



April 25, 2012

Karen Harkness  
City of Appleton  
Appleton Redevelopment Authority  
100 N. Appleton St.  
Appleton, WI 54911

Outagamie County  
FID # 445031510  
WDNR ERP #: 02-45-530084  
WDNR VPLE #: 06-45-523605

Subject: Conditional Case-by-Case Grant of Exemption for the Development of a Property  
Where Solid Waste has been Disposed: Parcel #s: 311077200, 311073500,  
**Foremost Farms (Former) Redevelopment**, 935 E. John St., Appleton, Outagamie Co., WI

Dear Ms. Harkness:

We have reviewed your request dated April 9, 2012 for a grant of exemption from regulation under s. NR 506.085, Wis. Adm. Code. Based on that evaluation, the Department is issuing this general grant of exemption from the prohibitions contained in s. NR 506.085, Wis. Adm. Code. You must comply with the conditions of this grant of exemption in order to maintain the exemption. 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.

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. We would like to particularly draw your attention to 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.

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. If you have any questions concerning this letter, please contact Jennifer Borski in Oshkosh at (920) 424-7887 or by email to [jennifer.borski@wisconsin.gov](mailto:jennifer.borski@wisconsin.gov).

Sincerely,

Roxanne N. Chronert, Team Supervisor  
Northeast Region Remediation & Redevelopment Program

c: J. Borski – DNR, Oshkosh  
File copy - A. Coakley, WA/5, Madison and D. Hammel, WA, Green Bay  
Bruce Roskom, Community Development, 100 N. Appleton St., Appleton, WI 54911-4799

Attachment: Aerial photo and parcel boundary map

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. The Appleton Redevelopment Authority (“ARA”) owns the property located at 935 East John Street, Appleton, Outagamie County, Wisconsin (“the Property”).
2. Solid waste has been disposed of at the Property and remains at the Property.
3. Karen Harkness, Director of Community & Economic Development for the City of Appleton, has submitted a request dated April 9, 2012 for an exemption from the prohibition in NR 506.085, Wis. Adm. Code. The request has been submitted under the seal of a professional engineer or a professional geologist relating to the proposed development and the environmental conditions at the property.
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 documents considered in review of the exemption request include the following:
  - The boundaries of the Property are shown on the **aerial photo and parcel boundary map**, which is attached and made part of this exemption.
  - *Remedial Action Plan, Former Foremost Farms Property, Appleton, Wisconsin, FID No. 445031510, VPLE No. 06-45-523605*, dated March 2012 and prepared by Arcadis;
  - *Cap Maintenance Plan and Materials Handling Plan, Former Foremost Farms Property, Appleton, Wisconsin, FID No. 445031510, VPLE No. 06-45-523605*, dated March 2012 and prepared by Arcadis;
  - *Response to Remedial Action Plan and Cap Maintenance Plan and Materials Handling Plan for Foremost Farms (Former), 935 E. John St., Appleton, WI, WDNR BRRTS # 02-45-530084 / 06-45-523605*, dated March 28, 2012 and issued to Ms. Karen Harkness, Appleton Redevelopment Authority, 100 N. Appleton St., Appleton, WI 54911.
  - April 24, 2012, 3:27 PM, electronic mail from Brian Maillet (Arcadis) to Jennifer Borski (Department) and copied to Karen Harkness (City of Appleton), Quasan Shaw (City of Appleton), Mark Hurban, Ryan Bombeck, Dennnis Wesselhoft and M. Carlson (Sabre Demolition) and titled *FFUSA, Revised Cap thickness* that includes the attachment, Figure 6.pdf, an amended soil management plan for the development area (proposed cap thickness reduced from seven feet to five feet of clean fill).

- April 25, 2012, 2:14 PM, electronic mail from Jennifer Borski (Department) to Brian Maillet (Arcadis) and titled *RE: FFUSA, Revised Cap thickness* that includes a response to the proposal to reduce cap thickness from seven feet to five feet of clean fill.
6. Additional facts relevant to the review of the grant of exemption modification request include the following:
- The application is specific to the Property currently addressed as 935 E. John St., Appleton, Wisconsin and includes parcel numbers 311077200 and 311073500.
7. 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 from 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 April 9, 2012, 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 ch. NR 103, Wis. Adm. Code.
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 s. NR 500.03(55), Wis. Adm. Code.
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 s. NR 500.03(62), Wis. Adm. Code.

4. 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.
5. 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.
6. 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.
7. No action related to the development of the Property may be taken which will cause an exceedance of a soil clean up standard in ch. NR 720, Wis. Adm. Code.
8. 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.
9. 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.
10. Temporary storage of contaminated soils, concrete, and masonry on or off the Property, relocation and/or disposal of any solid waste on the Property, and beneficial reuse of any soil or waste on the Property must be in compliance with a Low Hazard Grant of Exemption to be issued by the Waste and Materials Management Program.
11. Institutional controls and capping required for the Property by the Remediation and Redevelopment Program and Waste and Materials Management Program must be implemented.

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 the Property.

### NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the 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 sections 227.52 and 227.53, Wis. Stats., 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 must name the Department of Natural Resources as the respondent.

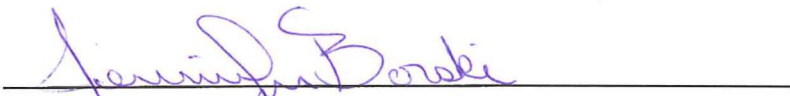
To request a contested case hearing pursuant to section 227.42, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. All requests for contested case hearings must be 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 does not extend the 30 day period for filing a petition for judicial review.

Dated: April 25, 2012

DEPARTMENT OF NATURAL RESOURCES  
For the Secretary



Roxanne N. Chronert, Team Supervisor  
Northeast Region Remediation & Redevelopment Program



Jennifer Borski, Hydrogeologist  
Northeast Region



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1-0525  
PATRICK COFFEY STEWART BURNEY  
1-0528  
KATHLEEN WIESMANN  
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JEFFREY KRUEGER  
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JAMES EVANS  
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MICHAEL MEVIS  
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MICHAEL MEVIS  
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CHRISTOPHER SERRA  
1-0749  
PAUL SCHREITER  
1-0754

JOSHUA MODDER ET AL  
1-0730  
JOHN PETERSON ET AL  
1-0731  
APPLETON CITY OF  
1-0732  
APPLETON CITY OF  
1-0735

HOUSING PARTNERSHIP FOX CITIES  
1-0541  
SALLY FOSTER  
1-0542  
KEVIN ROWOLD  
1-0543  
ROBERT PATRICK  
1-0540

MICHAEL RIVERS ET AL  
1-0555  
MICHAEL FLEMING  
1-0554  
PATRICIA PERCE TRUST  
1-0553

KHALDOON ALASWAD ET AL  
1-0788  
DENNIS QUINLAN  
1-0769

TIMOTHY WEBSTER  
1-0743  
KENNETH JOHNSON  
1-0744  
VICTOR LUTZ  
1-0742

THOMAS BAUMHARDT  
1-0789-1

JOSEPH TROY  
1-0746  
ROSS MUELLER  
1-0747

ROSS MUELLER  
1-0770

APPLETON CITY OF  
1-0772

GERALD RISNER II  
1-0758  
ALBERT BELLG  
1-0760

ROBERT BUCHANAN  
1-0764  
ERIC RHODE ET AL  
1-0761

U S GOVERNMENT  
1-0766

ROBERT BUCHANAN  
1-0764

DONALD BEHM  
1-0762

WISCONSIN ELECTRIC POWER CO  
1-0765-1

UNION PACIFIC RAILROAD  
1-0771

STATE OF WISCONSIN  
1-0765

SOUTH COURT

ALTON C

