



February 2, 2012

Town of Vernon Board of Supervisors
Michael P. Doble, Town Chairman
W249 S8910 Center Drive, P.O. Box 309
Big Bend, WI 53103-0309

Subject: Exemption to Build at S72 W23820 National Avenue, Village of Big Bend, WI
FID# 268148540 and BRRTS# 02-68-550215

Dear Town of Vernon Board of Supervisors:

Thank you for your letter dated December 21, 2011 regarding the property on the northwest corner of Hwy 164 and National Avenue, located in the Village of Big Bend. Secretary Stepp asked me to respond to your letter. We, as you do, consider protecting our groundwater an important task of the agency. The drinking water standards we enforce to protect the state's groundwater are second to no other state in the nation. The Department takes great pride in remediating properties and ensuring that all citizens of the state have safe drinking water.

The Department is familiar with the subject property and is aware of your concerns. We issued a "Conditional Grant of Exemption for the Development of a Site Where Solid Waste has been Disposed" on June 19, 2009. Working with the Village of Big Bend, we issued the exemption (permit) which allowed for the property to be graded with clean fill in preparation of building construction. The Department was and is aware of the past history of the property (including waste disposal) and is following through with all the requirements of the exemption to ensure that proper monitoring is taking place. The common practice of placing clean fill (or a cap) over an area of waste disposal not only addresses environmental issues but helps create a viable commercial property.

The Department, the property owner, and the Village of Big Bend are monitoring the filling process and enforcing the conditions in the exemption approval. The June 19, 2009 Conditional Grant of Exemption approval letter as well as the Village of Big Bend, Conditional Use permit for the site requires that the property owner (Mr. Kaishian) provide a monthly record and documentation of soil received at the site.

We did consider your request for additional groundwater monitoring wells to be placed northwest of the former fill area. Multiple rounds of groundwater samples have not detected any compounds above state standards, and the groundwater sampling shows there is no evidence a plume exists. Based on the results of the groundwater sampling, along with the fact that the waste disposal took place more than twenty five years ago, the two remaining monitoring wells located down-gradient (northwest) from the former waste area are appropriate for the monitoring. Additional wells can be installed if future sample results indicate additional investigation is necessary. Under Wisconsin Statutes, Section 292.11 (3) the property owner would be responsible for any contamination originating from their property. It is then up to the Department to enforce the State Statutes. The State Statutes are a clear incentive for property owners to ensure all environmental issues are addressed properly.

Your December 21, 2011 letter also included a list of background issues and questions regarding the subject property. I would like to answer each of the issues/questions in the order they were submitted:

1. The Department does not close entire sites, but rather individual cases from releases detected on sites. The July 2, 2009 letter from James C. Delwiche (the Department) to Mr. John Kaishian (property owner) of Crystal Enterprises closed the impacts reported to the Department in a Phase II Site Investigation report which was conducted as part of the exemption to build process. The July 2, 2009 letter states that current and future property owners must comply with continuing obligations relating the former fill area. The letter also states that the case may be reopened pursuant to s. NR 726.09, Wis. Adm. Code, "... if additional information regarding site conditions indicates that contamination on or from the site poses a threat to public health, safety, or welfare or to the environment ...".
2. Enforcement actions were taken and a fine was issued for the former transfer station. Most notably; 1) December 30, 1983 and March 5, 1983 Notice of Violations (NOV) were issued to Moeller Disposal for operating without a license. The issue was resolved by Moeller Disposal ultimately receiving a license to operate a Solid Waste transfer station. 2) November 7, 1988 Moeller Disposal was issued a Notice of Violation for disposing of nonexempt solid waste at the transfer site. The matter was resolved by Moeller Disposal excavating and removing buried drums and gasoline tanks and 3) October 22, 1991, the State of Wisconsin, Circuit Court Branch 7, Waukesha County, Case 90-CV-0938 fined Moeller Disposal for open burning of wood waste. These enforcement actions (including the fine) are consistent with actions taken throughout the state at similar facilities.
3. The ongoing soil and groundwater sampling operates under the assumption that "anything and everything" has been disposed of on the property. A Volatile Organic Compound (VOC) sample analyzes for over 112 different compounds was required. Past history from sampling landfills throughout the state confirms that the same compounds are usually detected. To date, multiple rounds of groundwater samples (including VOCs) have not detected any compounds above state standards and there is no indication of a groundwater contamination plume.
4. The June 19, 2009 letter from James A. Schmidt is regarding the Exemption to Build on a Historic Fill Site. The referenced statement "Your application discusses soil and groundwater contamination at the site which will be addressed through the ch. NR 726 case closure process" is put in all Exemption to Build approval letters to inform the recipient that the Exemption to Build approval is only addressing the approval to build and not any contamination at the site. The ch. NR 726 case closure issues were addressed in the July 2, 2009 letter from James C. Delwiche to Mr. Kaishian (please see item #1).
5. The July 17, 2008 letter from the Department (written by James Delwiche) to the property owner (John Kaishian) was routine correspondence asking for additional site investigation information. Specifically, the Department was asking for additional sample information for vertical profile soil impacts. The additional information requested was submitted to the Department in the October 29, 2008 correspondence from Dakota Intertek Corporation (consultant for Mr. Kaishian) and clarified soil vertical profiling issues.

6. The B-TOX chemicals the hydrogeologist is referring to is actually the acronym BTEX, which represents four petroleum hydrocarbon compounds. While some of the BTEX compounds can be classified carcinogens at certain levels, no compounds have been detected above state standards in any of the groundwater samples collected at the subject site. Chapter 160, Wis. Statutes clarifies what levels are detrimental to health and over what period of time. Generally the Department uses the assumption of an ingestion rate of one liter of water per day over seventy years for a 1:1 million illness risk.
7. Since multiple rounds of groundwater samples have not detected any compounds above state standards, there is no indication of a contamination plume and no existing map shows a plume. The Groundwater Flow Direction Map submitted by Dakota Intertek Corporation does show the groundwater flow direction, in addition to the monitoring well locations and elevations. Monitoring wells MW-5 and MW-6 have been left in place to monitor the groundwater quality during filling. Concerns have also arisen that one of the monitoring wells is damaged. As of June, 2009 the damaged well has been repaired.
8. Mill Creek runs approximately 2,000 feet north of the subject property and is a Class I trout stream. The additional groundwater sampling at the subject site required by the Department will monitor groundwater quality for surface water (streams) and private wells. Please note that surface water standards are different than groundwater standards.
9. Municipal water and high-capacity (municipal) well installation is handled by the Department's Water Division, specifically the Bureau for Drinking and Groundwater. Water Supply Specialist Chad Czarkowski has corresponded with Town of Vernon Supervisor Bill Craig via telephone and in a December 8, 2011 email regarding high-capacity well installation. Mr. Craig was provided appropriate references to the approval process. While high capacity (municipal) wells can draw water from a quarter mile (or further), that does not mean a high-capacity well would draw any potential contaminants from the subject site and impact local residents with shallow wells. In this area, high-capacity (municipal) wells would draw their water from a much deeper and different aquifer and would not influence the shallow static water table. In the rare case a municipal well could influence a private well; arrangements are made with the home owner for an alternative water supply in advance of any high-capacity (municipal) well installation.
10. The filling operations that are taking place are at two adjoining parcels (not over the former transfer station) and are being monitored by multiple parties including the Department and Village of Big Bend. The additional groundwater sampling required by the Department will monitor groundwater quality for surface water, local wells and springs. Multiple rounds of groundwater samples have not detected any compounds above State standards.
11. Monitoring to date has been consistent with other fill sites throughout the State. The additional groundwater sampling required by the Department as part of the filling process is proactive. The Department, the property owner, and the Village of Big Bend are monitoring the filling process and enforcing the conditions in the exemption (permit) approval. The Department accepts responsibility for supervision during the filling process. The June 19, 2009 Conditional Grant of Exemption approval letter as well as the Village of Big Bend Conditional Use permit for the filling requires that the property owner (Mr. Kaishian) provide a monthly record and documentation of soil received to ensure permit requirements have been met. All documentation and correspondence is a public record and is available to the public (stakeholders) upon request.

12. As explained by Department staff at Town of Vernon council meetings, two groundwater monitoring wells (MW-5 and MW-6) located down-gradient (northwest) of the former fill area have been left in place to be sampled during the filling. As previously stated, the Department determined that the two wells are sufficient based on the fact that multiple rounds of groundwater samples have not detected any compounds above state standards and there is no indication of a contamination plume. **Additional wells can be installed if future sample results indicate additional investigation is necessary.**
13. The Department has not mandated the removal of all non-licensed fill from the site, because groundwater sampling has not indicated the groundwater has been impacted. The time of the waste disposal (more than twenty five years ago) is also a factor, as well as the type of documented fill that was disposed (organic or exempt).

The points answered above were submitted under the title "Background and Unanswered Questions Regarding the Kaishian Property". I believe this summary, along with the multiple meetings we have had with you addresses your concerns. The two most recent meetings were on the evenings of Thursday, October 15, 2009 and Monday, March 28, 2011. Each meeting was recorded and shown on the local cable access channel.

The Department respects your right to disagree with our decisions and recommendations. It is a professionally accepted practice to place clean fill (or a cap) over an area of waste disposal to address environmental issues, as well as in this case to create a viable commercial property. The practice of capping has been consistently successful throughout the State. As expressed in the past, we are more than willing to meet with you to discuss this matter at the State office building located at 141 NW Barstow Street in Waukesha. We encourage you to work with your counterparts at the Village of Big Bend to confirm if or when any filling will take place over the former transfer station, as well as to address any additional concerns you may have.

We appreciate you raising the matter about the water quality in the Town of Vernon area and hope we have addressed your concerns. If you have any questions regarding this letter; please contact me at (414) 263-8570 or eric.nitschke@wisconsin.gov.

Sincerely,



Eric Nitschke, P.E.
Southeast Regional Director
Department of Natural Resources

Cc: Secretary Stepp-AD\8

Mr. James Soneberg – Village of Big Bend
Mr. John Kaishian - Crystal Enterprises
James A. Schmidt – WDNR Milwaukee
Frances Koonce – WDNR Milwaukee
James C. Delwiche – WDNR Waukesha
Chad Czarkowski – WDNR Milwaukee

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