

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
Plymouth Service Center
1155 Pilgrim Road
Plymouth WI 53073

Scott Walker, Governor
Daniel L. Meyer, Secretary
Telephone 608-266-2621
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January 26, 2018

The Couture, LLC
Mr. Joel Aizen
260 East Highland Ave.
Milwaukee, WI 53202

Building on a Historic Fill Site Exemption Approval
909 East Michigan Street, Milwaukee
BRRTS# 07-41-580138 FID 341286220

Dear Mr. Aizen:

The Department has received your request for a grant of exemption from regulation under Wis. Admin. § NR 506.085. Your application includes an evaluation that the non-organic nature of the historic fill material does not pose a threat to human health and the environment. The Department understands that the historic fill and contaminated soil will be addressed under the Site Investigation/Remedial Action Plan which was approved by the Department under Bureau of Remediation and Redevelopment Tracking System (BRRTS) Case File No. 02-41-579105. The Department is issuing this conditional grant of exemption from the prohibitions contained in Wis. Admin. § NR 506.085, provided you comply with the conditions of this grant of exemption. This grant of exemption is limited to the proposed development described in your application, a forty-four story apartment tower with two levels of below ground parking. If you are considering additional changes beyond those described in the application, a new application must be submitted to the Department for approval.

Please review the information contained in the publication *Development at Historic Fill Sites and Licensed Landfills: Considerations and Potential Problems* PUB-RR-685 to assist you in preventing environmental or safety problems during and after development.

You are reminded that this approval does not relieve you of obligations to meet all other applicable federal, state and local permits, as well as zoning and regulatory requirements including site closure under Wis. Admin. Chapter NR 726. If you have any questions concerning this letter, please contact Thomas A. Wentland at 920-893-8528.

Sincerely,

A handwritten signature in blue ink that reads 'Michele R. Norman'.

Michele R. Norman, Supervisor
Remediation and Redevelopment Program
Southeast Region

cc: City of Milwaukee Building Inspection
Giles

BEFORE THE

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

CONDITIONAL GRANT OF EXEMPTION
FOR
DEVELOPMENT ON A PROPERTY
WHERE SOLID WASTE HAS BEEN DISPOSED

FINDINGS OF FACT

The Department finds that:

1. The Couture, LLC owns the property at 909 East Michigan Street, Milwaukee, Wisconsin.
2. Giles Engineering, on behalf of The Couture, LLC, has submitted a request received September 6, 2017 for an exemption from the prohibition in Wis. Admin. § NR 506.085.
3. Historically the site was filled with non-organic material consisting of cinders and foundry sand.
4. The proposed development will require all solid waste material and contaminated soil to be removed from the construction footprint. The Couture, LLC is in the process of obtaining approval of a Soil Management Plan for this work.
5. The nature of the fill material does not present a risk of methane gas generation.
6. If the conditions set forth below are complied with, the development of the property will not result in environmental pollution as defined in Wis. Stat. §§ 289.01(8) and 299.01(4).

CONCLUSIONS OF LAW

1. The Department has the authority under Wis. Admin. § NR 500.08(4) to issue an exemption from the prohibition in Wis. Admin. § NR 506.085, if the proposed development will not cause environmental pollution as defined in Wis. Stat. §§ 289.01(8) and 299.01(4).
2. The Department has authority to approve a grant of exemption with conditions if the conditions are necessary to ensure compliance with the applicable provisions of Wis. Admin. Chapters NR 500 to 538, or to assure that environmental pollution will not occur.
3. The conditions set forth below are necessary to ensure compliance with the applicable provisions of Wis. Admin. Chapters NR 500 to 538, and to assure that environmental pollution will not occur.
4. In accordance with the foregoing, the Department has the authority under Wis. Admin. § NR 500.08(4), to issue the following conditional grant of exemption.

CONDITIONAL GRANT OF EXEMPTION

The Department hereby issues an exemption to The Couture, LLC from the prohibition in Wis. Admin. § NR 506.085, for development on a property which contains solid waste as proposed in the submittal received September 6, 2017, subject to the following conditions:

1. No action related to the development of the property may be taken which will cause a significant adverse impact on wetlands as provided in Wis. Admin. Chapter NR 103.
2. No action related to the development of the property may be taken which will cause a significant adverse impact on critical habitat areas, as defined in Wis. Admin. § NR 500.03(55).
3. No action related to the development of the property may be taken which will cause a detrimental effect on any surface water, as defined in Wis. Admin. § NR 500.03(62).
4. No action related to the development of the property may be taken which will cause a detrimental effect on groundwater, as defined in Wis. Admin. § NR 500.03(62), or will cause or exacerbate an attainment or exceedance of any preventive action limit or enforcement standard in Wis. Admin. Chapter NR 140.
5. No action related to the development of the property may be taken which will cause an emission of any hazardous air contaminant exceeding the limitations for those substances contained in Wis. Admin. § NR 445.03.
6. No action related to the development of the property may be taken which will cause an exceedance of a soil clean up standard in Wis. Admin. Chapter NR 720.
7. Soil and solid waste material removed from the site shall be disposed of in accordance with an approved Soil Management Plan.
8. This grant of exemption should not be construed as a site closure under Wis. Admin. Chapter NR 726.
9. This exemption shall transfer with changes in property ownership. In accordance with Wis. Stat. § 289.46(2), any person having or acquiring rights of ownership in land where a solid or hazardous waste disposal activity occurred may not undertake any activities on the land which may cause a significant threat to public health, safety or welfare. The Department of Natural Resources should be contacted to discuss any proposed changes to avoid activities that could violate the statute.

This grant of exemption is limited to the proposed changes described in your application. If you are considering additional changes beyond those described in the application, a new application must be submitted to the Department for approval. The Department reserves the right to require the submittal of additional information and to modify this grant of exemption at any time, if in the Department's opinion, modifications are necessary. Unless specifically noted, the conditions of this grant of exemption do not supersede or replace any previous conditions of approval for this property.

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

For judicial review of a decision pursuant to Wis. Stat. §§ 227.52 and 227.53, you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

Dated: January 26, 2018

DEPARTMENT OF NATURAL RESOURCES
For the Secretary



Michele R. Norman, Supervisor
Remediation & Redevelopment Program
Southeast Region



Thomas A. Wentland
Waste Management Engineer
Remediation and Redevelopment Program
Southeast Region