



September 29, 2017

BRRTS # 07-50-579981

Estate of Thomas J. Judge, Jr.
Stephanie Judge, Personal Representative
1115 Mohican Pass
Madison, WI 53711

Subject: Representative Liability Clarification Letter for Judges Cleaners properties, located at 257 Division St., Stevens Point, in Portage County, and 213 N. Central Avenue, Marshfield, Wood County

Dear Ms. Judge,

On August 1, 2017, the Wisconsin Department of Natural Resources ("the Department") received a request, along with the required \$700 review fee, for a Representative Liability Clarification letter, to be issued pursuant to Section 292.21(2), Wisconsin Statutes (Wis. Stats.). The purpose of this letter is to provide the requested clarification of the liabilities of various parties as a "representative" under Wis. Stat. § 292.21 for the Judges Cleaners properties located at 257 Division St., Stevens Point, in Portage County, and 213 N. Central Avenue, Marshfield, Wood County ("the Properties"). Wis. Stat. § 292.01(16) defines a representative as "any person acting in the capacity of a conservator, guardian, court-appointed receiver, personal representative, testamentary trustee of a deceased person, trustee of a living trust, or fiduciary of real or personal property".

Request

The application cover letter, dated June 27, 2017, from Stephanie Judge, on behalf of the Estate of Thomas J. Judge, Jr. ("the Estate"), requested a determination from the Department regarding the application of the representative exemption to a trust that the Estate intends to form for the purpose of administering Drycleaner Environmental Response Fund (DERF) monies and environmental holdback monies for the completion of investigation and remediation efforts at sites in Stevens Point (BRRTS # 02-50-000298) and Marshfield (BRRTS # 02-72-283048). You stated that this trust would be administered by you, Stephanie Judge, and inquired as to the following:

1. The liability protection available to you in that role; and
2. The liability of the Estate and each member of the Judge family.

The following documents were also submitted with the request:

- Property information sheet containing a photo and legal description of the property at 257 Division St., Stevens Point, in Portage County

Representative Liability Determination

Under Wisconsin's Hazardous Substances Spill Law ("Spill Law"), Wis. Stat. § 292.11, a person who "possesses, controls or causes" a hazardous substance discharge is liable for taking necessary investigation and cleanup actions at the property. Wis. Stat. §292.21 provides a liability exemption for lenders and representatives. A "representative" is not personally liable for a discharge of a hazardous substance if certain conditions in Wis. Stat.

§ 292.21(2) are met. However, the entity represented by the representative is responsible under Wis. Stat. §292.11(3) to take the necessary response actions at the Properties.

Wis. Stat. § 292.21(2) provides:

(a) A representative who acquires title to, or possession or control of, real or personal property is not personally liable under this chapter for a discharge of a hazardous substance if all of the following circumstances apply:

1. The representative acquires title to, or possession or control of, the real or personal property in the capacity of a representative.
2. The representative, through action or inaction, does not knowingly, willfully or recklessly cause a discharge of a hazardous substance.
3. The representative does not physically cause a discharge of a hazardous substance.
4. The representative does not have a beneficial interest in a trust, estate or similar entity that owns, possesses or controls the real or personal property.
5. The representative does not knowingly, willfully or recklessly fail to notify the department in accordance with s. 292.11 (2) of the discharge of a hazardous substance.

(b) Paragraph (a) does not apply to any of the following:

1. A representative that knew or should have known that the trust, estate or similar entity for which the representative is acting as a representative was established, or that assets were transferred to the trust, estate or similar entity, in order to avoid responsibility for a discharge of a hazardous substance.
2. A representative that fails to act in good faith to cause the trust, estate or similar entity for which the representative is acting as a representative to take the actions described in s. 292.11 (3) or to reimburse the department under s. 292.11 (7) (b). It is not a lack of good faith for a representative to resign as representative, to seek a court order directing the representative to act or refrain from acting or to challenge the department by any legal means.

(c) This subsection does not limit the responsibility of any trust, estate or similar entity to take the actions required under s. 292.11 (2), (3), (4) or (7) (c) or any other provision of this chapter or to reimburse the department under s. 292.11 (7) (b).

The Department has reviewed the materials submitted with your application request and has made the following determinations:

1. With regard to your first question, as the representative of a trust, you would not be personally liable under Wis. Stat. ch. 292 for a discharge of a hazardous substance if the trust acquires title to, or is in possession or control of, real or personal property provided that the following are true:
 - a. Your role as representative of a trust meets the legal definition of “representative” (Wis. Stat. § 292.01),
 - b. The representative acquires title to, or possession or control of, the real or personal property in the capacity of a representative.
 - c. The representative, through action or inaction, does not knowingly, willfully or recklessly cause a discharge of a hazardous substance.
 - d. The representative does not physically cause a discharge of a hazardous substance.
 - e. The representative does not have a beneficial interest in a trust, estate or similar entity that owns, possesses or controls the real or personal property.
 - f. The representative does not knowingly, willfully or recklessly fail to notify the department in accordance with s. 292.11 (2) of the discharge of a hazardous substance.

All provisions of Wis. Stat. § 292.21(2) would need to be continuously met to maintain the representative's exempt status.

2. With regard to your second question, the Estate and other members of the Judge family would not be eligible for the representative exemption if those individuals are not acting in the role of a representative.

Please note that the trust, estate, or similar entity for which a representative is acting as a representative must continue to take all necessary actions for which it is responsible under Wis. Stat. § 292.11 with regard to the Properties.

Given the complexity of the issues referred to in the June 27, 2017, cover letter (*e.g.*, the liabilities of multiple persons, the existence of multiple sites, and involvement of private legal agreements), the Department strongly recommends that legal counsel is sought for the creation of the trust.

Non-Exempt Obligations Regarding Underground Storage Tanks

Please note that this letter does not exempt any entity from existing state or federal requirements for underground storage tank responsibilities at the Property, including, but not limited to, Wis. Admin. Chapter ATCP 93. If you have questions regarding these requirements, you should contact the Weights and Measures program at the Department of Agriculture Trade and Consumer Protection at (608) 224-4942 or by email to datcpweightsandmeasures@wi.gov. The program's website is located here: https://datcp.wi.gov/Pages/Programs_Services/WeightsAndMeasures.aspx.

Federal Liability Information

To determine what specific actions would satisfy the federal 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 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 Matt Thompson at (715) 839-3750 or by email at: MatthewA.Thompson@wisconsin.gov.

Sincerely,



David Rozeboom, Team Supervisor
West Central Region, Remediation and Redevelopment Program

Copies:

Jessica J. Shrestha; Wheeler, Van Sickle & Anderson, S.C.

Molly Schmidt; DNR CO-RR/5

Gina Keenan; DNR SCR LRT

District File & BRRTS