

State of Wisconsin  
DEPARTMENT OF NATURAL RESOURCES  
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File

May 23, 2013

BRRTS No. 06-32-560495  
FID#: 632025460

MR. LARRY J. KIRCH, DIRECTOR  
PLANNING DEPARTMENT  
CITY OF LA CROSSE  
400 LA CROSSE STREET  
LA CROSSE, WI 54601

SUBJECT: **Approval to Proceed in the Voluntary Party Liability Exemption ("VPLE") Program for the Kwik Trip Bakery Expansion (Former Desmond's Men's Wear, Inc.) Site, 2338/2326 Commerce Street, City of La Crosse, La Crosse County, Wisconsin. Parcel No. 17-10307-20.**

Dear Mr. Kirch:

#### **APPLICANTS TO THE VPLE PROCESS**

Thank you for submitting your application to the Wisconsin Department of Natural Resources ("WDNR") for approval to proceed with an environmental investigation and cleanup, pursuant to s. 292.15, Wis. Stats., associated with the Kwik Trip Bakery Expansion (Former Desmond's Men's Wear, Inc.) site located at 2338/2326 Commerce Street, City of La Crosse, La Crosse County, Wisconsin, hereinafter referred to as "the Property." As you are aware, the Voluntary Party Liability Exemption ("VPLE") process provides specific liability exemptions for voluntary parties after the completion of an environmental investigation and cleanup that are conducted in accordance with ss. 292.11, and 292.15, Wis. Stats.

#### **APPLICATION REVIEW AND APPROVAL TO PROCEED**

The WDNR has reviewed your application and is granting the City of La Crosse approval to proceed in the VPLE process. Based on a review of the information provided to the WDNR, s. 292.15, Wis. Stats., and ch. NR 750, Wis. Adm. Code, the WDNR has determined the following:

- the Property has or has had a discharge of a hazardous substance;
- the applicant meets the definition of a "voluntary party" under s. 292.15(1)(f), Wis. Stats.; and
- the Property *does not include* one of the ineligible facilities or sites listed in s. 292.15(7)(a) through (e), Wis. Stats.

**IF YOUR PROPERTY HAS A SOLID WASTE FACILITY OR WASTE SITE, PLEASE NOTE:**

While your site can proceed in the VPLE process, all sites, including solid waste facilities or waste sites, must obtain a site closure under ch. NR 726, Wis. Adm. Code, in order to receive the VPLE protections. This can be technically challenging for some solid waste facilities or waste sites. More specifically, s. 292.15(7)(e), Wis. Stats., specifies that a solid waste facility or waste site must be able to be closed by the WDNR without the reliance on any active remedial action (i.e. operation or treatment) systems to ensure compliance with environmental, public health, and safety standards. "Active remedial operation or treatment" includes sites or facilities where groundwater monitoring; leachate or groundwater collection or treatment; or active gas extraction is required as all or part of a remedial action under ch. NR 700, Wis. Adm. Code. The Voluntary Party should understand that they will not receive the exemption under s. 292.15, Wis. Stats., unless at the conclusion of all necessary response actions, the property satisfies s. 292.15(7)(e), Wis. Stats. If such a system is necessary at a solid waste facility or waste site after closure is approved, the site would not be eligible to receive the liability protection (i.e. Certificate of Completion) under the VPLE process. You should also be aware that approvals and continuing obligations, such as building on abandoned landfills and cap maintenance requirements, may be required as part of a case closure and will need to be met even after issuance of a Certificate of Completion.

**OTHER FUTURE CONDITIONS:** The approval to proceed in the VPLE process is based upon information available to the WDNR at the time the applications were reviewed. If in the future, additional information becomes available which indicates that the site is not eligible for the VPLE program, the WDNR may remove the site from the VPLE process. Specifically, s. 292.15(7), Wis. Stats., includes provisions regarding certain hazardous waste facilities that may begin operation after the property enters the VPLE process, that are not eligible for a Certificate of Completion. If at any time in the future, even after the liability exemption has been granted, a hazardous waste treatment, storage, or disposal facility is operated on the property, the Voluntary Party would no longer be eligible for the exemption in s. 292.15, Wis. Stats.

**REQUIREMENTS FOR ENVIRONMENTAL WORK**

In order to obtain the Voluntary Party Liability Exemption, all necessary environmental response actions must be reviewed by WDNR to determine their compliance with ss. 292.11 and 292.15, Wis. Stats., and with the ch. NR 700 administrative rule series. The first step in the process is to conduct an environmental investigation of the entire Property, in addition to investigation of the known or suspected areas of contamination. The environmental investigation includes Phase I and II Environmental Site Assessments ("ESA"), as well as a Site Investigation conducted in accordance with ch. NR 716, Wis. Adm. Code.

Where previous environmental work has been conducted on the Property, the work may satisfy some or all of the requirements for an environmental investigation. The scope of the environmental investigation must assess all discharges of any hazardous substances on the Property or that migrated from the Property, and solid or hazardous waste disposed of on the Property. The WDNR will review the reports you submit and inform you whether additional work is necessary to complete the environmental investigation requirement. The WDNR has assigned Doug Joseph, Hydrogeologist, and Loren Brumberg, Land Recycling Specialist, Eau Claire Regional Headquarters, to manage your VPLE project. Doug Joseph will provide technical review of the environmental investigation and can be reached at 715-839-1602. Loren Brumberg will manage program responsibilities and can be reached at 715-839-3770.

### **FEES**

Thank you for your application fee of ~~\$500.00~~ <sup>May 20, 250.00</sup> for one (1) parcel that will comprise the VPLE Property received on ~~March 25~~, 2013. As a participant in this process, the applicant is responsible for paying fees to the WDNR to cover the costs of WDNR's activities associated with assisting the City of La Crosse through the VPLE process.

Thank you for your advanced deposit of \$3,000.00 to cover WDNR review fees. From this advance deposit, the WDNR will deduct fees at the *current* hourly rate of \$100.00 to cover the costs of WDNR providing assistance on your project. Fees will be deducted as costs are incurred until the project is completed, or until the deposit is spent, whichever comes first. In the former case, any remaining balance will be refunded to you. If WDNR's review costs exceed the deposit amount, the WDNR will send you quarterly invoices for costs associated with your project during that time period. You will be required to reimburse the WDNR for its costs within 30 days of receiving the invoices.

You should be aware that the costs associated with WDNR assisting you will vary depending on the complexity and size of the property, as well as the completeness of the information that you submit to us. The costs of WDNR assistance generally average from \$2,000 to \$10,000 per site, with some properties costing more or less than that range, based on the factors referenced.

### **ADDITIONAL OBLIGATIONS OF APPLICANTS, POTENTIALLY RESPONSIBLE PARTIES, AND PROPERTY OWNERS**

The WDNR looks forward to working with you, as you address the contamination on or migrating from the Property. We would like to clarify your responsibilities, as well as the responsibilities of any potentially responsible parties and property owners who may have relationships to the Property.

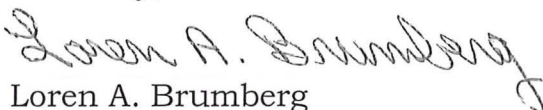
Wisconsin's hazardous substance spills law assigns responsibilities for cleanup in s. 292.11(3), Wis. Stats., as follows: "a person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands, or waters of the state."

If you should choose to withdraw from the VPLE process or discontinue clean-up efforts, you should be aware that you may have continuing legal and financial responsibilities. If you own the Property and are not eligible for the local governmental unit ("LGU") exemption under s. 292.11(9)(e), Wis. Stats., or caused the hazardous substance discharge, state law requires you to complete the necessary environmental work to restore the environment and minimize effects of discharges on the Property and/or migrating off of the Property. If you do not own the Property, have not caused the discharge, and you elect to discontinue clean-up activities at the site, the WDNR will work with those persons who caused the discharge or those who own the Property to address the remaining environmental concerns. If you wish to withdraw from the process, please notify the WDNR in writing and any remaining advanced deposit will be refunded.

Thank you for entering the Voluntary Party Liability Exemption process. The Bureau for Remediation and Redevelopment Tracking System ("BRRTS") identification numbers for the Property are included on page 1 of this letter. Please be aware that information on contamination sites is tracked in a WDNR database that is available on the Internet at <http://dnr.wi.gov/org/aw/rr/>. See "BRRTS on the Web" under "Contaminated Land Databases".

Further correspondence concerning technical issues at this site can be sent to Doug Joseph at the Wisconsin Department of Natural Resources, 1300 West Clairemont Avenue, Eau Claire, WI 54701.

Sincerely,



Loren A. Brumberg  
Land Recycling Specialist  
Remediation and Redevelopment Program

cc: Michael Prager - RR/5  
Bill Evans/Doug Joseph - WCR  
Stephen F. Matty, City Attorney, City of La Crosse, 400 La Crosse  
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