



SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

December 18, 2017

Estate of Gerald Kuehl
c/o Susan Kuehl, Representative for the Estate of Gerald Kuehl
121 Ashland Court
Sheboygan Falls, WI 53085

Christopher G. Sitzmann, Esq.
Sitzmann Law Firm, LTD.
231 W. Franklin Street
Appleton, WI 54911

Subject: Request for Representative Liability Clarification - the Estate of Gerald Kuehl
Quality Cleaners Site, 1226-1228 11th Ave, Grafton, WI 53024;
Tax Parcel Number: 10-060-10-09-001
WDNR BRRTS Activity # 02-46-560212 FID #: 246166470

Dear Ms. Kuehl,

Purpose

On September 29, 2017, the Wisconsin Department of Natural Resources (Department) received a request, along with the required \$700 review fee, for a Representative Liability Clarification letter, to be issued pursuant to Wis. Stats. § 292.21(2). The purpose of this letter is to provide you with the requested clarification of your liabilities as a "representative" as that term is defined under Wis. Stat. § 292 for the Quality Cleaners property located at 1226-1228 11th Ave, Grafton (the Property). 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 September 26, 2017, from Mr. Christopher Sitzmann, on behalf of Susan Kuehl, the representative of the Estate of Gerald Kuehl ("the Estate"), requested a determination from the Department on whether Ms. Kuehl, as the personal representative of the Property, is eligible for the representative exemption under Wis. Stat. § 292.21(2) for the Property.

The following documents were also submitted with the request:

- Quit Claim Deed, dated January 17, 1994, to Gerald A. Kuehl and Barbara A. Kuehl;
- Application for the Termination of Decedent's Interest and Confirmation of Applicant's Interest in Property, dated April 13, 2015;
- Death Certificate for Gerald A. Kuehl, dated April 17, 2015;

- Domiciliary Letters, dated May 28, 2015, issued to Susan J. Kuehl as Personal Representative of Gerald Kuehl;
- Disclaimer of Interest in Property by Susan J. Kuehl, dated August 21, 2017;
- Status update letter, prepared by Mr. Christopher Sitzmann, dated December 20, 2016;
- Indoor Air Testing letter, prepared by John Feeney at the DNR, dated December 28, 2015; and
- Copies of various emails for the Property from Nicole L. LaPlant of Robert E. Lee & Associates, Inc., containing status updates, analytical data, and the following reports:
 1. Transaction Screen Assessment and Initial Subsurface Investigation Report, prepared by Moraine Environmental, Inc., dated March 11, 2013;
 2. Subsurface Investigation Report, prepared by Moraine Environmental, Inc., dated April 8, 2013;
 3. Vapor Extraction SSD System Evaluation Report, prepared by Radon Abatement, Inc., dated June 8, 2016; and
 4. Groundwater Investigation Workplan, prepared by Robert E. Lee & Associates, Inc., dated August 2, 2016.

Additionally, Christopher Sitzmann sent a follow-up letter dated November 22, 2017, to the Department regarding this matter.

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 responsible for taking necessary investigation and cleanup actions at a 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 that is represented by the representative is responsible under Wis. Stat. § 292.11(3) to take the necessary response actions at the property.

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

1. You have demonstrated sufficient documentation to verify that you meet the Wis. Stat. § 292.01(16) definition of "representative".
2. You have not submitted sufficient documentation demonstrating that you *do not* have a "beneficial interest in a trust, estate or similar entity that owns, possesses or controls the real or personal property", as is required for eligibility under Wis. Stat. § 292.21(2)(a)(4). Therefore, the Department cannot affirmatively state that you are eligible for the exemption under Wis. Stat. § 292.21(2). Your disclaimer establishes that you have surrendered any right you might have to inherit the subject real estate. However, the real estate remains in the Estate, and you continue to be the Estate's representative. Given the Department's discussions with Mr. Sitzmann, it appears that you, as the representative, have management and control of the real estate.
3. Additionally, the letter from Mr. Sitzmann, dated December 20, 2016, stating that the estate will no longer pursue remediation, along with the Estate's lack of action subsequent to August 2016, indicates the Estate's failure to act in good faith to address responsibilities under Wis. Stat. § 292.11(3), which would make you ineligible for the exemption under Wis. Stat. § 292.21(2).

Please be reminded that a representative's eligibility or lack of eligibility for the exemption described under Wis. Stat. § 292.21(2) does not limit the responsibility of any trust, estate or similar entity to take the actions required under Wis. Stat. § 292.11 (2), (3), (4) or (7)(c) or any other provision of Wis. Stat. Chapter 292 or to reimburse the Department under Wis. Stat. § 292.11(7)(b).

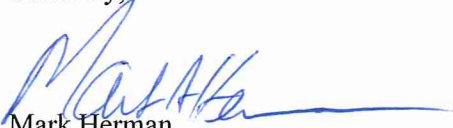
This letter responds only to the individual's status as eligible or ineligible for the representative exemption under Wis. Stat. § 292.21(2).

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 David Hanson at (414) 263-8680 or by email at david.hanson@wisconsin.gov.

Sincerely,



Mark Herman
Attorney Supervisor

Cc:

- Christopher Sitzmann, Sitzmann Law Firm Ltd.
- Clerk of Circuit Court, Washington County (Case No. 15PR87)
- Joshua Morrison, Treasurer, Ozaukee County

