



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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July 27, 2007

BRRTS#: 07-35-548794 & 02-35-000082

Mr. Chuck Kelly
Sydney Madison, LLC
P.O. Box 8
Butler, WI 53007-0008

Liability Clarification for the Tomahawk Tissue Landfill Property located in the Northeast ¼, Section 17, Township 35 North, Range 6 East, Tannery Road, Town of Bradley, Lincoln County, Wisconsin

Dear Mr. Kelly:

Purpose

The Department of Natural Resources ("Department") has reviewed your request for a liability clarification letter for the Tomahawk Tissue Landfill Property referenced above and referred to in this letter as "Property." The purpose of this letter is to determine what liability Sydney Madison, LLC. ("Sydney Madison") has under Wisconsin law by purchasing a portion of the Property not containing the area used by the former Tomahawk Tissue Corporation or Georgia Pacific Corporation ("Georgia Pacific") for waste disposal.

Request

On April 27, 2007, you requested that the Department determine whether you are exempt from s. 292.11(3), (4) and (7)(b) and (c), Wis. Stats., commonly known as the "Spill Law," with respect to the existence of a hazardous substance in the soil or groundwater that would be present should you purchase the entire property or would be present should you purchase the portion of the property that does not contain the landfill. The Department received a fee for providing assistance, as required by s. NR 749.04(1), Wis. Adm. Code. The Department has learned that you have now purchased the northern portion of the property not containing the landfill.

Background

The Department considered the information contained in the Department's case file to make the determinations presented in this letter.

The Property consists of approximately 117 acres. Georgia Pacific was issued a license for a landfill on the Property in 1970. The landfill is approximately 7 acres and is located approximately in the N1/2, SW1/4, NE1/4, Sec. 17, T35N, R6E. The landfill is a monofill

containing paper mill sludge. Georgia Pacific operated the landfill until the property was sold to Tomahawk Tissue Corporation in 1984. Tomahawk Tissue Corporation operated the landfill until they declared bankruptcy in 1989. The property has been abandoned since 1989.

The Department consolidated the sludge and installed a native soil cap on the landfill in 1996. The Department installed additional monitoring wells on the property and conducted groundwater monitoring semiannually from October 2000 – June 2005. All eleven monitoring wells were sampled during each sampling event. Vinyl chloride, total chromium, and lead, were detected above the NR 140 Wisconsin Administrative Code Preventive Action Limit (PAL) and/or Enforcement Standard (ES) in the monitoring wells surrounding the landfill. Dioxin and Furans were detected in water samples from monitoring wells on the south side of the landfill but were below the PAL and ES.

It is the Department's understanding that Sydney Madison has purchased approximately 75 acres of the land on the northern portion of the Property. The land purchased does not include the actual landfill.

Liability Determinations

Based on the Department's review of technical information, including the Environmental Liability Clarification Request, the Department makes the following determinations regarding Sydney Madison's liability under the spill law for the portion of the property that Sydney Madison purchased.

Section 292.11(3) Wisconsin Statutes, also known as the spill law states:

- **RESPONSIBILITY.** A person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands, or waters of the state.

By purchasing the portion of the property not containing the landfill Sydney Madison is not responsible for investigation and cleanup of contamination originating from the landfill; Sydney Madison has no greater liability than any party who would buy land adjacent to a landfill.

Site Access

Pursuant to ss. 289.46(2) and 292.11(3), Wis. Stats., Sydney Madison needs to provide access to the Department and the responsible parties and their authorized representatives in order to continue monitoring of groundwater, to maintain groundwater monitoring networks that are on the northern portion of the Property and to perform additional remedial action including landfill cap maintenance. In addition, because the access to the landfill is limited, Sydney Madison needs to provide access through the northern portion of the Property to the Department and the responsible parties and their authorized representatives to get onto the landfill and adjacent land to maintain and monitor the landfill cap and to conduct any necessary monitoring and for the installation and maintenance of monitoring wells and equipment.

State Funded Response Expenditures - Cost Recovery

As described above, the Department incurred costs to cap the landfill and monitor groundwater. The Department is required by statute to attempt to recover this money should a responsible party or parties be identified. The Department would not however have the authority to place a lien on the portion of the Property that Sydney Madison purchased or recover those costs already incurred from Sydney Madison, since the costs were incurred prior to Sydney Madison taking possession of the Property, Sydney Madison did not cause the environmental contamination and very little of the costs incurred were spent on the portion of the Property that Sydney Madison purchased.

Off-Site Liability Exemption

The off-site exemption in s. 292.13, Wis. Stats., limits the environmental liability of a person in possession, (i.e., who owns a property) or control of a property affected by the discharge of a hazardous substance, when the discharge originates from an off-site source. Because Sydney Madison purchased the northern portion of the Property **not** containing the landfill, Sydney Madison qualifies for the off-site exemption and is not responsible for investigation and cleanup of contamination originating from the landfill if the following are met:

1. The hazardous substance discharge originated from a source on property that is not possessed or controlled by Sydney Madison.
2. Sydney Madison did not possess or control the hazardous substances on the property on which the discharge originated.
3. Sydney Madison did not cause the hazardous substance discharge.
4. Sydney Madison will not have liability under Section 292.11(3) Stats. for investigation or remediation of soil or groundwater contamination originating from off-site onto the Property, provided that Sydney Madison does not take possession or control of the property on which the discharge originated.

Off-Site Liability Exemption Conditions

A person who meets all the conditions of the off-site exemption is not responsible for investigating and cleaning up environmental contamination that migrates onto her or his property from a neighboring property, if certain conditions are met.

The Department's determination, as set forth in this letter, are subject to the following conditions being complied with, as specified in s. 292.13(1) and (1m), Wis. Stats:

1. The facts upon which the Department based its determination are accurate and do not change.
2. Sydney Madison agrees to allow the following parties to enter the Property to take action to respond to the discharges: the Department and its authorized representatives; any party that possessed or controlled the hazardous substances or caused the discharge; and any consultant or contractor of such a party.

3. Sydney Madison agrees to take one or more specified actions directed by the Department if the Department determines that the actions are necessary to prevent an imminent threat to human health, safety or welfare or to the environment.
4. Sydney Madison agrees to avoid any interference with action undertaken to respond to a hazardous substance discharge and to avoid actions that worsen the discharges.
5. Sydney Madison agrees to any other condition that the Department determines is reasonable and necessary to ensure that the Department and any other authorized party can adequately respond to a hazardous substance discharge.

The Department may revoke the determinations made in this letter if it determines that any of the requirements under sections 292.13(1) or (1m), Wis. Stats., cease to be met.

There have been detections of heavy metals in the monitoring wells installed north of the landfill at concentrations greater than the ES for total chromium and lead during previous groundwater sampling events. The concentrations have declined to below the PAL during more recent groundwater sampling. The off-site exemption would also apply if VOCs, metals, dioxin and furan contamination from the former Tomahawk Tissue Landfill were later detected on the Property. Future Property owners are eligible for the exemption under section 292.13, Wis. Stats., if they meet the requirements listed in that statute section. The determinations in this letter regarding a liability exemption, however, only apply to Sydney Madison, and may not be transferred or assigned to other parties. The Department will provide a written determination to future owners of this Property, if such a determination is requested in accordance with the requirements of section 292.13(2), Wis. Stats.

Development Issues

While Sydney Madison does not have liability to investigate or remediate contamination from the landfill, you should be aware that any building or development in proximity to a landfill has the potential to be impacted by the landfill. Typical issues include gas migration and groundwater contamination. If you plan to build or develop the land, we recommend that you review the Department's site reports on this case and evaluate whether there are any concerns based upon the site conditions and your development plans. Also, you should be aware that if you intend to install a water well on the property within 1,200 feet of the landfill you need to apply for a variance from the Department's Drinking and Groundwater Program.

Other Spills or Discharges

This letter relates only to those conditions described above related to the Property, and makes no determination concerning the presence or absence of hazardous substances, other than those identified above. The Department has no information regarding the presence or absence of hazardous substances on the Property other than those detected during the investigation and capping of the landfill. In the future, if the Department becomes aware of new information concerning the contaminants referenced above, or the presence of other contaminants on the Property not previously identified, the Department will need to evaluate that data to determine if response actions may be required. Whenever possible, the Department requires the person who caused the discharge to take the appropriate response actions. You may wish to conduct an environmental site assessment on the portion of the

Property you purchased to identify if there are any other environmental conditions affecting the land.

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for this activity is included at the top of this letter. The Department tracks information on all determinations such as this in a 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 concerns regarding this letter, please contact John Sager at (715) 365-8959, by email at john.sager@wisconsin.gov or at the address listed in the letterhead.

Sincerely,



John Robinson
Northern Region Team Supervisor
Remediation & Redevelopment Program

cc: File
John Sager - Rhinelander
Michael Prager- RR/3

