

June 26, 2012

Karen Harkness, Director
Community Development Dept
City of Appleton
100 N Appleton St
Appleton WI 54911

Subject: Low Hazard Exemption for the Beneficial Reuse of On-site Contaminated Soil at the Former Foremost Farms Redevelopment Project, 935 E John St., Appleton, Outagamie County, Wisconsin, FID#445031510

Dear Ms. Harkness:

We have completed our review of the May 11, 2012, request submitted by ARCADIS, on behalf of Appleton Redevelopment Authority (Appleton), for the above referenced project. The information submitted for this low hazard exemption request provided sufficient justification for granting the exemption under s. 289.43 (8), Wis. Stats., and s. NR 500.08(5), Wisconsin Administrative Codes.

According to the proposed plan, Appleton intends to excavate approximately 6,125 cubic yards of polycyclic aromatic hydrocarbon (PAH) and metal contaminated soil from an approximate 40,000 square foot area located south of the former Foremost Farms building structure. The contaminated soil will be beneficially used to fill an approximate 34,279 square foot area within the footprint of the former building structure. Clean soil will be brought onto the property and placed in the excavation area to provide a minimum 4 feet of clean soil cover over contaminated soil in this area.

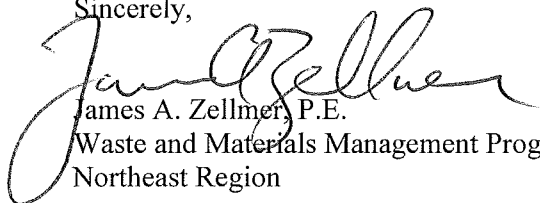
A non-woven geotextile membrane will be placed over the contaminated soil within the footprint of the former building structure and the abandoned building raceway. Following placement of the geotextile, clean soil will be brought in from off site to cover this area with a minimum 5 feet of clean soil. The clean soil covered areas will be seeded to establish a vegetative cover.

The attached grant of exemption constitutes your Department issued approval to excavate, relocate and cover the on-site contaminated soil. It is our opinion that the proposed activity can be performed in an environmentally acceptable manner if the conditions of this grant of exemption are followed.

This grant of exemption is only applicable to solid waste management requirements under chs. NR 500-538, Wisconsin Administrative Code. This exemption does not relieve you of the obligation to comply with all other Department of Natural Resource requirements and other applicable federal, state, and local regulations.

Please contact me by telephone at (920) 662-5431 or by email at james.zellmer@wisconsin.gov if you have any questions concerning this exemption.

Sincerely,

A handwritten signature in black ink, appearing to read "James A. Zellmer". The signature is fluid and cursive, with the first name being particularly prominent.

James A. Zellmer, P.E.
Waste and Materials Management Program Supervisor
Northeast Region

cc: Brian Maillet – ARCADIS, 126 North Jefferson St., Suite 400, Milwaukee, WI, 53202 (e-copy)
Jennifer Borski – OSH (e-copy)
Bob Grefe – WA/5 (e-copy)

**BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**

**CONDITIONAL LOW HAZARD GRANT OF EXEMPTION
FOR THE
BENEFICIAL USE OF
ON-SITE CONTAMINATED SOIL
ON THE
FORMER FOREMOST FARMS PROPERTY**

FINDINGS OF FACT

The Department finds that:

1. The Appleton Redevelopment Authority (Appleton) owns an approximate 8.22 acre property, previously known as the Foremost Farms property, located at 935 East John Street, Appleton, Wisconsin (Site).
2. On May 15, 2012, the Department received a report from ARCADIS, on behalf of Appleton, titled, "Request for Solid Waste Exemptions to allow the Beneficial Reuse of Impacted Soils as a Low-Hazardous Waste Fill Material, Former Foremost Farms Facility, 935 East John Street, Appleton, Wisconsin", and dated May 11, 2012. The request included relocating approximately 6,125 cubic yards of on-site contaminated soil and covering the soil with a geotextile and 5 feet of clean soil.
3. On March 4, 2009, the Department issued a Low Hazard Exemption for the On-Site Beneficial Use of Lead-Bearing Painted Concrete and Brick from Demolition of the Former Foremost Farms USA Facility, 935 East John Street, Appleton. This exemption allowed concrete and brick from on-site demolition activities to be crushed and used to fill in the building foundation and the on-site water raceway.
4. On November 16, 2011, Appleton enrolled the Site into the Department's Voluntary Party Liability Exemption program.
5. On March 28, 2012, the Department approved a Remedial Action Plan and Cap Maintenance and Materials Management Plan for the Site.
6. On April 25, 2012, the Department issued a conditional case-by-case grant of exemption for excavation of historic fill material containing foundry sand and cinders on the Site.
7. Development of the Site will potentially include residential areas.
8. Additional documents considered in review the exemption request include:
 - a. The March 2012 report titled, "Remedial Action Plan" for the Former Foremost Farms Property, Appleton, Wisconsin.
 - b. The March 2012 report titled, "Cap Maintenance Plan and Materials Handling Plan" for the Former Foremost Farms Property, Appleton, Wisconsin.
9. Additional facts relevant to the review of the grant of exemption request includes:

- a. Polycyclic aromatic hydrocarbons (PAHs) were detected at concentrations exceeding the generic non-industrial and/or industrial direct contact residual contaminant levels (RCLs) in all but 11 soil samples on the Site.
 - b. Naphthalene and/or phenanthrene concentrations were detected above the generic groundwater pathway RCL in five soil samples on the Site.
 - c. Arsenic was detected in each of the soil samples at concentrations exceeding the NR 720 industrial direct contact RCL.
 - d. Lead was sporadically detected at concentrations exceeding the NR 720 non-industrial direct contact RCL.
 - e. Mercury was sporadically detected at concentrations slightly exceeding the groundwater pathway site-specific RCL (SSRCL).
 - f. Selenium was detected in one soil sample at a concentration slightly exceeding the groundwater pathway SSRCL.
 - g. Groundwater exceedances have been limited to sulfate concentrations.
 - h. The proposed 4 to 5 foot clean soil cover layer over contaminated soil will be protective of human health and the environment.
10. The Department has determined that, if the conditions of the attached exemption are complied with, the proposed alternative disposal method of contaminated soil is protective of public health, safety and welfare, and the environment.
 11. The Department received payment of the plan review fee for this project on June 6, 2012.
 12. Granting the exemptions set forth below will not inhibit compliance with Wisconsin solid waste management standards in chs. NR 500 through 538, Wis. Adm. Code.
 13. The conditions set forth below are needed to assure that exempted use of contaminated soil may be conducted in an expeditious manner while preserving the Department's ability to minimize environmental impacts. If the conditions are complied with, the proposed exemption will not inhibit compliance with the applicable provisions of ch. 30, 31, 160, and 280 to 299 and ss. 1.11, 23.40, 59.692, 59.693, 60.627, 61.351, 61.354, 62.231, 62.234, and 87.30, Stats.

CONCLUSIONS OF LAW

1. Based on the foregoing, the Department has the authority under subs. 289.43 (8), Stats., and s. NR 500.08(5), Wis. Adm. code to issue a grant of exemption if the exemption would not inhibit compliance with the applicable provisions of ch. 30, 31, 160, and 280 to 299 and ss. 1.11, 23.40, 59.692, 59.693, 60.627, 61.351, 61.354, 62.231, 62.234, and 87.30, Stats.
2. The Department has authority to approve a grant of exemption with conditions if the conditions are needed to ensure compliance with the applicable provisions of ch. 30, 31, 160, and 280 to 299 and ss. 1.11, 23.40, 59.692, 59.693, 60.627, 61.351, 61.354, 62.231, 62.234, and 87.30, Stats.

3. The conditions set forth below are needed to ensure compliance with the applicable provisions of ch. 30, 31, 160, and 280 to 299 and ss. 1.11, 23.40, 59.692, 59.693, 60.627, 61.351, 61.354, 62.231, 62.234, and 87.30, Stats.
4. In accordance with the foregoing, the Department has the authority under sub. 289.43 (8), Stats. and sub. NR 500.08(5) Wis. Adm. Code to issue the following conditional grant of exemption.

CONDITIONAL GRANT OF SOLID WASTE EXEMPTION

The Department hereby issues a Low Hazard Grant of Exemption for the beneficial use of on-site contaminated soil as fill material in the footprint of the former Foremost Farms building structure, subject to the following conditions:

1. The geotextile "marker layer" shall consist of a highly visible nonwoven geotextile material that provides a visible warning to any person conducting intrusive activities on the Site. The purpose of this visible demarcation shall be to serve notification as to the vertical limit of the engineering control and beginning on the contaminated soil zone.
2. The geotextile shall be deployed and covered in accordance with the manufacturer specifications.
3. The clean soil cover layer shall be managed as an engineering control, subject to all requirements of the approved March 2012 cap maintenance and materials management plan.

This exemption is based on the information available to the Department as of the date of this document. If additional information, project changes or other circumstances indicate a possible need to modify this exemption, the Department may ask you to provide further information relating to this activity. Likewise, the Department accepts proposals to modify exemptions, as provided for in state statutes and administrative codes.

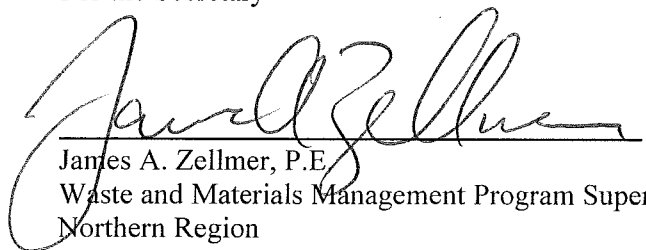
NOTICE OF APPEAL RIGHTS

If you believe you have a right to challenge this decision made by the Department, you should know that Wisconsin statutes and administrative codes establish time periods and requirements for reviewing Department decisions. To seek judicial review of the Department's decision, sections 227.52 and 227.53, Stats., establish criteria for filing a petition for judicial review. 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. The petition shall name the Department of Natural Resources as the respondent.

Dated: **June 26, 2012**

DEPARTMENT OF NATURAL RESOURCES

For the Secretary



James A. Zellmer, P.E.
Waste and Materials Management Program Supervisor
Northern Region