



October 15, 2021

BRRTS #: 07-17-587804

FID #: 617007160

Steve Sauvageau  
Village Bank  
9298 Central Avenue NE  
Blaine, MN 55434

Subject: Lender Liability Clarification for the Commercial Property, located at 1021 S. Broadway St., Menomonie, WI 54751; Tax Parcel Number: 1725122813263300014

Dear Steve Sauvageau:

On September 30, 2021, the Wisconsin Department of Natural Resources (DNR) received your request, along with the required \$700 fee, for a lender liability clarification letter. The purpose of this letter is to provide Village Bank with the requested clarification of environmental liabilities related to the Commercial Property located at 1021 S. Broadway St., City of Menomonie, Dunn County, Wisconsin ("the Property").

### Request

Your application dated September 29, 2021, requests a determination from the DNR on whether Village Bank is eligible for the lender liability exemption identified in Wisconsin Statutes (Wis. Stat.) § 292.21, with respect to the Property.

It is our understanding that your lending institution is seeking liability clarification with regard to its status under Wis. Stat. § 292.21(1)(a) as a lender that is engaged in mortgage lending for the Property. The DNR understands that Village Bank does not otherwise possess, control, or have title to the Property and that Village Bank is not presently seeking clarification with regard to an acquisition through enforcement of a security interest in the Property. In summary, with respect to the Property and based on the information provided, the DNR believes that Village Bank is a lender engaged in lending activities at the Property and is exempt under Wis. Stat. § 292.21(1)(a), provided that the lender does not otherwise possess, control or have title to the Property.

### Documents Provided

The following documents were submitted with your request:

- DNR Form 4400-196, *Lender Liability Exemption Environmental Assessment Tracking Form*;
- DNR Form 4400-237, *Technical Assistance and Environmental Liability Clarification Request*;
- Legal description of the Property;
- Dunn County Parcel Report and Map, valid as of September 24, 2021;
- A cover letter from Michael Neal, American Engineering Testing, Inc., dated September 29, 2021.

## **Property Information**

On June 18, 2021, Michael Neal of American Engineering Testing, Inc., on behalf of Wayne Moser of Quarters Unlimited, submitted a Phase I and Phase II environmental site assessment and notified the DNR that a hazardous substance discharge or other environmental pollution was detected at the Property. On July 29, 2021, the DNR issued a letter to Mr. Moser, informing Mr. Moser of his status as a responsible party. In addition, DNR issued a general liability clarification letter to Mr. Moser on August 6, 2021. Information relating to this hazardous substance discharge and the liability clarification letter are available via the Bureau for Remediation and Redevelopment Tracking System (BRRTS) under BRRTS numbers 02-17-587803 and 07-17-587804.

## **General Lender Liability Exemption Conditions and Limitations**

Under Wisconsin's Hazardous Substance Discharge Law (the "Spill Law"), Wis. Stat. § 292.11, a person who "possesses, controls or causes" a hazardous substance discharge is liable for taking necessary investigative and cleanup actions. Wis. Stat. § 292.21(1) provides a liability exemption for lenders for lending activities, preacquisition inspections of real property, acquisitions of real property through enforcement of a security interest, and acquisitions of personal property and fixtures through enforcement of a security interest, provided that the lender meets the respective statutory conditions for each of these activities. Pursuant to Village Bank's request, this letter primarily addresses Village Bank's eligibility for an exemption for lending activities under Wis. Stat. § 292.21(1)(a).

## **Lending Activities**

Under Wis. Stat. § 292.21(1)(a), a "lender" is not deemed to possess or control a hazardous substance or cause the discharge of a hazardous substance as a result of engaging in "lending activities", provided that:

- The lender does not physically cause a discharge; and
- The lender through tortious conduct with respect to lending activities causes a discharge of a hazardous substance or exacerbates an existing discharge of a hazardous substance.

Under Wis. Stat. § 292.01(8), "lender" means a bank, credit union, savings bank, savings and loan association, mortgage banker or similar financial institution, the primary business of which is to engage in lending activities or an insurance company, pension fund or government agency engaged in secured lending.

Under Wis. Stat. § 292.01(9), "lending activities" means advancing funds or credit to and collecting funds from another person; entering into security agreements, including executing mortgages, liens, factoring agreements, accounts receivable financing arrangements, conditional sales, sale and leaseback arrangements and installment sales contracts; conducting inspections of or monitoring a borrower's business and collateral; providing financial assistance; restructuring or renegotiating the terms of a loan obligation; requiring payment of additional interest; extending the payment period of a loan obligation; initiating foreclosure or other proceedings to enforce a security interest in property before obtaining title; requesting and obtaining the appointment of a receiver; and making decisions related to extending or refusing to extend credit.

## **Lender Liability Determinations Related to the Property**

The DNR reviewed the request and the other documents that were submitted by Village Bank on September 29, 2021. The request submitted by Village Bank indicates that Village Bank is a lender with a mortgagee interest in the

Property. Information submitted for this request does not indicate that Village Bank has either caused a discharge or caused or exacerbated a discharge through tortious conduct with respect to lending activities. Village Bank appears to be a bank within the definition of "lender" and Village Bank's action of advancing a mortgage loan for the Property falls within the definition of "lending activities." Based on the information you provided, and with respect to the Property, the DNR believes that Village Bank is exempt under Wis. Stat. § 292.21(1)(a) as a lender conducting lending activities, provided that the lender does not otherwise possess, control or have title to the Property.

Wis. Stat. § 292.55(1)(d)1. authorizes the DNR to issue letters concerning potential liability for environmental pollution. The DNR believes that, as a mortgage lender for the Property, Village Bank qualifies as an exempt lender and is therefore not liable for the identified contamination at the site. If Village Bank continues to meet the conditions for liability exemption eligibility that are listed in Wis. Stat. § 292.21, Village Bank will not be held responsible under Wisconsin's Hazardous Substance Spill Law, Wis. Stat. § 292.11, for hazardous substance discharges present on the Property.

Please note that the lender liability exemption is not transferable. This response letter is based on information you provided to the DNR and relates only to the state's lender liability exemption. The DNR makes no determination for other persons or entities concerning the presence or absence of hazardous substances on the Property.

#### **Acquisition Through Enforcement of a Security Interest**

If, in the future, Village Bank considers acquiring the Property through enforcement of a security interest, Village Bank should be aware that separate conditions apply for lenders that acquire properties through foreclosures or deeds in lieu of foreclosure. The lender must satisfy all conditions identified in Wis. Stat. § 292.21 to qualify for the lender liability exemption, including but not limited to the following provisions:

- The lender does not intentionally or negligently cause a new discharge of a hazardous substance or exacerbate an existing discharge.
- The lender notifies the DNR of any known discharge of a hazardous substance.
- The lender conducts an environmental assessment of the Property that includes all the elements identified in Wis. Stat. § 292.21(1)(c)2. The environmental assessment is conducted not more than 90 days after the date the lender acquires title to, or possession or control of, the Property, and the lender files a complete copy of the environmental assessment with the DNR not more than 180 days after the date the lender acquires title to, or possession or control of, the Property.
- If a discharge of a hazardous substance occurs on or after the date on which the lender acquires title to, or possession or control of, the Property, the lender implements an emergency action under Wisconsin Administrative Code (Wis. Admin.) § NR 708.05 in response to the discharge of the hazardous substance.
- For a hazardous substance discharged on or after the date on which the lender acquires title to, or possession or control of, the Property, the lender does not engage in the operation of a business at the Property, complete work in progress or take other actions associated with conducting the conclusion of the borrower's business (Wis. Stat. § 292.21(1)(c)1.).
- The lender agrees to allow the DNR and any party that possessed or controlled or caused the hazardous substance discharge, and their consultants or contractors, to enter the real Property to take action to respond to the discharge.
- The lender agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.

- The lender agrees to any other condition that the DNR determines is reasonable and necessary to ensure that DNR or another person can adequately respond to the discharge.

### **Federal Liability Information**

To determine what specific actions would satisfy the federal lender liability requirements under CERCLA, we advise that you contact either Thomas Krueger at (312) 886-0562 or by email to [krueger.thomas@epa.gov](mailto:krueger.thomas@epa.gov), or Larry Kyte at (312) 886-4245 or by email to [kyte.larry@epa.gov](mailto: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 secured creditor liability exemption conditions.

### **Public Database of Properties**

The DNR 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 me at (715) 492-2304 or by email at [matthewa.thompson@wisconsin.gov](mailto:matthewa.thompson@wisconsin.gov).

Sincerely,



Matt Thompson  
Hydrogeologist  
West Central Region, Remediation and Redevelopment Program

cc:

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