



July 12, 2021

--sent by email--

Castille Affordable Housing Limited Partnership  
DBA Maple Glen Apartment Homes  
c/o Wisconsin Affordable Housing Corp. General Partner  
5402 Flad Avenue  
Madison, WI 53711

Subject: Off-site Liability Exemption for the Chlorinated Solvent Contamination Found at and Near  
Country Rose Court and Deer Valley Road, Town of Madison, Wisconsin.  
BRRTS No. 7-13-586153

Dear Mr. Mullee:

**Purpose**

The Department of Natural Resources ("the department") reviewed your request for an off-site liability exemption letter for eight parcels that comprise the Maple Glen Apartment Home complex, owned by Castille Affordable Housing Limited Partnership (henceforth "CAHLP").

The eight parcels that are the subject of this this letter have Dane County parcel numbers 070935409780, 070935409673, 070935409566, 070935409459, 070935409011, 070935409128, 070935409235, 070935409342, and are collectively referred to herein as "the Property". Page 4 of this letter shows a map of the Property.

The department received a \$700 fee for providing this letter pursuant to Wis. Stat. §§ 292.13 (2) and (3), and Wis. Admin. Code ch. NR 749.

**Summary Determination**

The department, based on the information made available to it, confirms that CAHLP qualifies for the off-site liability exemption, and is not responsible for investigation or cleanup of the contamination that originated on a neighboring property. CAHLP and future owners of the Property may be responsible for limited actions that are described in this letter, under Wis. Stat. §§ 292.12 and 292.13, for the vapor contamination that migrated onto the Property.

**Request**

You have requested that the department determine if CAHLP is exempt from Wis. Stats. §§ 292.11(3), (4) and (7)(b) and (c), (commonly known as the " Spill Law"), with respect to the existence of a hazardous substance in the soil, groundwater, and soil vapor, that you believe is migrating onto the Property from an off-site source.

Wis. Stats. § 292.13(2) requires the department to issue, upon request, a written determination regarding a liability exemption for a person who possesses or controls property that is contaminated by an off-site discharge when certain conditions are met. To make this determination, the department reviewed information about the Property, including soil, groundwater, and soil vapor sampling data for the Property and nearby parcels contained in the following:

- The Off-Site Liability Exemption and Liability Clarification Application form dated July 27, 2020,
- Excerpts from Leggette, Brashears & Graham, Inc.'s, September 2005, "Phase III Site Investigation Report, Rimrock Road PCE Contamination, Cities of Madison and Fitchburg, BRRTS #02-13-24822",

- SCS Engineers' April 26, 2019, "Summary of Soil Gas Sampling WDNR Rimrock Road Investigation, Southdale Park, Town of Madison, BRRTS No. 02-13-248222", and
- SCS Engineers' February 25, 2020, "Summary of Vapor Sampling, WDNR Rimrock Road Investigation, 200 Deer Valley Road, Town of Madison (Property), BRRTS No. 02-13-248222".

### **Background**

The department considered the documents listed above in making the determinations presented in this letter. Contamination of soil, groundwater, and soil vapor appears to have resulted when chlorinated solvent leaked from an underground sewer line beneath the Town of Madison recreational park to the east of the Property. The chlorinated solvent contamination includes tetrachloroethylene, and its breakdown products, including trichloroethylene, dichloroethylene, and vinyl chloride. The department has not attributed responsibility for the contamination to any party. The investigation and mitigation of the contamination has proceeded as a state-funded project.

### **Determination**

Based upon the available information and in accordance with Wis. Stat. § 292.13, the department makes the following determinations regarding the presence of tetrachloroethylene, trichloroethylene, dichloroethylene, vinyl chloride, and other compounds that may have leaked from the sewer line beneath the park, especially those that have been detected at the Property.

The department, based on the information available, determined that the CAHLP meets the conditions in Wis. Stats. § 292.13 to qualify for the liability exemption, including but not limited to the following provisions:

1. The hazardous substance discharge originated from a source on property that is not possessed or controlled by CAHLP.
2. CAHLP did not possess or control the hazardous substance on the property on which the discharge originated.
3. CAHLP did not cause the discharge.
4. CAHLP will not have liability under the Spill Law for investigation or remediation of the contamination originating off-site and migrating onto the Property, provided that CAHLP does not take possession or control of the property on which the discharge originated.

### **Exemption Conditions**

The department's determination, as set forth in this letter, is subject to compliance with the following conditions, as specified in Wis. Stats. §§ 292.13(1) and (1m).

1. The facts upon which the department based its determination are accurate and do not change.
2. CAHLP and its officers and representatives agree to allow the following parties to enter the Property to take action to respond to the discharge: the department and its authorized representatives; any party that possessed or controlled the hazardous substance or caused the discharge; and any consultant or contractor of such a party.
3. CAHLP and its officers and representatives agree to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.
4. CAHLP and its officers and representatives agree to any other condition that the department determines is reasonable and necessary to ensure that the department and any other authorized party can adequately respond to the discharge.
5. With respect to soil and vapor contamination, CAHLP and its officers and representatives agree to take one or more specified actions directed by the department, if the department determines that the actions are necessary to prevent an imminent threat to human health, safety or welfare or to the environment.

**Responsibilities for Continuing Obligations**

A vapor mitigation system is planned to be installed at the Property. Maintenance and operation of the vapor mitigation system will be required at the Property. CAHLP, and any future Property owner, is responsible for maintenance and operation of the vapor mitigation system.

In addition to the conditions above, after the contamination at the source property is remediated, the department's approval of the cleanup may include continuing obligations at the source property as well as your Property. Often residual contamination remains after an approved environmental cleanup is complete. This approval may include requirements to maintain engineering controls, such as a cap or soil cover, to reduce the impact of the contamination. In that event, you may also be required notify the DNR prior to constructing a water supply well on your Property. If the neighboring property owners request for cleanup approval includes requirements for your Property, the party conducting the cleanup is required to notify you before the DNR reviews the proposal for final approval of the clean-up.

**Conclusion**

The department granted CAHLP an off-site exemption under Wis. Stats. § 292.13. Please note that the department may revoke the determinations made in this letter if it determines that any of the requirements under Wis. Stats. § 292.13, cease to be met.

Future Property owners are eligible for the exemption under Wis. Stats. § 292.13, if they meet the requirements listed in that statute section. The determinations in this letter regarding a liability exemption, however, only apply to CAHLP, and may not be transferred or assigned to other parties. The department will provide a written determination to future owners of this Property, if such a determination is requested in accordance with the requirements of Wis. Stats. § 292.13.

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for the contamination case is 02-13-248222. The department tracks information on all determinations such as this in a department database available online at [dnr.wi.gov](http://dnr.wi.gov) and search: "BOTW". This liability determination request and letter will be tracked using case number 07-13-586153.

If you have questions or concerns, please contact me at 608-219-2302 or at [jeff.ackerman@wi.gov](mailto:jeff.ackerman@wi.gov)

Sincerely,

An electronic signature of Jeff Ackerman, consisting of a stylized cursive script in black ink. Below the signature, the words "electronic signature" are printed in a small, light blue font.

Jeff Ackerman, P.G.  
Hydrogeologist  
Remediation and Redevelopment Program

cc: Michael Prager, DNR  
Janet DiMaggio, DNR

