



March 22, 2024

George Morrissey
Director of Public Works
City of Cuba City
108 N. Main Street
Cuba City, WI 53807

Via Email Only to gmorrissey@cubacitylightandwater.org

Subject: Local Governmental Unit (LGU) Liability Clarification Letter
Kessler Cleaners, 204 S. Main St, Cuba City, Wisconsin 53807
Parcel #: 211-00146-0000
BRRTS Activity Name: Kessler Cleaners
BRRTS #: 02-22-543811 and 07-22-594097

Dear Mr. Morrissey:

The Wisconsin Department of Natural Resources (DNR) received a request for a liability clarification letter from Cuba City on February 26, 2024 (Request). The Request was submitted with the appropriate review fee under Wisconsin Administrative (Wis. Admin.) Code § NR 749.04(1). It is the DNR's understanding, based on the documents submitted, that Cuba City acquired the property identified above (the Property). The purpose of this letter is to provide Cuba City with clarification of environmental liabilities associated with the Property. Wisconsin Statutes (Wis. Stat.) § 292.55(1)(d)4. authorizes the DNR to issue a letter to a person seeking assistance concerning the liability for environmental pollution at a property. The DNR based this letter on review of environmental reports and other documents that were provided in the Request:

- Liability clarification letter request, completed Form 4400-237, signed February 20, 2024
- Copy of the Brownfield Assessment Grant Wisconsin Assessment Monies Application that was submitted to DNR on December 12, 2022
- Resolution No. 2022-10, "A Resolution Approving the Purchase and Acquisitions of 204 S. Main Street in the City of Cuba City for the Purpose of Blight Elimination" adopted October 24, 2022

Cuba City's application requests a determination from the DNR on whether Cuba City is eligible for the local government unit (LGU) environmental liability exemption identified in Wis. Stat. § 292.11(9)(e), with respect to the Property.

PROPERTY USE

The Property consists of a two-story building that was used for as a dry-cleaning business until it closed more than 10 years ago. The building has been unoccupied since the business closed and has fallen into disrepair. The Property is tax delinquent. Cuba City plans to demolish the building and discussed plans to reuse the Property as parking for adjacent businesses. The Property is bound by South Main Street to the west, a commercial property (Mound City Bank) to the north, a gas station and convenience store to the south, and an alleyway followed by residential properties to the east.

BACKGROUND AND ENVIRONMENTAL SUMMARY

The Kessler Cleaners site (BRRTS #: 02-22-543811) was identified through groundwater monitoring associated with the B&B Oil CO site (BRRTS#: 03-22-002350) located south of the Property. Tetrachloroethene (PCE) and trichloroethene (TCE) were discovered in groundwater at the B&B Oil CO site. The chlorinated volatile organic compounds (CVOCs) in groundwater appeared to be migrating onto the B&B Oil CO property from an upgradient source. Further, PCE is often associated with dry cleaner operations and TCE is a known breakdown product of PCE. The PCE and TCE contamination identified at B&B Oil CO site was attributed to the Kessler Cleaners Property. In 2005, the DNR notified the operator of the Kessler Cleaners and the property owner of 204 South Main Street of their legal responsibilities under Wis. Stat. 292.11.

In 2016, the DNR conducted vapor testing in the 204 South Main Street and 211 South Washington Street properties under the Vapor Intrusion Zone Contract (VIZC). The investigation identified CVOCs in vapors at the Property (204 South Main Street). PCE was identified at concentrations greater than the residential indoor vapor action levels (VALs) in indoor air samples. PCE and TCE were identified in sub-slab vapors at concentrations greater than the residential Vapor Risk Screening Levels (VRSL). Based on the vapor sampling results, a vapor mitigation system was installed at the Property.

The indoor air sample from 211 South Washington detected PCE and *trans*-1,2-dichloroethene (*trans*-1,2,-DCE), but neither concentration exceeded the residential VAL. Further, PCE was detected in the sub-slab air sample from 211 South Washington Street, but the concentration did not exceed the residential VRSL.

Cuba City was approved for contractor services under the Wisconsin Assessment Monies (WAM) program. Through the WAM program, a Phase I Environmental Site Assessment (Phase I ESA) was completed for the Property in February 2024. The Phase I ESA identified the former dry cleaner as a recognized environmental condition.

METHOD AND PURPOSE OF ACQUISITION

On October 24, 2022, Cuba City adopted Resolution 2022-10 “A Resolution Approving the Purchase and Acquisition of 204 S. Main Steet in the city of Cuba City for the Purpose of Blight Elimination.” This resolution includes a determination that the Property meets the definition of “blighted property” in Wis. Stat. § 66.1333 and that the city is acquiring the Property for the purpose of blight elimination. On March 20, Cuba City purchased the Property through a purchase and sale agreement.

LOCAL GOVERNMENT LIABILITY EXEMPTION

Under 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. § 292.11(9)(e) provides a liability exemption for LGUs.

When applicable at a specific property, Wis. Stat. § 292.11(9)(e) exempts an LGU from the following responsibilities of owners of property with environmental contamination:

- The responsibility to take actions necessary to restore the environment and minimize harmful effects of hazardous substance discharges to soil, sediment, groundwater, surface waters and air of the state.
- The responsibility to comply with DNR orders to take action to prevent hazardous substance discharges.
- The responsibility to reimburse the DNR for activities it takes on the property to identify, locate, monitor, contain, remove, or dispose of hazardous substances.

The primary practical impact of an LGU exemption from these legal responsibilities is that an exempt LGU is not required to complete a Wis. Admin. Code. ch. NR 716 site investigation or a remedial response action. An exempt LGU can voluntarily move forward with site investigation and cleanup efforts but is not required to do so.

Wis. Stat. § 292.11(9)(e)2. provides that the LGU exemption does not apply to hazardous substance discharges caused by the LGU. In addition to directly spilling or dumping hazardous substances on a property before or after acquisition, demolition, and soil disturbing activities on a property with environmental contamination have the potential to make pre-existing contamination worse. These types of activities should be discussed with the DNR before they occur, to prevent the inadvertent cause of other contamination.

Wis. Stat. § 292.11(9)(e)2. also states that an LGU will not be exempt from legal responsibility for any contamination caused by the following LGU actions or inactions:

- A failure to take appropriate action to restrict access to the property to minimize costs or damages that may result from unauthorized persons entering the property.
- A failure to sample and analyze unidentified substances in containers stored aboveground on the property.
- A failure to remove and properly dispose of, or to place in a different container and properly store, any hazardous substance stored aboveground on the property in a container that is leaking or is likely to leak.

The LGU exemption is only available to local units of government as defined in Wis. Stat. § 292.11(9)(e)1. The LGU exemption is not transferrable from the exempt LGU to future property owners, except to other eligible LGUs. Nonexempt LGU owners and responsible parties are subject to full environmental responsibility and regulation by, at a minimum, Wis. Stat. ch. 292 and the Wis. Admin. Code chs. NR 700-799.

Wis. Stat. § 292.23 authorizes an LGU exemption from certain solid waste management requirements for pre-existing unlicensed solid waste disposal sites. The above-mentioned conditions and limitations of the Wis. Stat. § 292.11(9)(e) exemption apply to the solid waste exemption, along with others that are specific to solid waste. Wis. Stat. § 292.23 should be reviewed and consulted if any unlicensed solid waste disposal areas exist on the Property.

DETERMINATIONS

Based on the information provided by Cuba City and reviewed by the DNR, the DNR determined that Cuba City qualifies for an LGU environmental liability exemption under Wis. Stat. § 292.11(9)(e), for the following reasons:

- Cuba City meets the definition of a “local governmental unit” as described in Wis. Stat. § 292.11(9)(e)1. and is eligible to obtain the LGU environmental liability exemption authorized by that statute.
- The DNR has determined that Cuba City qualifies for the Wis. Stat. § 292.11(9)(e) local governmental unit liability exemption because the property has been acquired for the purpose of blight elimination which is one of the property acquisition methods listed in Wis. Stat. § 292.11(9)(e)1m.

Ongoing, Non-Exempt Responsibilities of a Local Governmental Unit at the Property

Wis. Admin. Code Ch. NR 706 Notification: Neither Wis. Stat. § 292.11(9)(e)1m. or Wis. Stat. § 292.23 exempt an LGU from Wis. Stat. § 292.11(2), titled “Notice of Discharge.” Therefore, all LGUs must notify the DNR immediately of any known and newly discovered discharge of a hazardous substance to the environment at the Property. See DNR publication *Immediate Reporting Required for Hazardous Substance Spills* (RR-560), available online at dnr.wi.gov, search “RR-560” for additional information about spill and discharge reporting.

Demolition: Before beginning any demolition work at the Property, a pre-inspection is required, along with filing of *Notification for Demolition* (Form 4500-113). See DNR publication *Planning Your Demolition of Renovation*

Project: A Guide to Hazard Evaluation, Recycling and Waste Disposal (WA-651), available online at dnr.wi.gov, search “RR-651” for additional information about demolition activities. Storm water management permits may also be necessary for demolition and construction activities. All LGUs must comply with these requirements.

Federal and State underground storage tank (UST) Regulations: The LGU exemption does not exempt USTs on the Property from compliance with federal and state requirements, including Wis. Admin. Code ch. ATCP 93. If you have questions about UST requirements, contact the Wisconsin Department of Agriculture, Trade and Consumer Protection (Bureau of Weights and Measures) directly. Wis. Admin. Code ch. ATCP 93 is available at https://docs.legis.wisconsin.gov/code/admin_code/atcp/090/93.

Use of the Property

If Cuba City intends to use or redevelop the Property during or after cleanup activities have occurred, or the Property will remain in its current state and be accessible to the public (with or without access permission), Cuba City should discuss proposed property uses and improvements with the DNR prior to taking any actions. Wis. Stat. § 292.11(9)(e)4. requires exempt LGUs to take actions the DNR determines are necessary to reduce to acceptable levels any substantial threat to public health or safety when the Property is developed or put into its intended use to maintain the LGU exemption.

For example, if soil is excavated at the Property, Cuba City must determine whether the material is classified as a solid or hazardous waste and ensure that any storage, treatment, or disposal is in compliance with applicable state laws. Cuba City must also comply with long-term continuing obligations, if applicable, associated with closed environmental case(s) at the Property.

In addition, leaving the Property open to possible public use, even if not authorized, may require some action to both prevent public contact with environmental contaminants and maintain the exemption.

It is especially important to consult with the DNR before and during any demolition, excavation, and/or other development work on the Property. The LGU exemption can be lost if significant public health or safety threats exist as a result of the use. Wis. Admin. Code § NR 708.17 describes types of protective actions that DNR may request when a new use is planned for a property owned by an LGU with the exemption.

Federal Liability Protections

In addition to state liability protections, an LGU may also be eligible for the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability protection in certain situations. Information about the CERCLA liability exemptions for local governments and the Bona Fide Prospective Purchaser protection can be found here:

- <https://www.epa.gov/enforcement/guidance-municipal-immunity-cercla-liability-property-acquired-through-involuntary>
- https://dnr.wisconsin.gov/sites/default/files/topic/Brownfields/rr/usepaLGUacquisition_guide_202006esign.pdf

To determine what specific actions would satisfy the federal liability requirements under CERCLA, contact Leslie Kirby-Miles, Office of Regional Counsel, Associate Branch Manager, U.S. Environmental Protection Agency (U.S. EPA) at kirby-miles.leslie@epa.gov. The 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 federal CERCLA requirements.

This Letter is Based on Information Provided to DNR

Any determinations made by the DNR in this letter are based specifically on the information made available to the DNR as part of the Request and are subject to change if other information arises. If new or more extensive contamination is discovered at the Property, the LGU is required to notify the DNR in accordance with Wis. Stat. § 292.11(2). The LGU environmental liability exemption under Wis. Stat. § 292.11(9)(e) is not transferable from the LGU to future owners, except to another eligible LGU.

CLOSING

This letter, site and case-related information and DNR contacts can be found online in the Bureau for Remediation and Redevelopment Tracking System (BRRTS) go to dnr.wi.gov and search “BRRTS.” Use the BRRTS ID # found at the top of this letter. The site can also be found on the map view, Remediation and Redevelopment Sites Map (RRSM), by searching “RRSM.”

For questions specific to the LGU exemption and other local government cleanup tools contact Michael Prager at (608) 225-7950 or Michael.Prager@wisconsin.gov. For questions related to environmental site investigation and cleanup work at the Property contact Project Manager Caroline Rice, at 608-219-2182 or caroline.rice@wisconsin.gov.

Sincerely,



Jodie Thistle, PG
Chief, Brownfields, Outreach and Policy Section
Bureau for Remediation and Redevelopment

cc:

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