply to 2600 50th Street, Kenosha, as shown on the attached *Figure 3 of the Development at Historic Fill Site or Licensed Landfill Exemption Application* prepared by Midwest Environmental Consulting.
10. The proposed construction activities shall be conducted as described in the Post-Closure Modification Request received by the Department on June 27, 2022 and will not otherwise modify conditions approved at site closure.
11. This exemption shall transfer with changes in property ownership. In accordance with Wis. Stat. § 289.46(2), any person having or acquiring rights of ownership in land where a solid or hazardous waste disposal activity occurred may not undertake any activities on the land which may cause a significant threat to public health, safety or welfare. The Department should be contacted to discuss any proposed changes to avoid activities that could violate the statute.

This grant of exemption is limited to the proposed changes described in your application. If you are considering additional changes beyond those described in the application, 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 Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

For judicial review of a decision pursuant to Wis. Stat. §§ 227.52 and 227.53, you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

Dated: July 28, 2022

DEPARTMENT OF NATURAL RESOURCES
For the Secretary



Pamela A. Mylotta, Supervisor
Remediation & Redevelopment Program
Southeast Region



Paul Grittner, Hydrogeologist
Remediation and Redevelopment Program
Southeast Region

FIGURE 3

