CITY OF STOUGHTON, 207 S FORREST ST, STOUGHTON, WISCONSIN

RESOLUTION OF THE COMMON COUNCIL	
Real Estate Purchase and Sale Agreement ("Agreement") with Stoughton Riverfront Development, LLC Contingency Satisfied Committee Action: Fiscal Impact: Zero	
File Number: R--2022	**Date** 7/26/2022

The City of Stoughton, Wisconsin, Common Council does proclaim as follows:

RECITALS:

WHEREAS, the City entered into a Real Estate Purchase and Sale Agreement ("Agreement") with Stoughton Riverfront Development, LLC in September 2021; and

WHEREAS, one contingency of the "Agreement" indicates "the Wisconsin Department of Natural Resources must approve a Materials Management Plan and Remedial Action Plans, described in the Agreement to Undertake Development, that are satisfactory to Buyer and Seller".; and

WHEREAS, on July 20, 2022, the Wisconsin Department of Natural Resources ("DNR") issued their approval letter (Exhibit A); and

NOW THEREFORE BE IT RESOLVED, that the Common Council is satisfied with the DNR's approval of the Materials Management Plan and the Remedial Action Plan, and has determined that, from the City's point of view, the contingency in the Agreement requiring DNR approval of the Materials Management Plan and the Remedial Action Plan has been satisfied.

Council Action: ☐ **Adopted** ☐ **Failed** **Vote** _____

Mayoral Action: ☐ **Accept** ☐ **Veto**

_____

Mayor Tim Swadley Date

Council Action: _____ ☐ **Override** **Vote** _____

S:\MPS-Shared\Resolutions\3UQ1657-Resolution re satisfaction with DNR approvals.docx

Exhibit A

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
3911 Fish Hatchery Road
Fitchburg WI 53711-5397

Tony Evers, Governor
Preston D. Cole, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711

July 20, 2022

--sent by email--

City of Stoughton
Attention: Rodney Scheel, Director of Planning & Development
207 S. Forrest Street
Stoughton, WI 53589

Subject: Approval of Site Investigation Reports and Plans for the Stoughton Riverfront Redevelopment Area at the Southeast Corner of Fourth Street and South Street, Stoughton, WI
BRRTS#s: 02-13-585835, 02-13-583169, 02-13-554724, and 02-13-579312

Dear Mr. Scheel:

The Department of Natural Resources (Department) received five documents related to the upcoming riverfront redevelopment at the southeast corner of Fourth and South streets in Stoughton (Project Area), submitted on your behalf by True North Consultants, Inc. (True North). The documents were received with the appropriate review fees, per ch. NR 749, Wis. Adm. Code. This letter provides the Department's comments and conditional approval of all five documents.

The five documents are True North's:

1. June 10, 2022, report on the "Results for Additional Site Investigation Activities – Stoughton Public Works Garage" (Garage Report).
2. June 10, 2022, report on the "Results for Contamination Assessment Activities – Former Millfab Holley Property" (Millfab Report).
3. June 30, 2022, "Soil Remediation Plan – Stoughton Public Works Garage - MGP" (Garage Plan).
4. July 8, 2022, "Material Management and Interim Remediation Plan – Stoughton Riverfront Redevelopment Area" (SRR Plan). The SRR Plan is for the entire Project Area.
5. The July 18, 2022, "Development at Historic Fill Site or Licensed Landfill Exemption Application", DNR Form 4400-226, (HFE Request).

These documents supersede the site investigation report and remedial action plan submitted by True North in November 2021 under BRRTS# 02-13-585835. The current reports and plans address the Department's comments on the two November 2021 documents.

The Project area includes several properties, multiple parcels and four Bureau of Remediation and Redevelopment Tracking System (BRRTS) sites, as shown on the attached Figure 3 "BRRTS Sites and Historic Industrial Activities". The BRRTS sites within the Project Area are:

#02-13-585835 Stoughton Public Works Garage,
#02-13-583169 Millfab Former (aka Former Millfab Holley Property)
#02-13-554724 Highway Trailer Building
#02-13-579312 Roberts Auto Electric Inc. (closed)

The Department's findings, comments, and approvals follow.

1 – The Garage Report

The Garage Report shows three areas of contamination. Two areas are related to typical industrial use that occurred historically throughout the Project Area, which resulted in elevated metals and polycyclic aromatic hydrocarbons (PAHs) that may pose a direct contact concern. The third area is relatively larger and is affected by what appears to be coal tar from a manufactured gas plan that operated on the site in the early 1900's. The coal tar issue may pose a direct contact concern and has also resulted in groundwater contamination.

The investigation performed to date is adequate for performing remediation and redevelopment.

The site investigation is not complete with respect to the ch. NR 716, Wis. Adm. Code requirements. Specifically, the extent of groundwater contamination related to the coal tar issue will need additional definition. This will include but may not be limited to restoration of the current groundwater monitoring network and supplementation with deeper monitoring wells (piezometers), as has been recommended by True North.

True North asserts the previously unexplained elevated photoionization detector readings in soil near the former gas plant may be related to the presence of alkanes (e.g. ethane, ethene, hexane) originating from the degradation of contaminants. As a precaution against all potential vapor intrusion True North recommended new buildings on the southern two-thirds of the site be constructed with vapor barriers and mitigation systems.

The emerging contaminants scoping statement included in the Garage Report is approved. The Department is not requiring sampling for emerging contaminants at this time based on current knowledge of the site.

The Garage Report consistently discussed "crude oil tanks" within the narrative while figures reference a "coal tar sheen". Based on the Department's discussion with True North, it is the general opinion of both parties that what were designated as crude oil tanks on a 1912 Sanborn map are more likely coal tar tanks. As a suitable supplement to the Garage Report, the Millfab Report includes discussions that are more explicit with respect to the finding of coal tar emanating from the former manufactured gas plant.

2 – The Millfab Report

The Millfab Report shows several areas of contamination related to past industrial uses. Site contaminants include lead and arsenic, volatile organic chemicals, semi-volatile chemicals, and PAHs, which could pose a direct contact concern. Areas of foundry sand and associated foundry waste material were also identified, and construction debris was found within fill soils at some locations. Based on groundwater monitoring data, none of the contaminants originating on the Millfab Property appear to pose a threat to groundwater quality. Coal tar contamination appears to be migrating in groundwater onto the western portion of the Millfab site from offsite.

The Millfab Report is adequate for performing remediation and redevelopment.

The Millfab Report is not considered a "Site Investigation Report" per ch. NR 716, Wis. Adm. Code and the findings may need to be re-examined in the future. This case has not been bound by or adhered to NR 700 code requirements because of a local government unit exemption to the Spill Law per Wis. Stats. s. 291.11(9)(e). When a non-exempt owner takes title to all or a portion of the site that owner will be responsible for assuring the site investigation is completed and any additional needed actions are taken for issues arising from their property.

The emerging contaminants scoping statement included in the Millfab Report is approved. The Department is not requiring sampling for emerging contaminants at this time based on current knowledge of the site.

3 – Garage Plan

The Garage Plan calls for:

- Excavation and management of shallow PAH and metal contamination at two areas.
- A large-scale excavation and off-site disposal of coal-tar containing soil and fill.
- Beneficial re-use of soil with low level contamination where that can be done safely and in accordance with applicable Wis. Adm. Code.
- Other associated activities, including abandonment of monitoring wells that are in the way, dewatering of excavations (as needed) and site restoration.

The Garage Plan is approved.

The Department agrees with the recommendation in True North's Garage Report; as a precaution against all potential vapor intrusion, new buildings on the southern two-thirds of the site should be constructed with vapor barriers and mitigation systems. Vapor mitigation system commissioning reports should be submitted following construction. The Department may request additional sampling and evaluation if there is adequate reason to suspect a vapor intrusion problem at the new buildings.

The Department grants an **exemption from the locational criteria in ss. NR 718.12 (1)(c) 3 and 6, Wis. Adm. Code**, to allow for re-use of soil within 300 feet of the river, and to allow placement of soil at a depth greater than the depth from which it was removed. This exemption does not apply to soil that may cause an exceedance of a groundwater standard. The soil re-use may not pose a threat to public health, safety, welfare, or the environment, and all contaminated soil that is re-used must have an adequate barrier to prevent direct contact.

4 – SRR Plan

The SRR Plan includes plans for the entire Project Area. The components of the plan include materials management, targeted excavations, and a request for an exemption to build on a historic fill site. In addition to those activities discussed in the Garage Plan, the SRR Plan call for:

- Remedial excavations and landfilling of soi contaminated with high concentrations of lead and PAHs, soil containing VOCs and/or oil, construction debris.
- Excavation and management of shallow PAH and metal contamination.
- Beneficial re-use of soil with low level contamination where that can be done safely.
- On-going observation and assessment of subsurface conditions to look for previously unknown issues.
- Other associated activities, including abandonment of monitoring wells that are in the way, dewatering of excavations (as needed) and site restoration.

The SRR is approved.

The proposed remedial excavation areas appear appropriate. You may consider collecting confirmation data to support a future closure request, especially for those portions of the Project Area that are not currently subject to all administrative code requirements due to the local government unit exemption discussed above.

The Department expects all soil re-use to occur within the Project Area. Movement of soil from one parcel to another within the Project Area is acceptable although such movement must be documented and reported.

The Department grants an **exemption from the locational criteria in ss. NR 718.12 (1)(c) 3 and 6, Wis. Adm. Code**, to allow for re-use of soil within 300 feet of the river, and to allow placement of soil at a depth greater than the depth from which it was removed. The Department also grants and exemption to s. NR 718.05 (2) (a) 3, to allow for stockpiling of soil within 300 feet of the river. These exemptions do not apply to soil that may cause an

exceedance of a groundwater standard. The soil re-use and stockpiling may not pose a threat to public health, safety, welfare, or the environment. All contaminated soil that is re-used must have an adequate barrier to prevent direct contact and may not cause a ch. NR 140. Wis. Adm. Code groundwater standard exceedance.

The plan for documentation and reporting included in section 4.0 of the SRR Plan is appropriate.

The planned work appears to comply with the continuing obligations imposed by the Department during closure of the Roberts Auto Electric Inc. case; BRRTS #: 02-13-579312.

As with all subsurface work, any findings of new contamination must be reported to the Department immediately.

5 – HFE Request

The HFE Request was listed as Attachment A to the SRR Plan, but it was not included. The HFE was submitted in its final form on July 18, 2022 and is therefore tracked as a stand-alone document in the DNR database.

The **Exemption for Building on a Historic Fill Site** is conditionally granted. The Department reviewed the HFE Request, which is for a grant of exemption from regulation under s. NR 506.085, Wis. Adm. Code. Based on that evaluation, the Department is issuing a "Conditional Grant of Exemption" (included on pages 6 to 8) from the prohibitions contained in s. NR 506.085, Wis. Adm. Code. 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 described in your application, which is part of the Plan. 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. We would like to particularly draw your attention to the public safety risk posed by the explosive potential for methane gas that may be present on a property due to the presence of decomposing solid waste.

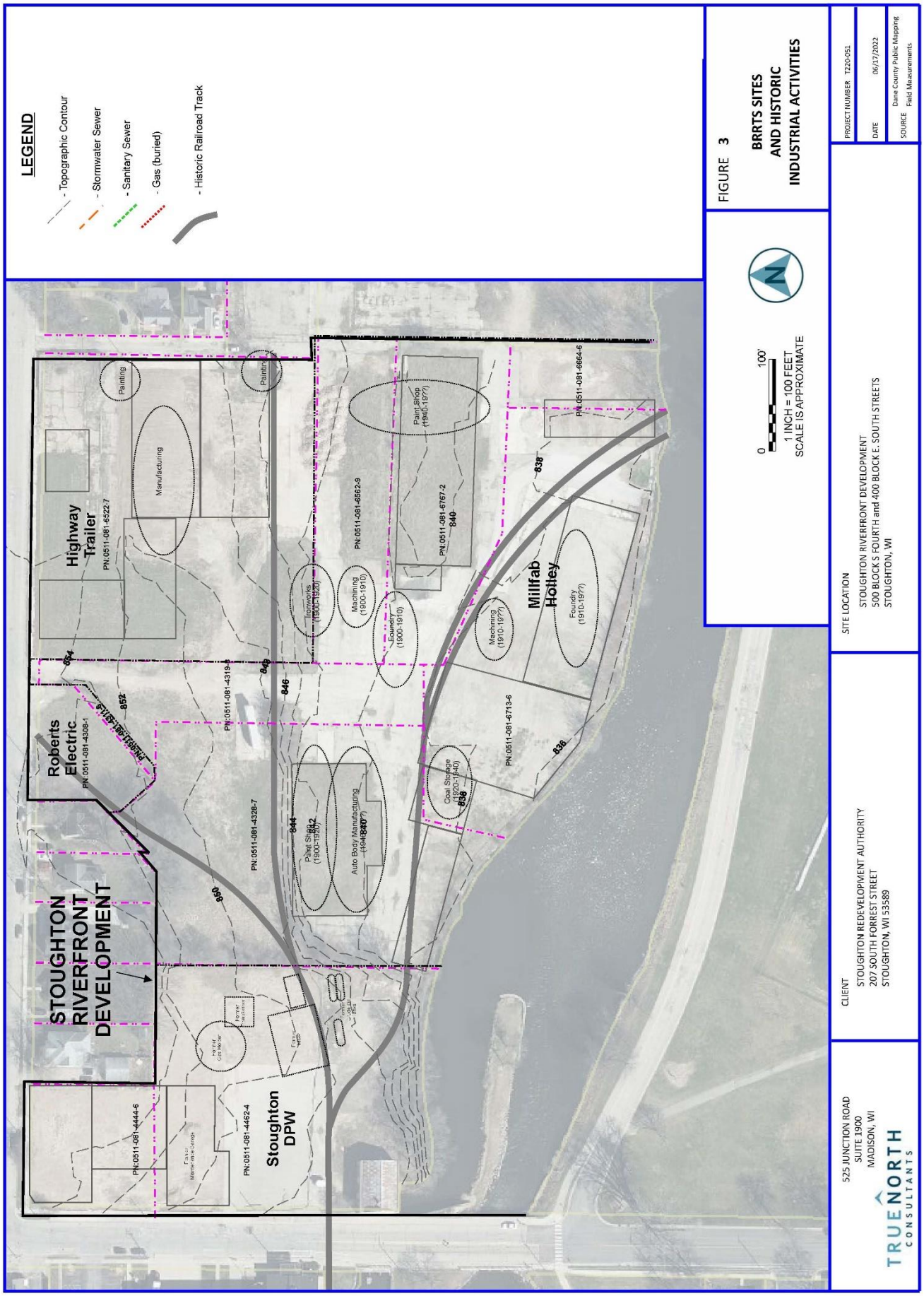
You are reminded that these approvals do not relieve you of obligations to meet all other applicable federal, state and local permits, as well as zoning and regulatory requirements.

If you have any questions concerning this letter, please contact Jeff Ackerman at 608-219-2302 or at jeffrey.ackerman@wisconsin.gov.

Sincerely,

Issac A. Ross
South Central Region Team Supervisor
Remediation & Redevelopment Program
Fitchburg DNR Service Center – Fitchburg, WI

cc: Tom Culp, True North


LEGEND
- Topographic Contour
- Stormwater Sewer
- Sanitary Sewer
- Gas (buried)
- Historic Railroad Track
FIGURE 3
BRRTS SITES AND HISTORIC INDUSTRIAL ACTIVITIES
0
100'
1 INCH = 100 FEET
SCALE IS APPROXIMATE
PROJECT NUMBER T220-051
DATE 06/17/2022
SOURCE Dane County Public Mapping Field Measurements
SITE LOCATION
STOUGHTON RIVERFRONT DEVELOPMENT
500 BLOCK S. FOURTH and 400 BLOCK E. SOUTH STREETS
STOUGHTON, WI
CLIENT
STOUGHTON REDEVELOPMENT AUTHORITY
207 SOUTH FORREST STREET
STOUGHTON, WI 53589
525 JUNCTION ROAD
SUITE 1900
MADISON, WI
TRUENORTH CONSULTANTS
STOUGHTON RIVERFRONT DEVELOPMENT
Roberts Electric
PN:0511-081-4308-1
Highway Trailer
PN:0511-081-6522-7
Manufacturing
Painting
Stoughton DPW
PN:0511-081-4444-6
PN:0511-081-4462-4
PN:0511-081-4328-7
PN:0511-081-4319-5
PN:0511-081-6562-9
PN:0511-081-6767-2
PN:0511-081-6664-6
PN:0511-081-4713-6
Paint Shop (1900-1920)
Auto Body Manufacturing (1940-197?)
Ironworks (1900-1920)
Machining (1900-1910)
Foundry (1900-1910)
Paint Shop (1940-197?)
Coal Storage (1920-1940)
Machining (1910-197?)
Foundry (1910-197?)
Millfab Holley
852
854
848
846
844
842
840
838
836

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. The Stoughton Redevelopment Authority (RDA) or the City of Stoughton (City) owns all the parcels within the Stoughton Riverfront Redevelopment (shown on the attached Figure 3) at the southeast corner of Fourth and South Streets, in Stoughton, Wisconsin ("the Property").

2. Solid waste has been disposed of at the Property and remains at the Property.

3. True North Consultants, on the behalf of the RDA and City, submitted a request, dated July 14, 2022, for an exemption from the prohibition in NR 506.085, Wis. Adm. Code. The request has been submitted under the seal of a professional engineer, professional geologist or hydrologist relating to the proposed development and the environmental conditions at the Property.

4. Based upon the information provided to the Department, the proposed development at the Property is not expected to cause future exceedances of applicable soil and groundwater standards.

5. Additional documents considered in review of the exemption request include the following submittals from True North:
   - The June 10, 2022, report on the "Results for Additional Site Investigation Activities – Stoughton Public Works Garage" (Garage Report).
   - The June 10, 2022, report on the "Results for Contamination Assessment Activities – Former Millfab Holley Property" (Millfab Report).
   - The June 30, 2022, "Soil Remediation Plan – Stoughton Public Works Garage - MGP" (Garage Plan).
   - The July 8, 2022, "Material Management and Interim Remediation Plan – Stoughton Riverfront Redevelopment Area" (SRR Plan). The SRR Plan is for the entire Project Area and includes a request for an exemption to build on a historic fill site.

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 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 July 18, 2022, 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 as defined in ch. NR 140, Wis. Adm. Code.

5. No action related to the development of the Property may be taken which will cause a migration and concentration of explosive gases in any structures in excess of 25% of the lower explosive limit for such gases at any time. No actions may be taken which will cause a migration and concentration of explosive gases in the soils outside of the limits of solid waste disposal within 200 feet of the Property boundary or beyond the Property boundary in excess of the lower explosive limit for such gases at any time. No actions may be taken which will cause a migration and concentration of explosive gases in the air outside of the limits of solid waste disposal within 200 feet of the landfill boundary or beyond the landfill Property boundary in excess of the lower explosive limit for such gases at any time.

6. 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.

7. No action related to the development of the Property may be taken which will cause an exceedance of a soil clean up standard established in accordance with ch. NR 720, Wis. Adm. Code.

8. This exemption shall transfer with changes in Property ownership. In accordance with s.289.46(2), Stats., any person having or acquiring rights of ownership in land where a solid or hazardous waste disposal facility was previously operated may not undertake any activities on the land which interfere with the closed facility causing 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.

9. 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.

10. Additional sampling and evaluation of soil and/or fill materials must be performed in accordance with the Department's approval of True North Consultants' July 8, 2022, "Material Management and Interim Remediation Plan – Stoughton Riverfront Redevelopment Area".

This exemption is based on the information available to the Department as of the date of this document. If additional information, project changes or other circumstances indicate a possible need to modify this exemption, the Department may ask you to provide further information relating to this activity. Likewise, the Department accepts proposals to modify exemptions, as provided for in state statutes and administrative codes.

NOTICE OF APPEAL RIGHTS

If you believe you have a right to challenge this decision made by the Department, you should know that Wisconsin statutes and administrative codes establish time periods and requirements for reviewing Department decisions.

To seek judicial review of the Department's decision, sections 227.52 and 227.53, Stats., establish criteria for filing a petition for judicial review. 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. The petition shall name the Department of Natural Resources as the respondent.

Dated: July 20, 2022

DEPARTMENT OF NATURAL RESOURCES
For the Secretary

Issac A. Ross
South Central Region Team Supervisor
Remediation & Redevelopment Program
Fitchburg DNR Service Center – Fitchburg, WI

Jeff Ackerman, P.G.
Hydrogeologist
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