



## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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March 24, 2004

File Ref.: 07-13-521699

Mr. Eric Schwartz  
Watts Road, LLC  
1612 North High Point Road, Suite 201  
Middleton, WI 53562

Subject: General Liability Clarification Letter for a Prospective Purchaser of Property Located at 6902 Watts Road, Town of Middleton, Dane County, Wisconsin, Affected by an Off-Site Contaminant Discharge

Dear Mr. Schwartz:

### Purpose

The Department of Natural Resources ("the Department") has reviewed your request for a general liability clarification letter in response to environmental contamination affecting the former Happy Sleeper property at 6902 Watts Road, Town of Middleton, Dane County, Wisconsin, here after referred to as "the Property." The purpose of this letter is to determine what provisions of the off-site exemption Watts Road, LLC, presently satisfies, and whether or not Watts Road, LLC would satisfy all the conditions of the off-site exemption in s. 292.13, Wis. Stats., upon taking title to the Property.

### Request

On February 10, 2004, you requested that the Department determine whether, as a potential purchaser of the Property, you would be held liable under the Hazardous Substance Spill Law for any hazardous substances in the groundwater that you believe are migrating on to the Property from an off-site source, if you acquired title to the Property. In particular, you have requested clarification as to whether or not you are eligible for the protections offered by the Spill Law's off-site discharge liability exemption in s. 292.13, Wis. Stats.

The following were also submitted with the request:

- The off-site exemption application form submitted to the Department, dated February 10, 2004.
- "Phase I Environmental Site Assessment", prepared by Edge Consulting Engineers, Inc., dated January 23, 2004.

Department staff also reviewed file information on the current Department investigation of volatile organic compounds (VOCs), particularly tetrachloroethene, in the groundwater of the Watts and Seybold Roads area.

### **Summary of Environmental Conditions**

The Department considered the documents listed above in making the determinations presented in this letter. These determinations address which provisions in the off-site exemption statute are presently satisfied by Watts Road, LLC, for this Property, and whether or not the conditions for the off-site exemption would be fully satisfied upon the taking of title to the Property by Watts Road, LLC.

With creation of the off-site exemption in s. 292.13, Wis. Stats., the statute limits the environmental liability of a person in possession (i.e., who owns a property) or control of a property affected by the discharge of a hazardous substance, when the discharge originates from an off-site source. At the present time, Watts Road, LLC, does not possess or control the Property, but it is the Department's understanding that Watts Road, LLC, does intend to purchase the Property. Because Watts Road, LLC, does not currently possess or own the Property, the Department cannot issue a written determination that all the provisions in s. 292.13, Wis. Stats., have been satisfied. However, the Department does have the ability under s. 292.55, Wis. Stats., to clarify a person's present or future liability for the environmental pollution of a property.

### **Liability Determinations**

Based upon the Department's review of the technical information and the Watts Road, LLC, exemption application, the Department makes the following determinations, in accordance with ss. 292.13 and 292.55, Wis. Stats., regarding the hazardous substances that have impacted the groundwater at the Property:

1. The hazardous substance discharges originated from a source on property that is not possessed or controlled by Watts Road, LLC.
2. Watts Road, LLC, did not possess or control the hazardous substance on the property on which the discharge originated.
3. Watts Road, LLC, did not cause the discharge.
4. An investigation report and other information have been submitted to the Department that is adequate to substantiate that Watts Road, LLC, has satisfied items 1 through 3 listed above.

### **Exemption Conditions for Owner of Affected Property**

Watts Road, LLC, as future owner of the Property, will need to comply with the following conditions, as specified in ss. 292.13(1) and (1m), Wis. Stats., to ensure the conditions of the exemption remain satisfied:

1. The facts upon which the Department based its determination are accurate and do not change.
2. The Property owner agrees to allow the following persons to enter the Property to take action to respond to the discharge: the Department and its authorized representatives; any party that possessed or controlled the hazardous substance or caused the discharge; and any consultant or contractor of such a party.
3. The Property owner agrees to avoid any interference with actions undertaken to respond to the discharge and to avoid actions that worsen the discharge.

4. With respect to soil contamination only, the Property owner agrees to take one or more specified actions directed by the Department, if the Department determines that the actions are necessary to prevent an imminent threat to human health, safety or welfare or to the environment, after the Department has made a reasonable attempt to notify the party who caused the hazardous substance discharge about that party's responsibilities to investigate and clean up the discharge.
5. The Property owner agrees to any other conditions that the Department determines are reasonable and necessary to ensure that the Department and a responsible party can adequately respond to the discharge.

Based on the Department's determinations in this letter, Watts Road, LLC, will not be held responsible under the State's Hazardous Substance Spill Law, s. 292.11, Wis. Stats., to investigate and clean up the hazardous substances migrating on to the Property if Watts Road, LLC, takes title to the Property. These assurances are provided to Watts Road, LLC, based on the information that is presently available to the Department. Watts Road, LLC, should be aware that the Department may revoke the determinations made in this letter if the Department concludes that any of the requirements under ss. 292.13(1) and (1m), Wis. Stats., cease to be met.

Watts Road, LLC, should be aware that future Property owners are eligible for the exemption under s. 292.13, Wis. Stats., if the new Property owner meets the requirements specified in the statute. However, the determinations in this letter may not be transferred or assigned by the Watts Road, LLC, to any other person. The Department will provide a written determination to future owners of the Property documenting whether or not a new Property owner satisfies the off-site exemption conditions, if such a determination is requested. Potential purchasers of the Property may also request a general liability clarification letter, such as this one, from the Department.

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for the activity is included at the top of this letter. The Department tracks information on all determinations such as this one in a database that is available on the Internet at <http://dnr.wi.gov/org/aw/rr/>. See BRRTS on the web under Contaminated Land Databases.

It is the Department's hope that this has been helpful to you in clarifying the environmental liability under the State's Spill law, associated with the contamination that has migrated onto the Property. If you have any questions or concerns regarding this letter, please contact Hank Kuehling at the address listed above, by telephone at (608) 275-3286, or e-mail at: [harlan.kuehling@dnr.state.wi.us](mailto:harlan.kuehling@dnr.state.wi.us).

Sincerely,



Patrick McCutcheon, Team Supervisor  
South Central Region, Remediation and Redevelopment Program

- c: Hank Kuehling – SCR  
Mike Schmoller - SCR  
Joe Renville – LS/5  
Percy Mather – RR/3  
Dave Lyshek – Edge Consulting Engineers, Inc.