

Bruan Intertech Information

My responses to your questions are in red below. Let me know if you need any clarifications.

Best,



Imants Pone

Project Scientist

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From: Patrick Brama [<mailto:pbrama@ci.ramsey.mn.us>]

Sent: Friday, January 20, 2017 1:12 PM

To: Pone, Imants <IPone@braunintertec.com>

Subject: RE: 6401 Hwy 10

Hi Imants,

Per our phone conversation, if you have time, to answer these questions:

1. Why would the city remove the tanks before closing on the purchase of the property?
So that the City would not be held responsible for a petroleum release from the tank system. See attached statute 115C.021.
2. What liability does the city have (from an environmental perspective), by purchasing this property (are we now liable for past issues)?
The City would not be responsible for release of a hazardous substance prior to their ownership of the property – see attached statute 115B.03. See question #1 regarding prior petroleum release. The environmental liability the City would have associated with the property is to appropriately manage on-site impacted materials. That would mean: if contaminated soil is present on-site, you would need to ensure that people are not exposed to those soils (i.e. place an impervious cap over soils, dispose at landfill, ensure they are at an appropriate inaccessible depth, etc.); if elevated vapors are present on-site, buildings may need vapor controls to prevent exposure of building inhabitants. In short, as landowner, you would be responsible for limiting exposure to known ON-SITE impacts.
3. What is Bruan proposing in their Phase II ESA?
The Phase II proposes evaluating on-site soil, soil vapor, and groundwater for impacts/contamination related to past on- or off-site practices. This includes sampling in areas of known past practices with the potential to have caused environmental impacts.

If you have any other common questions/ obvious questions, please add.

Thank you very much!

Best,

Patrick Brama
City of Ramsey

ATTACHMENT B
DEFINITION OF "RESPONSIBLE PERSON" UNDER MERLA
(Minn. Stat. § 115B.03, subds. 1, 3, 5-7)

Minn. Stat. § 115B.03 RESPONSIBLE PERSON.

Subdivision 1. General rule. For the purposes of sections 115B.01 to 115B.20, and except as provided in subdivisions 2 and 3, a person is responsible for a release or threatened release of a hazardous substance, or a pollutant or contaminant, from a facility if the person:

1) owned or operated the facility:

(i) when the hazardous substance, or pollutant or contaminant, was placed or came to be located in or on the facility;

(ii) when the hazardous substance, or pollutant or contaminant, was located in or on the facility but before the release; or

(iii) during the time of the release or threatened release;

(2) owned or possessed the hazardous substance, or pollutant or contaminant, and arranged, by contract, agreement or otherwise, for the disposal, treatment or transport for disposal or treatment of the hazardous substance, or pollutant or contaminant; or

(3) knew or reasonably should have known that waste the person accepted for transport to a disposal or treatment facility contained a hazardous substance, or pollutant or contaminant, and either selected the facility to which it was transported or disposed of it in a manner contrary to law.

Subd. 2. Employees and employers. [language omitted]

Subd. 3. Owner of real property. An owner of real property is not a person responsible for the release or threatened release of a hazardous substance from a facility in or on the property unless that person:

(1) was engaged in the business of generating, transporting, storing, treating, or disposing of a hazardous substance at the facility or disposing of waste at the facility, or knowingly permitted others to engage in such a business at the facility;

(2) knowingly permitted any person to make regular use of the facility for disposal of waste;

(3) knowingly permitted any person to use the facility for disposal of a hazardous substance;

(4) knew or reasonably should have known that a hazardous substance was located in or on the facility at the time right, title, or interest in the property was first acquired by the person and engaged in conduct associating that person with the release; or

(5) took action which significantly contributed to the release after that person knew or reasonably should have known that a hazardous substance was located in or on the facility.

For the purpose of clause (4), a written warranty, representation, or undertaking, which is set forth in an instrument conveying any right, title or interest in the real property and which is executed by the person conveying the right, title or interest, or which is set forth in any memorandum of any such instrument executed for the purpose of recording, is admissible as evidence of whether the person acquiring any right, title, or interest in the real property knew or reasonably should have known that a hazardous substance was located in or on the facility.

Any liability which accrues to an owner of real property under sections 115B.01 to 115B.15 does not accrue to any other person who is not an owner of the real property merely because the other person holds some right, title, or interest in the real property. An owner of real property on which a public utility easement is located is not a responsible person with respect to any release caused by any act or omission of the public utility which holds the easement in carrying out the specific use for which the easement was granted.

Subd. 4. Tax-forfeited land. [language omitted]

Subd. 5. Eminent domain. [language omitted]

Subd. 6. Mortgages. (a) A mortgagee is not a responsible person under this section solely because the mortgagee becomes an owner of real property through foreclosure of the mortgage or by receipt of the deed to the mortgaged property in lieu of foreclosure.

(b) A mortgagee of real property where a facility is located or a holder of a security interest in facility assets or inventory is not an operator of the facility for the purpose of this section solely because the mortgagee or holder has a capacity to influence the operation of the facility to protect its security interest in the real property or assets.

Subd. 7. Contract for deed vendors. A contract for deed vendor who is otherwise not a responsible party for a release or a threatened release of a hazardous substance from a facility is not a responsible person under this section solely as a result of a termination of the contract for deed under section 559.21.

ATTACHMENT C
DEFINITION OF AN "OWNER OF REAL PROPERTY" UNDER MERLA

Minn. Stat. § 115B.02 DEFINITIONS.

Subd. 11. Owner of real property. "Owner of real property" means a person who is in possession of, has the right of control, or controls the use of real property, including without limitation a person who may be a fee owner, lessee, renter, tenant, lessor, contract for deed vendee, licensor, licensee, or occupant; provided that:

(1) a lessor of real property under a lease which in substance is a financing device and is treated as such under the United States Internal Revenue Code, common law, or statute, is not an owner of the real property;

(2) a public utility holding a public utility easement is an owner of the real property described in the easement only for the purpose of carrying out the specific use for which the easement was granted;

(3) any person holding a remainder or other nonpossessory interest or estate in real property is an owner of the real property beginning when that person's interest or estate in the real property vests in possession or that person obtains the unconditioned right to possession, or to control the use of, the real property; and (4) the state or an agency of the state is not an owner of real property solely because it holds title to the property in trust for taxing districts as a result of forfeiture of title for nonpayment of taxes; and

(4) the state or an agency of the state is not an owner of real property solely because it holds title to the property in trust for taxing districts as a result of forfeiture of title for nonpayment of taxes.

AG:200540, v. 1

115C.021 RESPONSIBLE PERSON.

Subdivision 1. **General rule.** Except as provided in subdivisions 2 to 4, a person is responsible for a release from a tank if the person is an owner or operator of the tank at any time during or after the release.

Subd. 2. **Exception of certain tank owners.** An owner of a tank is not responsible for a release from the tank if the owner can establish that:

(1) the tank was in place but the owner did not know or have reason to know of its existence at the time the owner first acquired right, title, or interest in the tank; and

(2) the owner did not by failure to report under section 115.061 or other action significantly contribute to the release after the owner knew or reasonably should have known of the existence of the tank.

Subd. 3. **Tank located on tax-forfeited land.** The state, an agency of the state, or a political subdivision is not responsible for a release from a tank solely as a result of actions taken to manage, sell, or transfer tax-forfeited land where the tank is located under chapter 282 and other laws applicable to tax-forfeited land. This subdivision does not relieve the state, a state agency, or a political subdivision from liability for the daily operation of a tank under its control or responsibility located on tax-forfeited land.

Subd. 3a. **Eminent domain.** (a) The Department of Transportation is not responsible for a release from a tank under this section solely as a result of the acquisition of property or as a result of providing funds for the acquisition of such property either through loan or grant, if the property was acquired by the department through exercise of the power of eminent domain, through negotiated purchase in lieu of or after filing a petition for the taking of the property through eminent domain, or after adopting a layout plan for highway development under sections 161.15 to 161.241 describing the property and stating its intended use and the necessity of its taking.

(b) A person who acquires property from the department, other than property acquired through a land exchange, is not a responsible person under this section solely as a result of the acquisition of property if the property was acquired by the department through exercise of the power of eminent domain, by negotiated purchase after filing a petition for the taking of the property through eminent domain, or after adopting a layout plan for highway development under sections 161.15 to 161.241 describing the property and stating its intended use and the necessity of its taking.

Subd. 4. **Mortgages.** (a) A mortgagee is not responsible for a release from a tank solely because the mortgagee becomes an owner of real property on which the tank is located through foreclosure of the mortgage or by receipt of the deed to the mortgaged property in lieu of foreclosure.

(b) A mortgagee of real property where a tank is located or a holder of a security interest in a tank is not an operator of the tank for the purpose of this section solely because the mortgagee or holder has a capacity to influence the operation of the tank to protect its security interest.

History: 1988 c 686 art 1 s 58; 1990 c 586 s 4; 1992 c 414 s 2; 1997 c 200 art 2 s 2; 1999 c 86 art 1 s 23