

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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Scott Hassett, Secretary
Ronald W. Kazmierczak, Regional
Director

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Oshkosh, Wisconsin 54901-9731
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SENT CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Date: 9/10/06

Kay Clabault
MRED Cummings
W228 N745 Westmound Drive
Waukesha, WI 53186

SUBJECT: Case by Case Exemption for the Development of a Property Where Solid Waste has been Disposed at the former Georgetown Cleaners Property, 180 N. Main Street (BRRTS # 02-20-546625); former Manowske Welding Property at 200 N. Main Street (BRRTS # 02-20-547456); and former Holy Family Church Parking lot at 26 Follett Street (BRRTS # 02-20-547886) in the City of Fond du Lac, (SW ¼, NE ¼, Sec. 10, T15N, R17E) Fond du Lac County, Wisconsin, 54935.

Dear Ms. Kay Clabault:

We have reviewed your request dated September 20, 2006, for a grant of exemption from regulation under s. NR 506.085, Wis. Adm. Code. Based on this evaluation, the Department is issuing this conditional 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. Documentation that certain conditions have been completed shall be submitted to the Department within 30 days of completing the work. 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 with a new fee.

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, which may be present on a property if decomposing solid waste is present.

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 Jennie Easterly at 920-303-5447.

Sincerely,

Bruce Urben

NER Remediation and Redevelopment Team Supervisor

cc: Jennie Easterly - NER Oshkosh, Diane Hammel - NER - Green Bay
John Angeli - City of Fond du Lac

Quality Natural Resources Management
Through Excellent Customer Service



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. BRIC Associates currently owns the property located at 180 North Main Street, 200 North Main Street and 26 Follett Street, Fond du Lac, 54936, Fond du Lac County, Wisconsin.
2. Solid waste has been disposed of at this property and remains at this property.
3. BRIC Associates has submitted a request dated September 20, 2006 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 relating to the proposed development and the environmental conditions at the property.
4. Based upon the information provided to the Department of Natural Resources ("the Department"), the proposed development at the property is not expected to cause future exceedances of applicable soil and groundwater standards. The proposed Walgreen's building and associated asphalt parking lot and the retail building and associated asphalt parking lot cover all of the solid waste on the property and should prevent any direct contact with the solid waste and reduce/eliminate surface water infiltration through the solid waste.
5. Additional documents considered in review of the exemption request include the following:
 - Email dated September 20, 2006 from James Bannantine at Arcadis to Jennifer Easterly which included the Request for Case by Case Exemption Application Form 4400-226 (signed on 9-20-2006) and summary document which included the building plans.
6. 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 BRIC Associates 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 February 9, 2006 subject to the following conditions:

1. All excavated solid waste/contaminated soils shall be transported to a licensed landfill for proper disposal. Documentation that this waste disposed of properly shall be submitted to the Department within 30 days of completing the work.
2. BRIC Associates shall cover all exposed solid waste as proposed in the submitted development plan with asphalt driveway and concrete building slabs. The earthwork contractor/site owner shall provide documentation that asphalt/building foundations/synthetic lined stormwater basins cover all exposed wastes. This documentation shall be maintained and held by the property owner and shall be provided to the Department. Photo documentation and a written document from the contractor who completed this work shall be submitted to the Department within 30 days of completing the work.
3. A portion of this property has been used as a solid waste landfill and its use is restricted to prevent disturbing the integrity of the final cover (cap) or constructing any buildings on the property without written approval from the Department or its successor agency.
4. Water supply regulations in chs. NR811 and 812, Wis. Adm. Code, prohibit the construction of water supply wells within 1200 feet of a waste disposal facility. A special variance is required from the Drinking Water and Groundwater Program within the Department to construct a drinking water well in this 1200-foot setback area. Special well construction standards or water treatment requirements, or well construction prohibitions may apply.
5. 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.
6. 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.
7. 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.
8. 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 exceedance of any preventive action limit or enforcement standard at a point of standards application in ch. NR 140, Wis. Adm. Code.

9. 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.
10. 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.
11. 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.
12. This conditional 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 should be contacted to discuss any proposed changes to avoid activities that could violate the statute or the conditions of this exemption.
13. 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.

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 this property.


NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin statutes, administrative rules and case law establish time periods within which requests to review Department decisions must be filed.

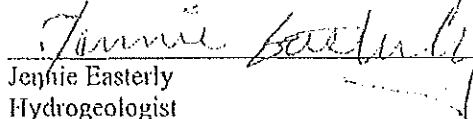
For judicial review of a decision pursuant to section 227.52 and 227.53, Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

Dated: 9/10/06

DEPARTMENT OF NATURAL RESOURCES
For the Secretary



Bruce Urban
Northeast Region - Green Bay
Remediation and Redevelopment Program



Jennie Easterly
Hydrogeologist
Northeast Region - Oshkosh
Remediation and Redevelopment Program