State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
Plymouth Service Center
1155 Pilgrim Road
Plymouth WI 53073

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WISCONSIN
DEPT. OF NATURAL RESOURCES

April 11, 2016

Mr. James Tarantino
Milwaukee County
633 West Wisconsin Avenue
Milwaukee, WI 53203

FILE COPY

Building on a Historic Fill Site Exemption Approval
Park East – Block 7, Milwaukee, Wisconsin
BRRTS# 07-41-576781 FID 241018580

Dear Mr. Tarantino:

We have received your request for a grant of exemption from regulation under Wis. Admin. § NR 506.085, to allow development of a multi-story parking structure with some mixed-use retail/office and possibly residential space. Your application includes an evaluation that the historic fill material present on the property proposed for development may have a potential to cause soil and groundwater contamination. Evaluation of this potential is being addressed under BRRTS# 02-41-231156, and investigation and remediation requirements of the ch. NR 700 Wis. Adm. Code series must still be followed. The application also states that there is not a threat of methane gas due to the non-organic nature of the waste. The threat of vapor intrusion is not a concern since soil excavation is planned to remove volatile organic compounds in targeted areas and volatiles in soil and groundwater are otherwise limited in extent and concentrations low.. The Department is issuing this conditional grant of exemption from the prohibitions contained in Wis. Admin. § NR 506.085, provided you comply with the conditions of this grant of exemption. This grant of exemption is limited to the proposed development described in your application, a multi-story parking structure with retail and office space. 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 including site closure under ch. NR 726. If you have any questions concerning this letter, please contact Thomas A. Wentland at 920-893-8528.

Sincerely,

Michele R. Norman

Michele R. Norman, Supervisor
Remediation & Redevelopment Program
Southeast Region

Cc: City of Milwaukee Building Insp.
Terracon

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. Milwaukee County owns the property bounded by West McKinley and West Juneau Avenues; North 6th Street and reconstructed North 5th Street, in the city of Milwaukee, Wisconsin.
2. Terracon Consultants Inc., on behalf of Deer District LLC, has submitted a request received February 10, 2016 for an exemption from the prohibition in Wis. Admin. § NR 506.085.
3. Historically the site was filled with non-organic material consisting of concrete, bricks, glass and foundry sand.
4. The nature of the fill material does not present a risk of methane gas generation.
5. Targeted removal of soil containing volatile organic compounds is proposed to eliminate the risk of a vapor intrusion problem.
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 ch. NR 500.08(4), Wis. Adm. Code to issue an exemption from the prohibition in ch. 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 ch. 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 the Milwaukee County from the prohibition in Wis. Admin. § NR 506.085 for development on a property which contains solid waste as proposed in the submittal received February 10, 2016 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 Wis. Admin. ch. NR 103.

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 Wis. Admin. § NR 500.03(55).

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 Wis. Admin. § NR 500.03(62).

4. No action related to the development of the property may be taken which will cause a detrimental effect on groundwater, as defined in Wis. Admin. § NR 500.03(62), or will cause or exacerbate an attainment or exceedance of any preventive action limit or enforcement standard in Wis. Admin. ch. NR 140.

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 Wis. Admin. § NR 445.03.

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 Wis. Admin. ch. NR 720.

7. The development construction activities shall be coordinated with approved remedial response actions and shall not prevent the completion of approved remedial response actions.

8. Soil and waste material removed from the site or disposed of at a different location on the site shall be disposed of or re-placed in accordance with an approved Soil Management Plan.

9. This grant of exemption should not be construed as a site closure under Wis. Admin. ch. NR 726.

10. This exemption shall transfer with changes in property ownership. In accordance with Wis.Stat. § 289.46(2), Stats., any person having or acquiring rights of ownership in land where a solid or hazardous waste disposal activity occurred may not undertake any activities on the land which may cause a significant threat to public health, safety or welfare. The Department of Natural Resources should be contacted to discuss any proposed changes to avoid activities that could violate the statute.

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 Wis. Stats. §§ 227.52 and 227.53, 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: April 18, 2016

DEPARTMENT OF NATURAL RESOURCES
For the Secretary

Michele R. Norman

Michele R. Norman, Supervisor
Remediation & Redevelopment Program
Southeast Region

Thomas A. Wentland

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