

Beggs, Tauren R - DNR

From: Robert Cigale <bob@endpointcorporation.com>
Sent: Wednesday, February 24, 2016 9:58 AM
To: Beggs, Tauren R - DNR
Subject: RE: Campbellsport Self Serve property questions

[See below](#)

Thanks, Bob

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From: Beggs, Tauren R - DNR [mailto:Tauren.Beggs@wisconsin.gov]
Sent: Tuesday, February 23, 2016 10:01 AM
To: Robert Cigale
Subject: Campbellsport Self Serve property questions

Hi Bob,

I have worked my way through the Phase I Environmental Site Assessment report for the Campbellsport Self Serve and am looking for some clarifications:

- Are there two 55-gallon drums of investigative waste/soil cuttings or only one? **Based on our most recent visit, it appears there are two drums present. I checked my photographs from the first ESA we conducted, but was not able to confirm if only one drum was present at the time. It may have been a case that we were able to determine that only one drum contained any materials.** On pg. 17, it is stated there are two, but every other reference in the report only says one drum. Previous 2013 documentation states there is only one drum also.
 - Is the investigative waste still on-site or was it properly disposed yet? **Following the first Phase I, we collected a sample from the drum containing soils and had the sample analyzed. The sample results indicated no detectable concentrations and we recommended the contents of the drum be thinspread on a non-paved portion of the site and the empty drum recycled. Based on our observations during the most recent Phase I, the drum of soil was not emptied and the drum was not recycled and currently remains on the site.**

- Have the two 5-gallon pails of roofing tar and the partially full 5-gallon container of diesel been properly disposed yet? **No**
- Is it likely that the USTs still currently contain the remaining petroleum products, as based on the May 2015 inventory report? Since the USTs are still listed as In Use, I would assume the contents haven't been removed yet? **We are working on a scope of work and proposal to Collins Bank to blow the dispenser lines clear back to the USTs, remove any residual product from the USTs and change the status of the USTs with DATCP to "temporarily out-of-service".**
- There is a reference to ASTs on pg. 9. I can't find any other references to the ASTs in the report or the May 24, 2013 documentation for sample results of GRO, DRO, PVOCs, and lead in Appendix C. It seems to me this was a mistake in the report. There are ASTs documented on the other property (Random Lake Oil) that you submitted documentation on as well, so I'm assuming there was a mix-up in the reports. Please confirm. If there were ASTs on the Campbellsport Self Serve Property, I will need additional information: sample documentation, how many there were, where they were located, what was in the ASTs, etc. **You are correct, Section 3.6.2 of the 2016 ESA report summarizes the Random Lake Phase II instead of the Campbellsport Phase II. A copy of the Campbellsport Phase II EA report is attached in Appendix C of the 2016 ESA report.**
- When does the bank intend to acquire title to the property? **The bank has initiated the legal process to foreclose on the property. However, this process could take 60 to 90 days to complete.**

Please clarify on the above questions.

Thanks a bunch,

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Tauren R. Beggs

Hydrogeologist & Northeast Region Land Recycling Expert

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Beggs, Tauren R - DNR

From: Beggs, Tauren R - DNR
Sent: Tuesday, February 23, 2016 3:21 PM
To: Schmidt, Molly E - DNR
Cc: Haag, Christine T - DNR; Ashenfelter, Barry J - DNR
Subject: RE: Lender Liability Questions
Attachments: Tracking Form, Campbellsport Self Serve, BRRTS 07-20-576750.pdf; Tracking Form, Random Lake Oil, BRRTS # 07-60-576754.pdf; Campbellsport Self Serve property questions; Random Lake Oil property questions

Hi Molly,

Thanks for your answers! In regards to the document/evidence for the borrower turning over keys, it just states on page 2 of the *Lender Liability Exemption Environmental Assessment Tracking (Form 4400-196)* that was submitted with the two requests that the "Borrower turned over keys to the property to Collins State" with a date of December 18, 2015. This was the same for both requests submitted, please refer to above attachments. I also emailed the consultant the questions in the attached emails to get more up to date information on the drums, containers, sampling, etc.

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Tauren Beggs
Phone: (920) 662-5178
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From: Schmidt, Molly E - DNR
Sent: Tuesday, February 23, 2016 2:04 PM
To: Beggs, Tauren R - DNR
Cc: Haag, Christine T - DNR; Ashenfelter, Barry J - DNR
Subject: RE: Lender Liability Questions

Hi Tauren,

Answers to your last three questions are listed below. I discussed the responses briefly with Barry Ashenfelter and have copied him on this email so that he can jump in if need be.

For your first question – I don't think anyone has looked at this question (whether we can refer to the date of "possession" or "control" for timing purposes, and also whether turning over keys meets the definition of "possession" or "control") in the lender liability context, so I do not have a ready answer; however, I will follow up. Meanwhile, here's one additional question -- what sort of document/evidence did the bank send in to demonstrate that the borrower turned over the keys on Dec. 18?

Thanks,

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Molly Schmidt
Program and Policy Analyst, Brownfields and Outreach Section – Remediation and Redevelopment Program



From: Beggs, Tauren R - DNR
Sent: Tuesday, February 23, 2016 8:57 AM
To: Schmidt, Molly E - DNR
Subject: Lender Liability Questions

Hi Molly,

As discussed below are my questions, I have one additional one that I forgot to ask over the phone:

- Should the 90 and 180 day timeframes for conducting and submitting an environmental assessment, respectively, only be compared with the date of acquisition (taking title to) the property? In the code it states not more than 90 and 180 days after the lender acquires title to, or possession or control of the real property. The borrower turned over the keys to the bank on December 18, 2015, so the bank has possession of the property, but has not yet acquired it.
- Does the bank have to collect samples of unknown wastes or potentially hazardous substances found in tanks, drums or other containers prior to acquiring the property in order to be eligible for the lender liability exemption? Or can they do this after acquiring title?

For the acquisition exemption, the timing of sampling before or after acquisition does not matter as long as the timing requirements for the overall EA completion & submission are met:

- The lender has until 90 days after acquisition to conduct an adequate EA, which must be submitted to DNR not more than 180 days after acquisition.
- Also, there are additional requirements for the EA if it has been done more than one year before the date of acquisition. If the EA is conducted more than one year before the date of acquisition, they have to visually inspect the property to verify the EA and then submit the complete EA and visual inspection results to the DNR within 90 days of acquiring.

In order to have an adequate EA, the EA must contain the following:

- For **soil or materials on the ground** (Wis. Stat. § 292.21(1)(c)(2)(h)) they must do "collection or analysis of representative samples ..." and "identify contaminants ... and shall quantify concentrations."
- For **tanks, drums, or other containers** (Wis. Stat. § 292.21(1)(c)(2)(i)) they must do "collection and analysis of representative samples of representative samples of unknown wastes found on the real property and the determination of concentrations of hazardous waste and hazardous substances found in tanks, drums, or other containers... on the real property"
- Does the bank have to properly handle and dispose of materials in the drums (once material has been characterized) prior to acquiring the property in order to be eligible for the lender liability exemption? Or can they do this after acquiring title?

Depends on whether the materials are deemed to be "discharge" or not – if there's no discharge, then this issue would not affect the lender liability exemption; however, there may be separate laws or rules/code regarding DATCP's regulation of storage tanks

http://datcp.wi.gov/consumer/weights_and_measures/Storage_Tank_Regulations/ in addition to federal requirements for storage tanks.

- Does the bank have to remove any remaining contents in USTs that remain on the property in order to be eligible for the lender liability exemption? There are active USTs on both properties that, as documented in their most recent inventory reports, still have petroleum products stored in them. I think this is a federal requirement, but wanted to confirm with you.

Similar to above ... depends on whether the materials are deemed to be “discharge” or not – if no discharge, then this issue (removal) would not affect the lender liability exemption; however, there may be separate laws or rules/code regarding DATCP’s regulation of storage tanks
[http://datcp.wi.gov/consumer/weights_and_measures/Storage Tank Regulations/](http://datcp.wi.gov/consumer/weights_and_measures/Storage_Tank_Regulations/) in addition to federal requirements for storage tanks.

I have attached the EA checklists for both properties to provide more information for each scenario.

Thanks,

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