

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
Plymouth Service Center
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Plymouth WI 53073-4294

Scott Walker, Governor
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November 21, 2011

Mr. David Cox
Wal-Mart Stores, Inc
2001 SE 10th Street
Bentonville, AR 72712

Subject: Building on a Historic Fill Site Exemption Approval
Wal-Mart Store No. 70810
BRRTS# 07-41-557798 FID# 341189420

Dear Mr. Cox:

We have received your request for a grant of exemption from regulation under ch. NR 506.085; Wis. Adm. Code. Your application includes an evaluation indicating that methane gas is present at the site. Department records indicate that this site has two open case files addressing soil and groundwater contamination. This Exemption to Build Approval is independent of those cases. Your request for exemption from regulation under ch. NR 506.085; Wis. Adm. Code has been approved by the Department provided you comply with the conditions of this grant of exemption. This grant of exemption is limited to the proposed development described in your application, a retail store and parking lot. If you are considering additional changes beyond those described in the application, a new application must be submitted to the Department for approval.

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.

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 including site closure under ch. NR 726. If you have any questions concerning this letter, please contact Thomas A. Wentland at 920-892-8756 Ex. 3028.

Sincerely,

James A. Schmidt, Supervisor
Remediation and Redevelopment Section
Southeast Region

Cc: City of South Milwaukee
PSI

BEFORE THE

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. Wal-Mart Stores, Inc. proposes to purchase the properties at 222 North Chicago Avenue and 1200 Davis Avenue in the City of South Milwaukee, Wisconsin.
2. Professional Services Industries, Inc. (PSI) submitted a "Development at Historic Fill Site Application" received on October 13, 2011.
3. The site contains historic fill, namely, foundry sand and animal carcasses.
4. Methane gas was detected at high concentrations at one monitoring location out of eleven. The remaining monitoring locations had very low concentrations or no methane reported.
5. The concentration of methane gas in monitoring well MW-1 is at a level which would normally require an active methane extraction system. Since this well is at a remote location from the actual proposed building and the only well on the site to contain methane gas, a passive venting system will be allowed for the building.
6. Soil and groundwater contamination is present on the site and the applicant is working with the Department to obtain closure under ch. NR 726.

CONCLUSIONS OF LAW

1. The Department has the authority under ch. NR 500.08(4), Wis. Adm. Code to issue an exemption from the prohibition in ch. 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 ch. 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 Wal-Mart Stores, Inc. from the prohibition in ch. NR 506.085, Wis. Adm. Code, once the property sale is completed, for development on a property which contains solid waste as proposed in the submittal received October 13, 2011 subject to the following conditions:

1. 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.
2. 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 ch. NR 500.03(55), Wis. Adm. Code.
3. 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 ch. NR 500.03(62), Wis. Adm. Code.
4. No action related to the development of the property may be taken which will cause a detrimental effect on groundwater, as defined in ch. NR 500.03(62), Wis. Adm. Code, or will cause or exacerbate an attainment or exceedance of any preventive action limit or enforcement standard in ch. NR 140, Wis. Adm. Code.
5. 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 ch. NR 445.03, Wis. Adm. Code.
6. 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.
7. Safeguards should be taken to prevent volatile organic chemical vapors from collecting in the structure. At a minimum, an external venting system should consist of a 6 to 12 inch gravel layer laid directly over the ground surface with an interconnected system of 4-inch diameter polyvinyl chloride (PVC) or corrugated drainage pipe installed in the top 4 inches of the gravel. A vapor barrier consisting of a minimum 30-mil thick polyethylene geomembrane welded at the seams or other approved systems providing a continuous vapor barrier between the venting system and the floor slab shall be installed. Filter fabric or a 6-inch layer of fine sand should be placed on top of the geomembrane to act as a cushion.
8. Monitoring well MW-1 shall be converted to a permanent passive vent stack terminating at least ten feet above grade.
9. This grant of exemption should not be construed as a site closure under ch. NR 726.
10. The development construction activities shall be coordinated with the approved remedial response actions and shall not prevent the completion of the approved remedial response actions.

11. This 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 activity occurred may not undertake any activities on the land which may cause a significant threat to public health, safety or welfare. The Department of Natural Resources should be contacted to discuss any proposed changes to avoid activities that could violate the statute.

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 and administrative rules 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: _____

DEPARTMENT OF NATURAL RESOURCES
For the Secretary



James A. Schmidt, Supervisor
Remediation and Redevelopment Section
Southeast Region

Thomas A. Wentland
Waste Management Engineer
Remediation and Redevelopment Section
Southeast Region