State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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October 1, 2009

Mr. Jack Hoffman, President
Village of Oostburg
P.O. Box 700227
Oostburg, WI 53070-0227

Mr. Paul Dirkse
Hopp Neumann Humke LLP
2124 Kohler Memorial Dr., Suite 110
Sheboygan, WI 53081-3174

Subject: Clarification of the Local Governmental Unit Liability Exemption for Acquiring the DeMaster Enterprises, Inc./Midtown Ford Property, consisting of four tax parcels including 947 Center Ave. and 11 S. 10th St., Oostburg, Wisconsin (See Exhibits A and B, attached)
FID#460113280 BRRTS#07-60-554171

Dear Messrs. Hoffman and Dirkse:

On September 23, 2009, the Wisconsin Department of Natural Resources ("Department) received a request, dated September 21, 2009, for a general liability clarification letter from Attorney Paul Dirkse of Hopp Neumann Humke LLP, on behalf of the Village of Oostburg ("Village"). As requested by the Village, this letter provides the Department's explanation of the local governmental unit ("LGU") liability exemption pursuant to s. 292.11(9)(e)1m.c, Stats., based on the Village's proposed acquisition of the "Property" known as DeMaster Enterprises, Inc./Midtown Ford (which is comprised of four parcels as further described on the attached Exhibit A and Exhibit B)..

To assist in making these determinations, the Department has reviewed the following documents which were submitted with the Village's request:

- *Technical Assistance and Environmental Liability Clarification Request and attachment,* signed September 18, 2009
- *Municipal Resolution No. 4-2009 Establishing a Determination of Necessity for the Taking of Property Pursuant to Wisconsin Statutes Chapter 32 (DeMaster Enterprises, Inc./MidTown Ford),* dated May 18, 2009
- *E-mail message from Paul Dirkse to Dan Kolberg, dated 9/28/09, 12:29 PM, Subject: Village of Oostburg—Midtown Ford Property*

Background

The Property, commonly known as Midtown Ford, is comprised of four tax parcels, as described on the attached Exhibits A and B. The northernmost parcel, described as 947 Center Avenue, was formerly used as a gas station and service garage. Petroleum contamination related to a discharge from underground storage tanks was discovered and reported to the Department on September 19, 1991. After the soil and groundwater contamination was investigated and remediated (soil excavation), the Department provided case closure per ch. NR 726, Wis. Admin. Code, on July 2, 1999.

In July 2009, a Phase II environmental site assessment was conducted on the Property, specifically the 947 Center Ave. parcel and the adjacent parcel to the south known as 11 South 10th St. The Department was notified on July 29, 2009 that low level soil and groundwater contamination had been discovered. The full extent and degree of the contamination has not been defined. It is believed that this is a new discharge of a hazardous substance, not related to the July 1999 closure.

Based on the information provided in the Village's Technical Assistance and Environmental Liability Clarification Request, the Department understands that the Property is currently owned by DeMaster Enterprises, Inc. The Property consists of 1.4 acres and is currently vacant. It was most recently the site of a new and used car and truck dealership, at the 11 S. 10th St. parcel.

The Village of Oostburg has asked for a determination from the Department as to whether the Village's proposed acquisition of the Property through condemnation, for purposes of blight elimination, would qualify it for the LGU exemption under s. 292.11(9)(e)1m.c., Stats.

Section 292.11(9)(e)1m, Stats., was created to exempt LGUs from liability for past hazardous substance discharges at a property that the LGU did not cause. The exemption applies if the property is acquired by an LGU through tax delinquency, bankruptcy, escheat, eminent domain, condemnation, for the purpose of blight elimination or slum clearance, from an exempt LGU, or through use of a Stewardship grant. Under this exemption a LGU is not required to investigate or clean up properties under the requirements of the Spills Law, if the LGU takes title to the properties through one of the prescribed methods listed in the statute.

Liability Determinations

The Department provides the following environmental clarifications and assurances to the Village of Oostburg concerning their proposed method of acquiring the Property.

1. Does the Village qualify as a LGU for the Property?

Yes. The definition of a "local Governmental unit" in s. 292.11(9)(e)(1), Stats., is "a municipality, a redevelopment authority created under s. 66.1333, a public body designated by a municipality under s. 66.1337(4), a community development authority or a housing authority". The Village of Oostburg qualifies as a LGU under this definition.

2. Does the Village's proposed method of acquiring the Property qualify for the LGU liability exemption?

In order to qualify for the LGU liability exemption, the LGU must acquire the Property through one of the methods listed in s. 292.11(9)(e)1m, Stats. The Village intends to acquire the Property from DeMaster Enterprises, Inc., through condemnation, at a negotiated price, for the purpose of blight elimination. Section 292.11(9)(e)1m.c., Stats., states that an LGU qualifies for the liability exemption if "the local

government acquired the property through condemnation or other proceeding under ch. 32." The WDNR understands that the Village will take the following steps to acquire the Property through condemnation in accordance with ch. 32.06, Stats.

A. **Determination of Necessity of Taking**: On May 18, 2009 the Village adopted Resolution No. 4-2009 establishing the necessity of taking the DeMaster Enterprises Inc./MidTown Ford Property, a blighted property hindering further revitalization and commercial enhancement of the center of the Village.

B. **Appraisal of Property**: On September 2, 2009 the Property was appraised by Kenneth F. Sonntag for the Village. The Property owner was provided a copy of the appraisal and had no objections to it.

C. **Negotiations with Property Owner:** Negotiations have been proceeding with the Property owner to reach an agreeable purchase price, before a jurisdictional offer needs to be made.

D. **Purchase Agreement**: On September 23, 2009 the Property owner signed an agreement to convey the Property to the Village for a negotiated price. Closure of the deal is currently expected to occur during the week of September 28 – October 2, 2009.

E. **Redevelopment Plan**: The Village intends to conduct any necessary environmental response actions, and then sell or lease the Property for redevelopment, as part of the Village's on-going efforts to revitalize its downtown and enhance the commercial center of the Village. Potential uses of the Property include commercial/retail; residential; office; and/or professional buildings.

The Department understands that the Village intends to take title to the Property on or about October 2, 2009. Based on the information provided to the Department, the Department has determined that if the Village acquires the Property, as proposed, it will have met the conditions of s. 292.11(9)(e)1m.c., and s. 32.06, Stats., and will be exempt from responsibility to investigate or clean up hazardous substances previously discharged at the Property. This liability exemption protects a LGU unless the spill is caused by an action taken by the LGU, or by failure of the LGU to take "limited actions" to prevent further spills. Those limited actions include:

- sampling and analyzing unidentified substances in containers stored above ground on the Property;
- removing and disposing, or properly storing, any hazardous substances in above ground containers that are leaking or likely to leak;
- restricting access to the Property to minimize costs or damages that may result from unauthorized persons entering the Property; and
- reporting any identified discharges of hazardous substances on the Property to the Department, as soon as discovered.

The Department will not hold the Village liable for the investigation or clean-up of the Property under the State's spill law if the following requirements are satisfied:

- The Village's proposed method of acquisition of the Property is carried out.
- The Village properly removes and disposes of containerized materials from the Property.
- The discharge of a hazardous substance was not caused by an action taken by the Village or by a failure of the Village to act.

- The Village agrees that any waste materials or contaminated environmental media generated at the Property will be managed in accordance with applicable federal and state laws.
- If the Village uses, leases or develops the Property, the Village agrees to take any action the Department determines is necessary to reduce to acceptable levels any substantial threat to public health or safety when the Property is developed, leased or put into its intended use. The Village should discuss any proposed site improvements with the Department before proceeding with any field activities.
- The Village agrees to allow the Department, authorized representatives of the Department, any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance, and any consultant or contractor of such a party to enter the Property to take action to respond to the discharge.
- The Village understands that the LGU exemption will continue throughout the Village's ownership of the Property and beyond, but is not transferable from the Village to future owners, except to other eligible LGUs.

Information on all LGU exemption determinations is tracked in a Department database that is available on the internet at http://dnr.wi.gov/org/aw/rr/clean.htm (see "BRRTS" under "Contaminated Land Databases"). The Bureau for Remediation and Redevelopment Tracking System ("BRRTS") identification number for this location is shown at the top of this letter. The Property will be shown as a location where the Department has made an "LGU Exemption" determination.

The Department looks forward to working with the Village of Oostburg to carry out redevelopment of the Property. We also hope this letter provides the needed assurances concerning the local governmental liability exemption. Should you have questions regarding technical issues please contact Nancy Ryan at (920) 892-8756 ext. 3025, or contact Dan Kolberg at (608) 267-7500 regarding liability exemption issues.

Sincerely,

Frances M. Koonce

Frances M. Koonce, Sub-Team Supervisor
Remediation and Redevelopment, Southeast Region

Attachments: Exhibit A – List of Parcels Comprising Property
Exhibit B – Map of Parcel Locations

CC: SER site file
Nancy Ryan, SER
Dan Kolberg – RR/5

Exhibit A

MidTown Ford Property is described by the following Tax Parcel Numbers:

1. 59165-714760: 947 Center Avenue (former gas station & service garage)*
2. 59165-714750: Vacant land south of Center Avenue, between South 10th Street and the railroad tracks
3. 59165-715100: 11 S. 10th St. (former auto dealership and auto repair)**
4. 59165-715110: Northeast corner of South 10th Street and Superior Avenue

*Parcel 1. formerly known as Dirkse Oil/Pippert Tire and listed on the WDNR database as BRRTS#03-60-108906, FID#460010870

**Parcel 3. Listed on the WDNR database as MidTown Ford and BRRTS#02-60-554006, FID#460195340

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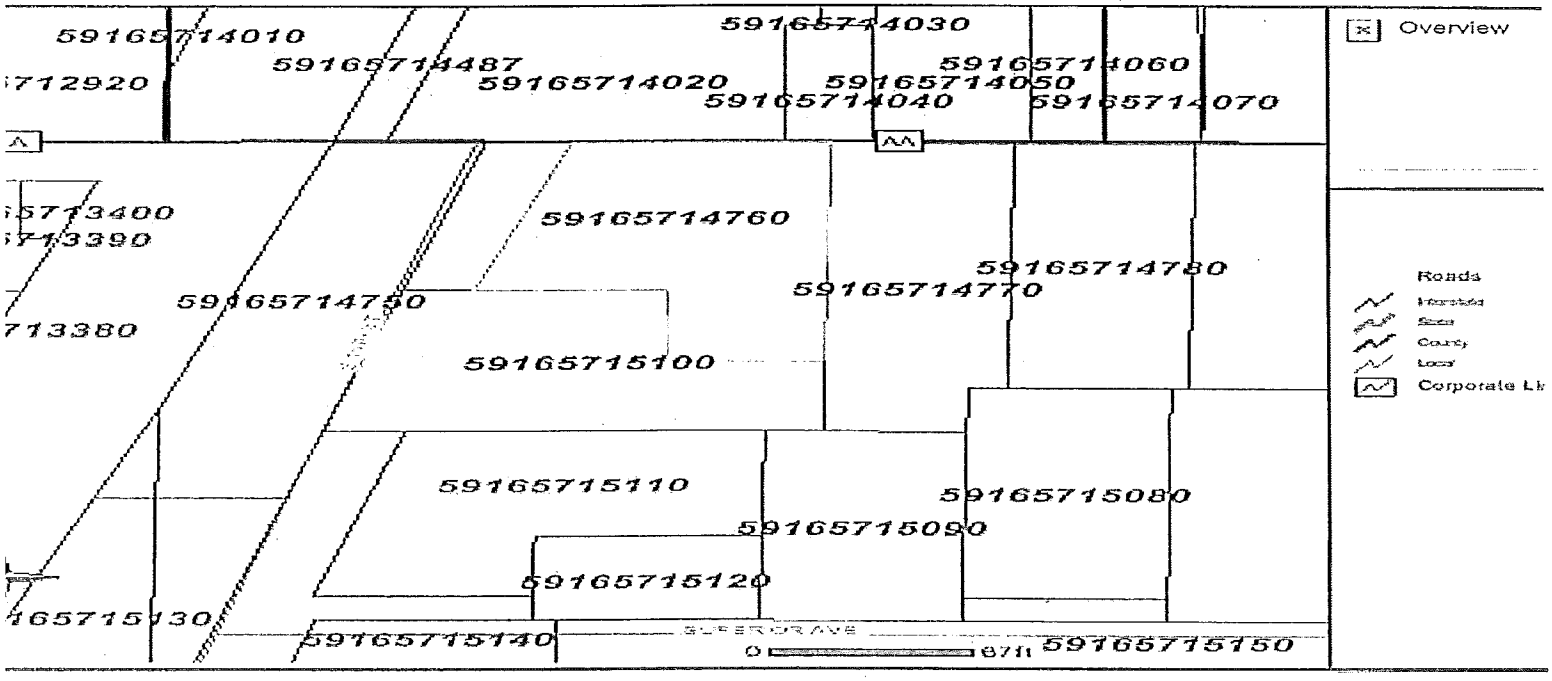
Exhibit B



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