



April 26, 2022

--sent by email--

Mr. Andy Selle, City Engineer
City of Fort Atkinson
101 N. Main Street
Fort Atkinson, 53538

Subject: "Off-site Liability Exemption" for 205 Hake Street, Fort Atkinson, Wisconsin
Jefferson County Parcel 226-0614-6432-007 *should read 226-0614-3432-007 JAA 9-23-2024*
Formerly part of BRRS# 02-28-588371 *filed under #07-28-589576 JAA 9-26-2024*

Dear Mr. Selle:

Purpose

The Department of Natural Resources ("the department") recently reviewed your request for an off-site exemption letter for the property located at 205 Hake Street, which will be referred to in this letter as "the Property." Refer to the page 4 of this letter for 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 City of Fort Atkinson (the "City") qualifies for the off-site liability exemption, and City is not responsible for investigation or cleanup of the contamination that originated on a neighboring property. The Property owner may be responsible for limited actions that are described in this letter, under Wis. Stat. §§ 292.12 and 292.13, for the contamination that migrated onto the Property.

Request

You have requested that the department determine if the City 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 discharge found in soil and groundwater, that you believe migrated 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 and groundwater sampling data for the Property and/or other sites contained in the following documents:

- Off-Site Liability Exemption and Liability Clarification Application form (Form 4400-201) dated April 8, 2022;
- Terrcon's April 8, 2022, "Off-Site Liability Exemption Application Request – Hake Parcel", which included relevant excerpts of data from the neighboring DB Oak cleanup site.

Background

The department considered the documents listed above in making the determinations presented in this letter. Tetrachloroethene and trichloroethene and their associated breakdown products were found in soil and groundwater samples at the Property. The contaminants are believed to have migrated from a source on the DB Oak cleanup site and caused concentrations of concern. Soil vapor is likely impacted as well.

Determination

Based upon the available information and in accordance with Wis. Stat. § 292.13, the department makes the following determinations regarding the presence of tetrachloroethene, trichloroethene, cis-1,2-dichloroethene, trans-1,2-dichloroethene, vinyl chloride, and 1,1-dichloroethene contamination found in soil samples from borings P-1 and MW-1, and in groundwater samples from borings P-1, P-5, P-10 and monitoring well MW-1.

The department, based on the information available, determined that the Property owner met 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 the City.
2. The City did not possess or control the hazardous substance on the property on which the discharge originated.
3. The City did not cause the discharge.
4. The City will not have liability under the Spill Law for investigation or remediation of the soil and groundwater contamination originating from off-site onto the Property, provided that the City 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. The City agrees 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. The City agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.
4. The City agrees 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 vapor contamination only, the City agrees 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. This would occur after the department made a reasonable attempt to notify the party who caused the hazardous substance discharge about that party's responsibilities to investigate and clean up the discharge. A vapor intrusion evaluation must be performed prior to construction to assure any planned occupied spaces will not contain the above-listed contaminants at concentrations exceeding a vapor action level.

Responsibilities for Continuing Obligations

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 to 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 the City 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 the City, 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 this activity is shown at the top of this letter. The department tracks information on all determinations such as this in a department database available online at dnr.wi.gov and search: "BOTW".

If you have questions or concerns, please contact me at jeffrey.ackerman@wisconsin.gov or 608-219-2302.

Sincerely,

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

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

cc: Ed Buc, Terracon
Michael Prager, DNR
Janet DiMaggio, DNR

