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ENVIRONMENTAL PROTECTION INDUSTRIES

August 3, 2018

State of Wisconsin
Department of Natural Resources
2300 North Dr. Martin Luther King, Jr. Drive
Milwaukee, Wisconsin 53212

**RE: Request for Off-Site Exemption Letter
Taco Bell
3358 Douglas Avenue, Racine, Wisconsin
EPI Project/Proposal #171114**

Dear RR Program Assistant:

Environmental Protection Industries (EPI) respectfully submits this **Request for an Off-Site Exemption Letter** to WDNR on behalf of the owner, Borad Development Partners, LLC. This package includes the WDNR Voluntary Party Liability Exemption Application Form #4400-201 (R 11/14) and \$700.00 fee payable to the Wisconsin Department of Natural Resources.

The Phase I ESA for the Taco Bell property, the Site Investigation Report and a copy of the property deed and Site Location Map (topographic map) were all previously submitted to WDNR. Additional site location maps are included in the Phase I ESA.

We look forward to working with you on this project. If you have any questions, please do not hesitate to contact us.

Sincerely,
Environmental Protection Industries, Inc.

Robert L. Mankowski
Vice President-Technical Services

ATTACHMENTS:

**Check for \$7000.00 – Application Fee
WDNR Form 2200-201**

Notice: Pursuant to ss. 292.13 and 292.55, Wis. Stats., this application must be completed to request a written determination from the Department of Natural Resources (DNR) for the off-site liability exemption or for the liability clarification regarding property affected by an off-site discharge. The Department will not consider, or act upon your application unless all sections are completed on this form and the required fee of \$700, required under ch. NR 749, Wis. Adm. Code is included. Personal information collected will be used for administrative purposes and may be provided to requester's to the extent required by Wisconsin's Open Records law [ss. 19.31 - 19.39, Wis. Stats.]

Definitions:

"Off-Site Exemption" refers to a statutory limit on liability available to a person with respect to the existence of a hazardous substance in the groundwater or soil, including sediments, on Property possessed or controlled by the person, as provided in s. 292.13, Wis. Stats. The off-site exemption is available only to persons who possess or control the affected property, who meet the requirements and criteria in the statutes. DNR provides a written determination regarding liability upon submittal of this application and the required fee.

"General Liability Clarification" refers to a written determination by the Department, as provided in s. 292.55, Wis. Stats., that clarifies the environmental liability of a person, business or another party for a specific situation. General liability clarifications can be provided in situations when the party requesting the clarification does not meet one of the requirements for the off-site exemption at the time of the application submittal, for example, does not yet own the off-site property. This application form should be used to request a written liability clarification **for property affected by an off-site discharge**.

"Property" refers to the subject property that has been impacted by hazardous substances that migrated there from a different property containing the original contamination source. The subject property is often referred to as an "off-site" or "off-source" property.

"Possession or control" refers to holding title to the property or exercising possession or control over the property by some other means, such as a lease.

[NOTE: a person with an easement doesn't have possession or control over the property; the property owner just allows the person to use part of the property for a limited purpose].

Instructions:

- Use this application to request a written determination from the Department for the off-site liability exemption or for the liability clarification regarding **property affected by an off-site discharge**. See DNR's Fact Sheet: "When Contamination Crosses a Property Line - Rights and Responsibilities of Property Owners Off-Site Limited Liability Exemption" (RR-589) for general information on eligibility requirements, liability clarification letters related to the off-site liability exemption, and property owner responsibilities. Information and these publications are available by contacting a [DNR office](#) or on the Internet at: <http://dnr.wi.gov/topic/Brownfields>.
- Complete the application and include the information that adequately shows that the required criteria are met. See Section 7 on page 4.
- Include a \$700 fee payment with this application, in accordance with ch. NR 749, Wis. Adm. Code.
- Send the completed application, fee, and supporting materials to the DNR regional office where the Property is located, as listed on page 6. Contact the person listed with any questions.
- Department staff will make every attempt to provide timely written determinations. However, the time required for the determination varies depending on the complexity of the site, and the clarity and completeness of the application and supporting documentation.
Do not use this application form to request liability clarifications for properties without off-site contamination. Contact one of the DNR regional offices or see the DNR website on the Internet for more information.

1. Applicant information for person requesting the determination.

Applicant Last Name		First	MI
Borkan		Neil	J
Address		City	State ZIP Code
302 Saunders Road, Suite 100		Riverwoods	IL 60015
Phone Number (include area code)	Fax Number (include area code)	E-Mail Address	
(847) 955-1000	(847) 634-2200	neil@tacomakers.com	
Contact for questions (if different than applicant) Last Name		First	MI
Address		City	State ZIP Code
		WI	
Phone Number (include area code)	Fax Number (include area code)	E-Mail Address	

Off-Site Liability Exemption and Liability Clarification Application

Form 4400-201 (R 11/14)

Page 2 of 6

2. Applicant eligibility for off-site exemption or off-site liability clarification.

Request one determination based on whether the requirements for the off-site exemption are currently met. See page 5 and sign the appropriate certification.

Off-Site Discharge Exemption – I "possess or control" the Property and I believe I meet the criteria for an off-site exemption. I request an off-site exemption letter.

I have completed Section 8a on page 5.

As the applicant, I am:

Current owner

Other* Explain your relationship to the Property or the nature of your possession or control of the Property:

*Additional documentation may be requested by the DNR to verify the applicant's possession or control of the Property. For example, if a lessee requests a determination, DNR would need a copy of the lease by which to assess whether the lessee possesses or controls the Property.

Off-site Liability Clarification – I lack one or more of the requirements for the off-site exemption as shown below. I request a liability clarification letter that explains which conditions must be met in order to qualify for the off-site liability exemption.

I have completed Section 8b on page 5.

Requirements for the off-site exemption that are missing:

1. Currently I do not possess or control the Property and

I plan to buy the Property on _____ (Date) or

I plan to lease the Property on _____ (Date).

2. Currently no contamination has been detected on the Property but there is credible evidence that contamination has migrated onto the Property.

3. Multiple contiguous properties are believed to be affected by contamination from a known source.

4. Other: Explain the circumstances here or in an attachment.

3. Information on additional parties.

Check the appropriate box to have a copy of the determination letter sent to one or more of these parties:

<input checked="" type="radio"/>	Environmental Consultant	First	MI
	Environmental Protection Industries	Robert Mankowski	
	Address	City	State ZIP Code
	16650 S. Canal Street	South Holland	IL 60473
	Phone Number (include area code)	Fax Number (include area code)	E-Mail Address
	(708) 225-1115		rlm@environmental-epi.com
<input type="radio"/>	Attorney / Other Last Name	First	MI
	Address	City	State ZIP Code
	Phone Number (include area code)	Fax Number (include area code)	E-Mail Address

Off-Site Liability Exemption and Liability Clarification Application

Form 4400-201 (R 11/14)

Page 3 of 6

4. Information on Property affected by off-site discharge.

Property / Facility Name Taco Bell				County Racine			
Address 3358 Douglas Avenue			City Racine		State WI	ZIP Code 53402	
Public Land Survey Coordinates			Latitude		Longitude		
Section	Range	Township N	Datum (check only one): <input type="radio"/> NAD27 <input type="radio"/> NAD83 <input type="radio"/> 1990 Adjustment			Method	Accuracy

(Attach a list of locations if this request is for multiple properties.)

I request that DNR provide a copy of the Liability Clarification Letter to the current owner.

Current Owner (if different than applicant) Last Name			First		MI	
Address			City		State WI	ZIP Code
Phone Number (include area code)		Fax Number (include area code)		E-Mail Address		

5. Information about contamination on the impacted Property.

A. Have hazardous substances been detected on the Property or Properties?

No. If not, explain why contamination is suspected on the Property or Properties in an attachment or here:

Yes. Check all that apply: Groundwater Soil Sediment Other, describe: _____

B. Has the presence of contamination been reported to any State or local governmental agency?

No.

If yes, check all that apply: DNR Date Reported _____
 Division of Emergency Government
 Commerce
 Department of Agriculture, Trade and Consumer Protection (DATCP)
 Other, describe: _____

C. Is the source of the contamination known? Check only one.

No.

Yes. If yes, what is the source of the contamination?

Off-site source - Former Dry Cleaner 3406 Douglas

Provide the name and address of the owner of the contamination source or source property, if known.

Owner Name Unknown					
Address		City		State WI	ZIP Code

Suspected. If suspected to be migrating from a nearby source, what is the source and its address?

Provide the name of the owner of the suspected contamination source or source property, if known.

Owner Name					
Address		City		State	ZIP Code

6. Specific liability clarification questions relating to off-site contamination.

- I have no additional liability clarification questions.
- I request a DNR response to the questions provided to clarify my liability for the cleanup of off-site contamination to be included in the written determination (questions should be provided here or in an attachment) :

7. Property information needed for the determination of off-site exemption or off-site liability clarification.

DNR requires adequate information in order to make the determination requested in this application. Incomplete or inadequate information will delay the completion of the determination. DNR has the authority to request additional information, if needed. Include the following information with the application, if appropriate:

1. Map(s) showing Property location(s) and any suspected or known off-site contaminant source properties.
2. For any environmental data submitted, include:
 - a) Property map(s) showing sampling locations for all data submitted;
 - b) Interpretation of data signed by a qualified environmental professional, including data tables and figures that include data;
 - c) Soil boring logs;
 - d) Groundwater monitoring well construction, development and sampling logs;
 - e) Laboratory-provided data reports;
 - f) Survey information for groundwater elevations;
 - g) Chain of custody forms for all samples; and
 - h) Description of sample collection methods.

The submitted materials should document that the statutory criteria are satisfied regarding the contamination and its source as listed in A through C below.

- A. Document that there is hazardous substance contamination present in soil, groundwater and/or sediment on the Property or Properties. Examples of information include: Analytical results and interpretations for samples collected from soil, groundwater, and/or sediment on the Property, or at or near the Property line, that conclusively document the presence of a hazardous substance in one or more of these media on the Property. This information could be documented in a Phase II Environmental Assessment report, or could refer to existing reports in DNR files related to the source property.
- B. Document that the hazardous substance contamination, which is present in soil, groundwater, and/or sediment on the Property or Properties, is migrating onto the Property or Properties from an off-site source.

Examples of information include:

 1. Information identifying known or suspected discharges of the hazardous substance on neighboring property(ies), e.g., a Phase I Environmental Assessment report, information in existing reports in DNR files related to the source property.
 2. Soil, groundwater and/or sediment sample data and interpretations adequate to conclude that the hazardous substance is migrating onto the Property or Properties, such as:
 - Samples from monitoring wells located on the upgradient side of the Property or Properties (include information to establish upgradient direction), which show increasing contaminant concentrations toward the upgradient Property or Properties;
 - Off-site investigation results that provide information about groundwater flow direction and contaminant movement that convincingly document hazardous substances from a known or suspected off-site source have impacted the Property or Properties; or
 - A description of the event(s) that caused the deposit or accumulation of contaminated sediment on the affected Property or Properties and a map showing the location of the water body and elevations of the affected Property or Properties and water surface at normal flow and flood stage conditions.
- C. Document that the discharge of a hazardous substance is not from a source on the Property or Properties.

Examples of information include:

 1. Information related to historical activities, such as descriptions of chemicals used and handled, areas where chemicals were used and handled, and areas of potential discharges on the Property or Properties, e.g., a Phase I Environmental Assessment report.
 2. Where the types of hazardous substances used, handled, or discharged on the Property or Properties are the same as the hazardous substances migrating onto the Property or Properties, provide environmental information, e.g., expanded Phase II environmental assessment data, including type and volume of hazardous substances handled, generated or stored on the applicant's Property during the period of ownership and/or length of lease, and analytical results and interpretation for soil and groundwater samples collected from potential discharge areas to demonstrate that the contamination migrating onto the Property is separate and distinct from the contamination that may be on the Property.

Off-Site Liability Exemption and Liability Clarification Application

Form 4400-201 (R 11/14)

Page 5 of 6

8. Sign one of the certifications below based on whether the requirements of the off-site exemption are currently met.

8a. Certification if the applicant currently meets all the requirements for the off-site liability exemption.

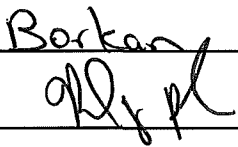
Applicant Certification for a Determination for the Off-Site Discharge Exemption, as provided in s. 292.13, Wis. Stats.

I certify that I possess or control the Property and have read and am familiar with the information on this application. The information on and included with this application is true, accurate and complete to the best of my knowledge.

I understand that I retain the responsibility for any hazardous substance discharges that I caused or cause, and for any discharges whose source I possess or control on the Property or on other properties.

I believe that I meet the criteria in s. 292.13, Wis. Stats., with respect to the fact that I never controlled or possessed either the source property itself, or the hazardous substances that have migrated onto the Property from the source property, nor did I cause the hazardous substance discharge for which I am seeking this written exemption.

I understand that if I fail to satisfy the statutory requirements in s. 292.13, Wis. Stats., such as failing to provide access to the Property, the DNR has the authority to revoke the off-site exemption for the Property.

Applicant Last Name	First	MI
Borkan	Neil	J
Signature	Date Signed	
	8/1/18	

8b. Certification if applicant has not currently met all the conditions for the off-site exemption.

Applicant Certification for a Determination for Liability Clarification, as provided in s. 292.55, Wis. Stats.

I certify that I have read and am familiar with the information on this application and that the information on and included with this application is true, accurate and complete to the best of my knowledge.

I understand that I retain the responsibility for any hazardous substance discharges that I caused or cause, and for any discharges whose source I possess or control on the Property or Properties or on other properties.

It is my understanding that I have not met all the conditions for the off-site exemption at the time of this application, but I request a liability clarification determination that includes the conditions under which I or others would become eligible for the off-site discharge exemption for the Property or Properties, if I were to meet all the criteria under s. 292.13, Wis. Stats. I believe that I meet the criteria regarding the source of the contamination and the source property in s. 292.13, Wis. Stats., with respect to the fact that I never controlled or possessed either the source property itself, or the hazardous substances that have migrated onto the Property or Properties from the source property, nor did I cause the hazardous substance discharge for which I am seeking this written exemption.

I understand that if I meet the criteria in s. 292.13, Wis. Stats., and obtain the off-site liability exemption, but subsequently fail to satisfy the statutory requirements in s. 292.13, Wis. Stats., such as failing to provide access to the Property, the DNR has the authority to revoke the off-site exemption for the Property.

Applicant Last Name	First	MI
Signature	Date Signed	