

File



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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FID NO. 701058490
ADAMS COUNTY
RR/BEAP/CORR

Mr. Dean Morgan, Chairman
Adams Co. Property Committee
402 Main Street, P.O. Box 250
Friendship, WI 53934

Subject: Limited Municipal Liability for Tax Delinquent Property

Dear Mr. Morgan:

The property of the former Easton Store was one of eleven properties selected to participate in the Department of Natural Resources' ("Department") 1997 Brownfields Environmental Assessment Program. Under this federal and state-funded program, the Department will conduct a Phase I and a Phase II environmental assessment to determine whether or not contamination is present on the property. The purpose is to assist local governments to fulfill the goal of returning the property to the local tax roles and a productive community use. As a part of this effort, the county is encouraged to take title to the tax-delinquent property through the tax deed notice process.

For the purpose of encouraging municipalities (county, city, etal.) to take title to abandoned and contaminated and tax-delinquent property, the Land Recycling Law - Wisconsin Act 453 provides relief to municipalities in the form of a limited liability exemption from provisions of the Hazardous Substance Discharge Law. More specifically, s. 292.11(9)(e), Wis. Stats., [formerly s. 144.76(9)(e), Wis. Stats.] was created to exempt any municipality from liability for any hazardous substance discharges at a property acquired by the municipality through tax delinquency proceedings or as a result of an order by a bankruptcy court. This limited liability exemption is dependent upon, of course, the municipality not causing or contributing to the hazardous substance release.

In other words, a municipality can not be held responsible to investigate or cleanup contamination at the property under, what is known as, the Spill Law, unless a discharge is caused by: (1) the municipality; (2) failure of the municipality to restrict access to the property; or (3) failure of the municipality to sample, analyze and properly store or dispose of unidentified or hazardous substances stored aboveground on the property. In addition, the Environmental Protection Agency issued a policy memorandum stating that any municipality that acquires ownership or control of property involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances will not be held liable for contamination under the federal Superfund program. Eligibility for the exemption is the same, or similar, to the state criteria.



The limited exemption provided under s. 292.11(9)(e), Wis. Stats., [formerly s. 144.76(9)(e), Wis. Stats.] applies only to municipalities. However, if a municipality or a non-responsible private party elects to investigate and cleanup the property in the future, the party undertaking the environmental response work can enter into the Land Recycling Program. This program can offer the participants protection from future liability under the Spill Law once the investigation and cleanup are approved by the Department, as provided in s. 292.15, Wis. Stats. [formerly s. 144.765, Wis. Stats.]. This limited liability exemption can be assigned to future purchasers of the property, whereas the exemption to municipalities under s. 292.11(9)(e), Wis. Stats., [formerly s. 144.76(9)(e), Wis. Stats.] cannot be assigned to future private party purchasers.

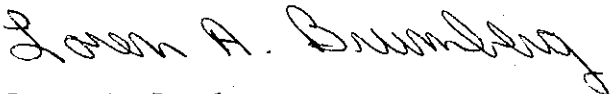
The Land Recycling Law also authorizes a county to enter any real property for which a tax certificate has been issued, or may authorize another person to enter the real property, to determine the nature and extent of environmental contamination, pursuant to s. 66.121, Wis. Stats.

The Land Recycling Law provides specific and important liability exemptions to Adams County when you acquire tax-delinquent properties. The purpose of the exemptions is to encourage you and other municipalities to take title to contaminated and abandon and tax-delinquent properties and to develop a means to return the properties to the local tax roles and a productive community use.

Department staff in the Land Recycling Program look forward to working with you in our efforts to accomplish this goal. I hope this letter clarifies your questions regarding liabilities associated with taking title to The Easton Store property.

If you have any additional questions, please contact me at 715-839-3770.

Sincerely,



Loren A. Brumberg
Waste Management Specialist
Land Recycling Program

LAB:lb

c: Amy Walden - RR/3
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