



December 20, 2021

BRRTS #: 07-56-553292; 02-56-000089

FID #: 656009420

Lanee Noble
Falcon National Bank
1441 Bunker Lake Blvd NE
Ham Lake, MN 55304

Subject: Lender Liability Clarification for the Industrial Property, 981 CTH UU, Hudson, WI 54016, Tax Parcel Number: 020-1058-20-050; 020-1057-90-000

Dear Ms. Noble:

On July 26, 2021, the Wisconsin Department of Natural Resources (DNR) received your request, along with the required \$700 fee, for a lender liability clarification letter. The purpose of this letter is to provide Falcon National Bank with the requested clarification of environmental liabilities related to the Industrial Property located at 981 CTH UU, Hudson, WI, 54016, St. Croix County, Wisconsin ("the Property").

Request

Your application dated July 26, 2021, requests a determination from the DNR on whether Falcon National Bank is eligible for the lender liability exemption identified in Wisconsin Statutes (Wis. Stat.) section (§) 292.21, with respect to the Property.

It is our understanding that your lending institution is seeking liability clarification regarding its status under Wis. Stat. § 292.21(1)(a) as a lender that is engaged in mortgage lending for the Property. The DNR understands that Falcon National Bank does not otherwise possess, control, or have title to the Property and that Falcon National Bank is not presently seeking clarification regarding an acquisition through enforcement of a security interest in the Property. In summary, with respect to the Property and based on the information provided, the DNR believes that Falcon National Bank is a lender engaged in lending activities at the Property and is exempt under Wis. Stat. § 292.21(1)(a), provided that the lender does not otherwise possess, control, or have title to the Property.

Documents Provided

The following documents were submitted with your request:

- DNR Form 4400-237, Technical Assistance and Environmental Liability Clarification Request, dated July 19, 2021;
- Special Warranty Deed between grantor Nor-Lake Incorporated and grantees Hudson Business Park, LLC, and Mirror Lake Properties, LLC, for Property, dated June 18, 2021;
- Assignment of Rents between Hudson business Park LLC, Mirror Lake Properties, LLC, and Falcon National Bank, dated June 21, 2021;

- Mortgage between Hudson business Park LLC, Mirror Lake Properties, LLC, and Falcon National Bank, dated June 21, 2021; and
- St. Croix County Parcel Report and Map, valid as of May 28, 2021.

Property Information

On February 1, 1984, Nor-Lake Incorporated notified the DNR that a hazardous substance discharge or other environmental pollution was detected at the Property. In addition, the DNR issued a general liability clarification letter to Hudson Business Park, LLC, on August 23, 2021. Information relating to this hazardous substance discharge and the liability clarification letter are available via the Bureau for Remediation and Redevelopment Tracking System (BRRTS) under tracking numbers 07-56-553292 and 02-56-000089.

General Lender Liability Exemption Conditions and Limitations

Under Wisconsin's Hazardous Substance Discharge Law (the "Spill Law"), Wis. Stat. § 292.11, a person who "possesses, controls or causes" a hazardous substance discharge is liable for taking necessary investigative and cleanup actions. Wis. Stat. § 292.21 provides a liability exemption for lenders that are conducting lending activities, preacquisition inspections of real property, acquisitions of real property through enforcement of a security interest, and acquisitions of personal property and fixtures through enforcement of a security interest, provided that the lender meets the respective statutory conditions for each of these activities. Pursuant to the request from Falcon National Bank, this letter primarily addresses Falcon National Bank's eligibility for an exemption for lending activities under Wis. Stat. § 292.21(1)(a).

Lending Activities

Under Wis. Stat. § 292.21(1)(a), a "lender" is not deemed to possess or control a hazardous substance or cause the discharge of a hazardous substance as a result of engaging in "lending activities," provided that:

- The lender does not physically cause a discharge; and
- The lender through tortious conduct with respect to lending activities causes a discharge of a hazardous substance or exacerbates an existing discharge of a hazardous substance.

Under Wis. Stat. § 292.01(8), "lender" means a bank, credit union, savings bank, savings and loan association, mortgage banker or similar financial institution, the primary business of which is to engage in lending activities or an insurance company, pension fund or government agency engaged in secured lending.

Under Wis. Stat. § 292.01(9), "lending activities" means advancing funds or credit to and collecting funds from another person; entering into security agreements, including executing mortgages, liens, factoring agreements, accounts receivable financing arrangements, conditional sales, sale and leaseback arrangements and installment sales contracts; conducting inspections of or monitoring a borrower's business and collateral; providing financial assistance; restructuring or renegotiating the terms of a loan obligation; requiring payment of additional interest; extending the payment period of a loan obligation; initiating foreclosure or other proceedings to enforce a security interest in property before obtaining title; requesting and obtaining the appointment of a receiver; and making decisions related to extending or refusing to extend credit.

Lender Liability Determinations Related to the Property

The DNR reviewed the request and other documents submitted by Falcon National Bank on July 26, 2021, and the deed submitted on October 26, 2021. The request submitted by Falcon National Bank indicates that Falcon

National Bank is a lender with a mortgagee interest in the Property. Information submitted for this request does not indicate that Falcon National Bank has either caused a discharge or caused or exacerbated a discharge through tortious conduct with respect to lending activities. Falcon National Bank appears to be a bank within the definition of "lender" and Falcon National Bank's action of advancing a mortgage loan for the Property falls within the definition of "lending activities". Based on the information you provided, and with respect to the Property, DNR believes that Falcon National Bank is exempt under Wis. Stat. § 292.21(1)(a) as a lender conducting lending activities, provided that the lender does not otherwise possess, control or have title to the Property.

Wis. Stat. § 292.55(1)(d)1. authorizes the DNR to issue letters concerning potential liability for environmental pollution. DNR believes that, as a mortgage lender for the Property, Falcon National Bank qualifies as an exempt lender and is therefore not liable for the identified contamination at the site. If Falcon National Bank continues to meet all of the conditions for liability exemption eligibility that are listed in Wis. Stat. § 292.21, Falcon National Bank will not be held responsible under Wisconsin's Hazardous Substance Spill Law, Wis. Stat. § 292.11, for hazardous substance discharges present on the Property.

Please note that the lender liability exemption is not transferable. This response letter is based on information you provided to DNR and relates only to the state's lender liability exemption. The DNR makes no determination for other persons or entities concerning the presence or absence of hazardous substances on the Property.

Acquisition Through Enforcement of a Security Interest

If, in the future, Falcon National Bank considers acquiring the Property through enforcement of a security interest, Falcon National Bank should be aware that separate conditions apply for lenders that acquire properties through foreclosures or deeds in lieu of foreclosure. The lender must satisfy all conditions identified in Wis. Stat. § 292.21 to qualify for the lender liability exemption, including but not limited to the following provisions:

- The lender does not intentionally or negligently cause a new discharge of a hazardous substance or exacerbate an existing discharge.
- The lender notifies the DNR of any known discharge of a hazardous substance.
- The lender conducts an environmental assessment of the Property that includes all the elements identified in Wis. Stat. § 292.21(1)(c)2. The environmental assessment is conducted not more than 90 days after the date the lender acquires title to, or possession or control of, the Property, and the lender files a complete copy of the environmental assessment with the DNR not more than 180 days after the date the lender acquires title to, or possession or control of, the Property.
- 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 Wisconsin Administrative Code (Wis. Admin.) § NR 708.05 in response to the discharge of the hazardous substance.
- For a hazardous substance discharged 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 (Wis. Stat. § 292.21(1)(c)1.).
- The lender agrees to allow the DNR 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 action undertaken to respond to the discharge and to avoid actions that worsen the discharge.
- The lender agrees to any other condition that the DNR determines is reasonable and necessary to ensure that DNR or another person can adequately respond to the discharge.

Federal Liability Information

To determine what specific actions would satisfy the federal lender liability requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), we advise that you contact either Thomas Krueger at (312) 886-0562 or krueger.thomas@epa.gov, or Larry Kyte at (312) 886-4245 or kyte.larry@epa.gov at the U.S. Environmental Protection Agency (U.S. EPA). The mailing address is U.S. EPA REGION 5, Office of Regional Counsel (C-14J), 77 W. Jackson Blvd., Chicago, IL 60604-3590. 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 secured creditor liability exemption conditions.

Public Database of Properties

The DNR maintains a public database of information about contaminated and remediated properties that is available at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>. To view this data, go to the "BRRTS on the Web" link to access information about the Property and this activity. The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for this activity is included at the top of this letter.

If you have any questions or concerns regarding this letter, please contact Candace Sykora at (715) 928-0452 or candace.sykora@wisconsin.gov.

Sincerely,



Dave Rozeboom
West Central Region Team Supervisor
Remediation and Redevelopment Program

Copies:

Tom Elbert, Hudson Business Park LLC, email
Matt Taylor, Cedar Corporation, email
Molly Schmidt; DNR CO-RR/5