

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCE

Jim Doyle, Governor  
Scott Hassett, Secretary  
Gloria L. McCutcheon, Regional  
Director

Plymouth Service Center  
1155 Pilgrim Rd.  
Plymouth, Wisconsin 53073  
Telephone 920-892-8756  
FAX 920-892-6638

December 16, 2003

Mr. Trent Kohl  
Wisconsin Electric Power Co.  
333 W. Everett Street  
Milwaukee, WI 53203

Ref: BRRTS# 02-41001055 FID# 241007800

Subject: Conditional Grant of Exemption for the Development of the Valley Area Power Plant  
Property Where Solid Waste has been Disposed

Dear Mr. Kohl:

We have received your request for a grant of exemption from regulation under s. NR 506.085, Wis. Adm. Code submitted on behalf of WE Energies. Based on that evaluation, the Department is issuing this general grant of exemption from the prohibitions contained in s. NR 506.085, Wis. Adm. Code for the Valley Area Power Plant Property located at 1035 W Canal Street, City of Milwaukee, Milwaukee County, Wisconsin. You must comply with the conditions of this grant of exemption in order to maintain the exemption. This grant of exemption is limited to the proposed changes, construction of two fly ash silos and ash loading building, as described in your application. If you are considering additional changes beyond those described in the application, a new application must be submitted to the department for approval.

Please review the information contained in the publication *Development at Historic Fill Sites and Licensed Landfills: Considerations and Potential Problems* PUB-RR-685 to assist you in preventing environmental or safety problems during and after development.

You are reminded that this approval does not relieve you of obligations to meet all other applicable federal, state and local permits, as well as zoning and regulatory requirements. If you have any questions concerning this letter, please contact Thomas A. Wentland at 920-892-8756 Ex. 3028.

Sincerely,

James A. Schmidt, Supervisor  
Remediation and Redevelopment Section  
Southeast Region

Cc: City of Milwaukee, Building Inspection

BEFORE THE

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

CONDITIONAL GRANT OF EXEMPTION  
FOR  
DEVELOPMENT ON A PROPERTY  
WHERE SOLID WASTE HAS BEEN DISPOSED

FINDINGS OF FACT

The Department finds that:

1. WE Energies owns the property at 1035 W Canal Street, in the City of Milwaukee, Milwaukee County, Wisconsin.
2. Based on information provided by the applicant solid waste materials consisting primarily of foundry sand has been disposed of at this property and remains at this property.
3. Mr. Trent Kohl of We Energies has submitted a request dated December 11, 2003 for an exemption from the prohibition in NR 506.085, Wis. Adm. Code. The request includes a statement signed by Mr. Trent Kohl, relating to the proposed development and the environmental conditions at the property.
4. Based upon the evaluation provided to the Department the site is a Historic Fill Area but there is no known contamination due to the fill material and it is not expected to lead to any in the future.
5. Based on information provided the applicant did not detect methane gas at the property.
6. If the conditions set forth below are complied with, the development of the property will not result in environmental pollution as defined in ss. 289.01(8) and 299.01(4), Wis. Stats.

CONCLUSIONS OF LAW

1. The Department has the authority under s. NR 500.08(4), Wis. Adm. Code to issue an exemption from the prohibition in s. NR 506.085, Wis. Adm. Code, if the proposed development will not cause environmental pollution as defined in ss. 289.01(8) and 299.01(4), Wis. Stats.
2. The Department has authority to approve a grant of exemption with conditions if the conditions are necessary to ensure compliance with the applicable provisions of chapters NR 500 to 538, Wis. Adm. Code, or to assure that environmental pollution will not occur.

3. The conditions set forth below are necessary to ensure compliance with the applicable provisions of chapters NR 500 to 538, Wis. Adm. Code, and to assure that environmental pollution will not occur.
4. In accordance with the foregoing, the Department has the authority under s. NR 500.08(4), Wis. Adm. Code, to issue the following conditional grant of exemption.

#### CONDITIONAL GRANT OF EXEMPTION

The Department hereby issues an exemption to WE Energies from the prohibition in s. NR 506.085, Wis. Adm. Code for development on a property which contains solid waste as proposed in the submittal dated December 11, 2003, subject to the following conditions:

1. No action related to the development of the property may be taken which will cause a significant adverse impact on wetlands as provided in ch. NR 103, Wis. Adm. Code.
2. No action related to the development of the property may be taken which will cause a significant adverse impact on critical habitat areas, as defined in s. NR 500.03(55), Wis. Adm. Code.
3. No action related to the development of the property may be taken which will cause a detrimental effect on any surface water, as defined in s. NR 500.03(62), Wis. Adm. Code.
4. No action related to the development of the property may be taken which will cause a detrimental effect on groundwater, as defined in s. NR 500.03(62), Wis. Adm. Code, or will cause or exacerbate an attainment or exceedance of any preventive action limit or enforcement standard at a point of standards application in ch. NR 140, Wis. Adm. Code.
5. No action related to the development of the property may be taken which will cause an emission of any hazardous air contaminant exceeding the limitations for those substances contained in s. NR 445.03, Wis. Adm. Code.
6. No action related to the development of the property may be taken which will cause an exceedance of a soil clean up standard in ch. NR 720, Wis. Adm. Code.
7. This grant of exemption should not be construed as a site closure under ss. NR 726.
8. This grant of exemption is limited to the proposed changes described in your application. If you are considering additional changes beyond those described in the application, a new application must be submitted to the department for approval. The Department reserves the right to require the submittal of additional information and to modify this grant of exemption at any time, if in the Department's opinion, modifications are necessary. Unless specifically noted, the conditions of this grant of exemption do not supersede or replace any previous conditions of approval for this property.

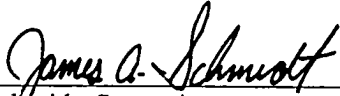
#### NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

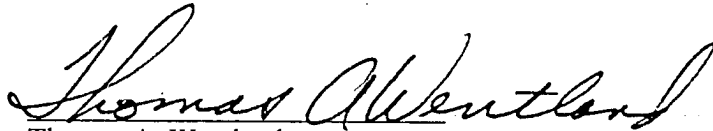
For judicial review of a decision pursuant to section 227.52 and 227.53, Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

Dated: 1-5-04

DEPARTMENT OF NATURAL RESOURCES  
For the Secretary



James A. Schmidt, Supervisor  
Remediation and Redevelopment Section  
Southeast Region



Thomas A. Wentland  
Waste Management Engineer  
Remediation and Redevelopment Section  
Southeast Region