



May 21, 2018

MR ERICK G MAKI
BREMER BANK
2570 MIDWEST DR
ONALASKA WI 54650

Subject: Lender Liability Clarification and Current Environmental Conditions for the St. Croix Valley Hardwood, Inc., Property located at 230 Duncan Street, Luck, Wisconsin
Tax Parcel Number: 146-00493-0000
DNR BRRTS #07-49-579980

Dear Mr. Maki:

On March 28, 2018, 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 Bremer Bank with the requested clarification of environmental liabilities related to the St. Croix Valley Hardwood, Inc., property, located at 230 Duncan Street in Polk County ("the Property").

Request and Decision Summary

Your application, dated March 23, 2018, requests a determination from the DNR on whether Bremer Bank is eligible for the lender liability exemption identified in Wis. Stat. § 292.21, with respect to the Property.

It is our understanding that Bremer Bank is seeking liability clarification with regard to its status under Wis. Stat. § 292.21(1)(a) as a lender that is engaged in mortgage lending for the Property. DNR understands that Bremer Bank does not otherwise possess, control or have title to the property and that Bremer Bank is not presently seeking clarification with regard to an acquisition through enforcement of a security interest in the Property. In summary, with respect to the Property and based on the information provided, DNR believes that Bremer 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;
- A cover letter, dated March 23, 2018, from John Wyciskalla, Associate Principal, Braun Intertec Corporation.
- Phase I Environmental Site Assessment, St. Croix Valley Hardwoods, Inc., 230 Duncan Street, Luck Wisconsin, Braun Intertec, March 31, 2014;
- Phase II Environmental Site Assessment, St. Croix Valley Hardwoods, Inc., 230 Duncan Street, Luck Wisconsin, Braun Intertec, May 2, 2014

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 for lending activities, pre-acquisition 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 Bremer Bank's request, this letter primarily address Bremer 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 has reviewed the request and other documents submitted by Bremer Bank on March 23, 2018. The request submitted by Bremer Bank indicates that Bremer Bank is a lender with a mortgagee interest in the Property. Information submitted for this request and for the St. Croix Hardwoods site does not indicate that Bremer Bank has either physically caused a discharge or caused or exacerbated a discharge through tortious conduct with respect to lending activities. Bremer Bank appears to be a bank within the definition of "lender" and Bremer 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 Bremer 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 Property, Bremer Bank qualifies as an exempt lender and is therefore not liable for the identified contamination at the site. If Bremer Bank continues to meet all of the conditions for liability exemption eligibility that are listed in Wis. Stat. § 292.21, Bremer 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, Bremer Bank considers acquiring the Property through enforcement of a security interest, Bremer Bank should be aware that 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(1)(c) 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 an environmental assessment is conducted more than one year before the date on which the lender acquires title to, or possession or control of, the real property, the lender does all of the following: visually inspects the property in accordance with Wis. Stat. § 292.21(1)(c)(2)(a) and (b) after the date on which the lender acquires title to, or possession or control of, the real property to verify the environmental assessment; submits a complete copy of the environmental assessment and the results of the visual inspection to DNR not later than 90 days after the lender acquires title to, or possession or control of, the real property; receives notice from DNR that DNR determines that the environmental assessment is adequate or that DNR directs the lender to address any inadequacies in the environmental assessment; corrects, to the satisfaction of DNR, any inadequacies of an environmental assessment; and reimburses DNR for the cost of reviewing materials.
- 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. Code) § 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.
- 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 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 CERCLA, we advise that you contact either Thomas Krueger at (312) 886-0562 or by email to krueger.thomas@epa.gov, or Larry Kyte at (312) 886-4245 or by email to kyte.larry@epa.gov. Their 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 Department 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 DNR Project Manager Philip Richard at (715) 762-1352 or by email to philip.richard@wisconsin.gov.

Sincerely,



Christopher A. Saari
Northern Region Team Supervisor
Remediation and Redevelopment Program

cc: John J. Wyciskalla – Braun Intertec Corporation (via email)
Molly Schmidt – DNR CO-RR/5 (via email)
Phil Richard – DNR Park Falls (via email)
Carrie Stoltz – DNR Rhinelander Northern LRT (via email)