



## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Scott Hassett, Secretary  
Scott Humrickhouse, Regional Director

West Central Region Headquarters  
1300 W. Clairemont Avenue  
PO Box 4001  
Eau Claire, Wisconsin 54702-4001  
Telephone 715-839-3700  
FAX 715-839-6076  
TTY 711

December 7, 2004

BRRTS No: 07-29-535569

Mr. Bill Zeidler  
Marshall & Ilsley Corporation  
770 North Water Street  
Milwaukee, WI 53948

Subject: Lender Liability Clarification and Current Environmental Conditions for the City Center Motel Property, 315 East State Street, City of Mauston, Juneau County, Wisconsin

Dear Mr. Zeidler:

### **Purpose**

On November 12, 2004, the Wisconsin Department of Natural Resources ("the Department") received a request from Godfrey & Kahn, S.C. on behalf of M & I Marshall & Ilsley Bank Corporation, along with the required \$500 fee, for a lender liability clarification letter. The purpose of this letter is to provide M & I Marshall & Ilsley Bank Corporation with the requested clarification of its environmental liabilities after acquisition of the City Center Motel property through the foreclosure process. The purpose is also to discuss the status of any environmental contamination that may exist on the City Center Motel property, hereinafter referred to as "the Property". The Property is located at 315 East State Street in the City of Mauston and is described as tax parcel numbers 1030 and 1031 of Lot 5, Block 15, Miscellaneous Addition located in the southwest ¼ of the southwest ¼, Section 1, Township 15 North, Range 3 East, Juneau County, Wisconsin. The Property covers approximately 11,664 square feet or 0.27 acres.

### **Request**

The November 12, 2004, letter requested a determination from the Department on whether the M & I Marshall & Ilsley Bank Corporation is eligible for the lender liability exemption under s. 292.21, Wis. Stats., for property that M & I Marshall & Ilsley Bank Corporation acquired through foreclosure.

This determination is based on the following documents submitted with the request:

- Lender Liability Exemption Environmental Assessment Tracking Form.
- "Phase I Environmental Site Assessment, City Center Motel, 315 East State Street, Mauston, Wisconsin" prepared by Ayres Associates and dated February 2004.

### **Background and Summary of Environmental Conditions**

M & I Marshall & Ilsley Bank Corporation acquired the Property through the foreclosure process on October 25, 2004. Based on information provided in the Phase I Environmental Site Assessment report, the Property is presently occupied by a two-story motel shaped like a "U" and containing twenty-three (23) units. The three sides of the motel enclose a paved courtyard that serves as a parking lot for guests. The motel consists of guestrooms, an office, three utility rooms and three furnace rooms.

The surrounding land uses are mainly commercial with a gasoline service station located across State Street off the southwest corner of the Property. A church parking lot abuts the Property on the north and parking lots are located on the west and east sides of the Property. The parking lots serve commercial properties on the west and east sides of the Property. The motel faces south and is fronted by State Street.

Ayres Associates performed a Phase I Environmental Site Assessment ("Phase I ESA") of the Property in conformance with the scope and limitations of American Society for Testing and Materials ("ASTM") Practice E 1527-00. The results of the Phase I ESA are contained in the aforementioned report. The report indicates that the assessment revealed no evidence of *recognized environmental conditions* in connection with the Property.

It was concluded that based upon the lack of *recognized environmental conditions* associated with the Property, further environmental assessment activities are not warranted for the Property.

### **Exemption Conditions**

Under Wisconsin's Hazardous Substance Spills Law ("the Spills Law"), s. 292.11, Wis. Stats., a person who "possesses, controls or causes" a hazardous substance discharge, is liable for the cleanup. Section 292.21, Wis. Stats., provides a liability exemption for lenders and representatives. A lender is not subject to ss. 292.11(3), (4) or (7)(b) or (c), Wis. Stats., and is not liable under chapters 281, 285, 289 or 291 to 299, Wis. Stats., for a discharge of a hazardous substance that occurred on the Property, if the lender takes title, possession or control of the Property. Section 292.55(1)(d)1., Wis. Stats., authorizes the Department to issue letters concerning potential liability for environmental pollution.

The lender must meet the following conditions to qualify for the liability exemption:

- The lender does not intentionally or negligently cause a new discharge of a hazardous substance or exacerbates an existing discharge:
- The lender notifies the Department of any known discharge of a hazardous substance.
- The lender conducts an environmental assessment of the property at any time, but not more than 90 days after the date the lender acquires title to, or possession or control of, the property and files a complete copy of the environmental assessment with the Department not more than 180 days after the date the lender acquires title to, or possession or control of, the property. The requirements for conducting an environmental assessment are found in s. 292.21(1)(c) 2., Wis. Stats.
- If a discharge of a hazardous substance occurs on or after the date on which the lender acquires title to, or possession or control of, the property, the lender implements an emergency action under s. NR 708.05, Wis. Adm. Code, in response to the discharge of the hazardous substance.
- For a hazardous substance released on or after the date on which the lender acquires title to, or possession or control of, the property, the lender does not engage in the operation of a business at the property, complete work in progress or take other actions associated with conducting the conclusion of the borrower's business (s. 292.21(1)(c) 1., Wis. Stats.).
- The lender agrees to allow the Department and any party that possessed or controlled or caused the hazardous substance discharge (and their consultants or contractors) to enter the real property to take action to respond to the discharge.
- The lender agrees to avoid any interference with actions undertaken to respond to the discharge and to avoid actions that worsen the discharge.
- The lender agrees to any other conditions that the Department determines is reasonable and necessary to ensure that the Department or another person can adequately respond to the discharge.

**Lender Liability Determinations**

The Department has reviewed the materials submitted with the request from the M & I Marshall & Ilsley Bank Corporation and makes the following liability determinations:

1. M & I Marshall & Ilsley Bank Corporation contracted with an environmental consultant to conduct an environmental assessment of the Property and provide a copy of a Phase I ESA report to the Department as required under s. 292.21(1)(c)1.d., Wis. Stats.
2. M & I Marshall & Ilsley Bank Corporation has no cause to notified the Department of a known discharge of a hazardous substance.
3. M & I Marshall & Ilsley Bank Corporation has not intentionally or negligently caused a new discharge of a hazardous substance or exacerbated an existing discharge of a hazardous substance on the Property.
4. M & I Marshall & Ilsley Bank Corporation has met the requirements for an environmental assessment in accordance with s. 292.21(1)(c)2., Wis. Stats., including the requirement that an environmental assessment be conducted at any time, but not more than 90 days after the date of acquisition of the Property. A Phase I ESA was conducted in January 2004. The Property was acquired, possessed or controlled, on October 25, 2004.
5. If M & I Marshall & Ilsley Bank Corporation meets all of the conditions for liability exemption eligibility under s. 292.21, Wis. Stats., that are listed above, M & I Marshall & Ilsley Bank Corporation will not be held responsible under Wisconsin's Hazardous Substance Spill Law, s. 292.11, Wis. Stats., for hazardous substance discharges which were present on the Property prior to M & I Marshall & Ilsley Bank Corporation acquiring title, or possession and control, of the Property. If contamination is later discovered that was not revealed by the environmental assessment, M & I Marshall & Ilsley Bank Corporation will not be subject to ss. 292.11(3), (4), or (7)(b) or (c), Wis. Stats., and will not be liable under chs. 281, 285, 289, 291, 292 or 293 to 299, Wis. Stats., for a discharge of a hazardous substance on the Property as long as M & I Marshall & Ilsley Bank Corporation continues to comply with the requirements of s. 292.21(1)(c), Wis. Stats., and does not cause a new hazardous substance discharge or exacerbate an existing discharge on the Property.

To determine what specific actions would satisfy the **Federal** lender liability requirements under CERCLA, we advise that you contact Eileen L. Furey, U.S. EPA REGION 5 in Chicago, IL (312-886-7950 or [furey.eileen@epa.gov](mailto:furey.eileen@epa.gov)).

The U.S. EPA should be able to provide you with guidance on whether your current and proposed actions concerning the Property are consistent with the Federal CERCLA lender liability requirements.

The Bureau for Remediation and Redevelopment Tracking System ("BRRTS") identification number for the Property is included at the top of this letter. Please be aware that information on sites is tracked in a Department database that is available on the Internet at <http://dnr.wi.gov/org/aw/rr/>. See "BRRTS on the web" under "Contaminated Land Databases".

If you have any questions or comments, please feel free to contact Loren A. Brumberg at the above address or at 715-839-3770. Refer to numbers at the top of this letter in any future correspondence.

Sincerely,



William J. Evans, P.G.  
West Central Region Team Supervisor  
Remediation & Redevelopment Program

c: Percy Mather - RR/3  
Loren Brumberg - WCR  
Dave Rozeboom - Wisconsin Rapids Service Center  
Scott C. Wilson, Ayres Associates, 1802 Pankratz Street, Madison,  
WI 53704  
Pamela E. Barker, Esq., Godfrey & Kahn, S.C., 780 North Water Street,  
Milwaukee, WI 53202