

June 30, 2015

Ms. Sonja Reichertz
City Planner and Assistant Economic Development Director
City of Monona
5211 Schluter Road
Monona, WI 53706

Subject: Clarification of the City of Monona's Eligibility for a Liability Exemption for
6418 Bridge Road, Monona, Wisconsin - DNR BRRTS Case 07-13-563753
(Related to the Former One Hour Cleaners Remediation Project located at 6418 Bridge
Road, Monona, Wisconsin - DNR BRRTS Case 02-13-001685)

Dear Ms. Reichertz:

On June 1, 2015, the Bureau for Remediation and Redevelopment ("RR") of the Department of Natural Resources ("Department") received a request from the City of Monona ("City") for a general liability clarification letter, which you submitted. This letter provides an explanation of the local governmental unit ("LGU") environmental liability exemption pursuant to sec. 292.11(9)(e)(1m), Wisconsin Statutes, based on the City's proposed acquisition of the property located at 6418 Bridge Road (Dane County Tax No. 258/0710-203-7360-1) ("the Property"), which formerly housed One Hour Cleaners, a local dry cleaning business.

Background Overview

Given that the City may take title to this parcel, this letter provides clarification to the City as to whether the steps it has taken to date to acquire the Property are consistent with the LGU liability exemption identified in sec. 292.11(9)(e), Wis. Stats. In addition, this letter addresses the City's responsibilities associated with the demolition, cleanup, and redevelopment activities that will be undertaken if the City's intended uses of the Property, for mixed-use, residential housing, or green space, are realized.

To assist in making a determination about the applicability of the LGU liability exemption to the Property, RR has reviewed the following documents:

- The City's May 18, 2005, "Technical Assistance and Environmental Liability Clarification Request" letter.
- The City's completed version of DNR form 4400-237, which is the Technical Assistance and Environmental Liability Clarification Request form.
- Generations Title, LLC's, September 5, 2014, Letter Report, file no. 71032, which discusses the title and mortgage history for the Property.
- Strand Associates, "Map ID 12 – Any and All Video/Media" map of the Property.
- The Monona Common Council's, November 17, 2014, "Resolution No. 14-11-1993", which includes a finding of blight in the area of the City that includes the Property.
- Seymour Environmental's September, 2013, "Site Investigation Update" report on the Property.
- The City's November 17, 2014, "Monona Redevelopment District No. 9 Project Plan"

The City's Redevelopment District No. 9, as identified in the Nov. 17, 2014, Monona Redevelopment District No. 9 Project Plan, is a 20.39 acre area with 880 feet of waterfront on the Yahara River. The objective of the Redevelopment Plan, as stated in the Plan, is to set a vision and implementation strategy for converting a deteriorating stretch of Monona shoreline into a vibrant, mixed use, waterfront district. By creating physical and economic vitality, eliminating blight, and ensuring appropriate land uses, the City will be able to provide high-quality development that is tax generating and an attractive destination for new and existing residents. The goals of the redevelopment include better public access and enjoyment of the Yahara River and connecting water bodies, increased business opportunities, including restaurants, office space and hotels, and the creation of multi-family residential housing.

The Property, located at 6418 Bridge Road, Monona, Wisconsin, is within the boundaries of Redevelopment District No. 9. On November 17, 2014, the Monona City Council approved Resolution No. 14-11-1993, titled, "A resolution approving the boundaries of redevelopment area #9, finding such area to be blighted, and approving a redevelopment plan for said redevelopment area." This resolution states, "The area within the boundaries of Redevelopment Area #9 is found to be a blighted area within the meaning of section 66.1333(2m)(b) of the Wisconsin Statutes, and in need of a blight elimination, slum clearance or urban renewal project." The resolution also states that the District #9 Project Plan "is in conformity with the comprehensive plan of the City."

Information provided by the City, along with DNR's information about the Former One Hour Cleaners, which previously operated at this site, show the Property has soil, groundwater, and vapor contamination that appear to be the result of the former dry cleaning operations. There has been no substantive environmental investigative work performed by the owners of the Property in the last several years. Uncertainty about the extent and significance of the contamination at the Property, and off-site, if not resolved, are likely to pose a challenge for redevelopment efforts in District No. 9.

Liability Determination

The RR Program at the Department provides the following environmental clarifications and assurances to the City concerning their proposed method of acquiring the Property, and their intended reuse plans:

1. The City appears to meet the definition of a "local government unit" (LGU), in s. 292.11(9)(e)1, Wis. Stats., and therefore the City will be eligible for the LGU exemption described in this statute.
2. The City plans to acquire the property as part of an officially approved blight elimination project, and this form of property acquisition meets the applicable requirement specified in s. 292.11(9)(e)(1m)(d), Wis. Stats. DNR has reviewed the City's plans and processes, related to the blight determination of the Property, and finds them to be in compliance with a thorough assessment, evaluation and decision-making process.
3. Since the blight determination is in accordance with Subchapter XIII, of ch. 66, Wis. Stats., titled "Urban Redevelopment and Renewal", the City will obtain the s. 292.11(9)(e), Wis. Stats., LGU liability exemption if it acquires the Property.
4. If the Property is acquired by the City, the City will have an exemption from liability for discharges that occurred prior to the City taking control of the Property, and this exemption conditionally applies to: s. 292.11 (3), Wis. Stats., titled "Responsibility"; s. 292.11 (4), Wis. Stats., titled "Prevention of Discharge"; and s. 292.11 (7), Wis. Stats., titled "Removal or Other Emergency Action."

5. Section 292.11(9)(e)(1m), Wis. Stats., does not exempt the City from s. 292.11(2), Wis. Stats., titled "Notice of Discharge." Therefore, if the City possesses or controls the Property, the City must notify the Department immediately of any known discharge of a hazardous substance at the Property. The City must also notify the Department immediately if it causes a hazardous substance discharge at the Property.
6. To obtain the LGU exemption the City will need to acquire the property in accordance with s. 292.11(9)(e), Wis. Stats. Conditions and limitations of the LGU environmental liability exemption are also described in s. 292.11(9), Wis. Stats.
7. The LGU exemption protects a LGU from certain environmental liabilities; however, a LGU can lose the exemption if an action taken by the LGU causes the discharge of a hazardous substance, or the LGU fails to take action to prevent a discharge or prevent making an existing discharge worse. Therefore, upon taking title to a property, a LGU is responsible for a discharge that occurs due to the LGU failing to do one or more of the following:
 - Sampling and analyzing unidentified substances in containers stored above the ground on the Property;
 - Removing and disposing, or properly storing, any hazardous substances in above ground containers that are leaking or likely to leak; and
 - Restricting access to the Property to minimize costs or damages that may result from unauthorized persons entering the Property.
8. If the City intends to use, or develops, the Property, the City must take any action the Department determines is necessary to reduce to acceptable levels any substantial threat to public health or safety when the Property is developed or put to its intended use. The City should discuss any proposed Property improvements with the RR Program before proceeding with site work.
9. The LGU exemption, if obtained, is not transferrable from the City to future owners, except other eligible LGUs.
10. The LGU exemption does not exempt the City from compliance with federal and state requirements, including ch. ATCP 93, Wis. Adm. Code, related to existing underground storage tanks on the Property. If you have questions regarding tank requirements, contact the Wisconsin Department of Agriculture, Trade and Consumer Protection directly. Chapter ATCP 93, Wis. Adm. Code can be viewed here: https://docs.legis.wisconsin.gov/code/admin_code/atcp/090/93.
11. The complete statutory language concerning the LGU environmental liability exemption and related conditions is in s. 292.11(9), Wis. Stats.

The City's May 18, 2015, request referred to the property acquisition method described in s.292.26(2)(d), Wis. Stats., which is titled "Civil immunity; local governmental units." A telephone call between the City's legal counsel and the Department clarified the main intent of the City's request is the s. 292.11(9)(e), Wis. Stats., exemption and related property acquisition methods. As such, this liability clarification letter is focused on the latter statutory reference.

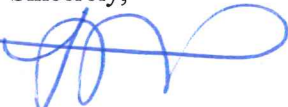
If the City does acquire the Property for blight elimination, and all related conditions are complied with, the City will also be eligible for s. 292.26, Wis. Stats., civil immunity protection after title to the Property is transferred to another party. Additional potential liability protections exist in s. 292.23(2), Wis. Stats., relating to solid waste management, and in s. 292.24, Wis. Stats., relating to the responsibility of LGUs with respect to hazardous waste.

Contact Information

The Department hopes this letter provides the City with the assurance requested concerning the local government liability exemption. If you have questions about the related Former One Hour Cleaner remediation case, please contact Jeff Ackerman at (608) 275-3323 or jeff.ackerman@wisconsin.gov. For questions about the LGU exemption, please contact Barry Ashenfelter at (608) 267-3120 or barry.ashenfelter@wisconsin.gov.

The Department looks forward to working with the City on the remediation and redevelopment of the Property, and is available to assist with other environmental issues related to Redevelopment District No. 9.

Sincerely,



Linda Hanefeld
Team Supervisor
Bureau for Remediation & Redevelopment

cc: Patrick Marsh, Monona City Administrator
Bill Cole, City Attorney
Luke Hellerman, Strand Associates
Jeff Ackerman, DNR
Barry Ashenfelter, DNR