

## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor  
 George E. Meyer, Secretary  
 Gloria L. McCutcheon, Regional Director

Southeast Region Headquarters  
 2300 N. Dr. ML King, Jr. Drive, Box 12436  
 Milwaukee, Wisconsin 53212-0436  
 TELEPHONE 414-263-8500  
 FAX 414-263-8716  
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February 11, 1998

File Ref: FID# 241577050 RR/ERP

Ms. Kimberley Grimm  
 Continental Properties Company, Inc.  
 P.O. Box 220  
 Menomonee Falls, WI 53052

**SUBJECT:** Off-Site Determination Letter for Wisconsin Gas Parcels A, B and C

Dear Ms. Grimm:

Please find enclosed a final draft version of the off-site determination letter, which the Department is prepared to issue to Continental Properties in response to your request. We appreciate the efforts made by your attorney to respond with suggested changes to our original form letter for this determination. In response to your immediate need to have this issue resolved by the Department, the group charged with developing policy and standard letters for brownfields issues re-evaluated the original form letter and considered the issues raised by Mr. Roush's suggestions. With input from the Department legal counsels, we have developed new standard language for the off-site determination letter, which is enclosed, modified to include the specifics of your site.

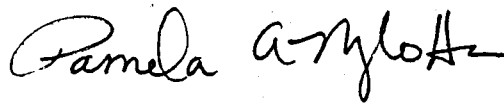
As we have discussed, our legal counsel determined that the statutory sections authorizing the Department to issue these exemption letters, do not provide for these determinations to be transferable or to run with the land. I'm not sure the Department will ultimately support such legislative changes, if they are proposed. This topic (proposed statutory revisions) has yet to be officially considered by the Department, and, of course, the process of making statutory language changes would take longer than your transaction needs can accommodate. Thus, the letter we can send you at this time will be offering the determination solely for Continental Properties (and, Wisconsin Gas can also request this determination). Typically, we would only offer the determination to the property owner, but are also willing to consider requests from parties intending to purchase a property in the near future. When you prepare to sell any of these Parcels, you can contact me and we will establish a simple process for getting and responding to requests from your subsequent purchasers for a similar determination.

I've also informed you that the Department eliminated the "Agreement", which was included in the original standard determination letter. Therefore, we have not provided the example access agreement provided by your attorney. If the Department requires access to any of the parcels in the future in order to conduct response actions, we would anticipate that Continental would be willing to negotiate an agreement granting access at that time.

With regard to the attached "draft" letter, I am sending this as a courtesy to you and have sent a copy to Wisconsin Gas, because of the on-going property transaction negotiations you are conducting with Wisconsin Gas at this time. If you have significant concerns about this letter, please contact me. Because of the Department's need to maintain consistency and standardized responses for this exemption, we request that you not submit suggestions for editorial or format changes to this letter. Any significant

concerns that you and I cannot resolve quickly can be addressed through the policy group and Department program management teams. I am prepared to sign the attached letter as soon as I hear from you.

Sincerely,

A handwritten signature in black ink that reads "Pamela A. Mylotta". The signature is written in a cursive style with a horizontal line at the end.

Pamela A. Mylotta  
Hydrogeologist, Remediation & Redevelopment Program  
Southeast Region, Milwaukee Service Center

Enclosure

c: Art Covi - Wisconsin Gas (via fax)  
Bill Roush - Davis & Kuelthau (via fax)  
Judy Ohm - WDNR Legal Counsel



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DRAFT - 2/11/98

File Ref: FID# 241577050 RR/ERP

Ms. Kimberley Grimm  
Continental Properties Company, Inc.  
P.O. Box 220  
Menomonee Falls, WI 53052

**SUBJECT:** Liability for soil or groundwater contaminated by an off-site source at 5400 N. Green Bay Road (Parcels A, B and C), Glendale, Wisconsin

Dear Ms. Grimm:

### Purpose

The Department of Natural Resources ("the Department") has recently reviewed your request for an off-site exemption letter for Parcels A, B and C of the property located at 5400 N. Green Bay Road, shown on Attachment A of this letter, which will be referred to in this letter as "the Property." You have requested that the Department determine whether Continental Properties Company, Inc., upon purchase of the Property, is exempt from sections 292.11(3), (4) and (7)(b) and (c), Wis. Stats. (commonly known as the "Hazardous Substance Spill Law"), with respect to the existence of a hazardous substance in the soil or groundwater that you believe is migrating onto the Property from an off-site source.

### Determination

As you are aware, section 292.13(2), Wis. Stats., requires the Department, upon request, to issue a written determination regarding a liability exemption for a person who possesses or controls property that has been contaminated by an off-site source, when certain conditions are met. In order to make this specific determination, the Department has reviewed the reports listed in Attachment B to this letter, which were prepared on your behalf by Graef, Anhalt, Schloemer & Associates, Inc. Based upon this information, and in accordance with section 292.13(2), Wis. Stats., the Department makes the following determinations regarding the presence of chlorinated volatile organic compounds, which are associated with an apparent off-site discharge of tetrachloroethylene, in soil and groundwater located on Parcels A, B and C of the Property:

1. The hazardous substance discharge of tetrachloroethylene originated from a source on property that is not possessed or controlled by Continental Properties Company, Inc.
2. Continental Properties Company, Inc. did not possess or control the hazardous substance tetrachloroethylene or its breakdown products on the property on which the discharge originated.
3. Continental Properties Company, Inc. did not cause the discharge of tetrachloroethylene or the breakdown products found on the Property.

4. Continental Properties Company, Inc. will not have liability under the Hazardous Substance Spill Law for investigation or remediation of the soil or groundwater contamination on the Property, caused by the discharge of tetrachloroethylene, provided:
  - a. Continental Properties Company, Inc. does not take possession or control of the property on which the discharge originated, and
  - b. Continental Properties Company, Inc. maintains compliance with the other exemption conditions listed below.

**Exemption Conditions**

The Department's determinations, as set forth in this letter, are subject to the following conditions being complied with, as specified in Sec. 292.13(1) and (1m), Wis. Stats:

1. The facts upon which the Department based its determinations are accurate and do not change.
2. Continental Properties Company, Inc. agrees to allow the following parties to enter the property to take action to respond to the discharge: the Department and its authorized representatives; any party that possessed or controlled the hazardous substance or caused the discharge; and any consultant or contractor of such a party.
3. With respect to soil contamination only, Continental Properties Company, Inc. agrees to take one or more specified actions directed by the Department if the Department determines that the actions are necessary to prevent an imminent threat to human health, safety or welfare or to the environment, after the Department has made a reasonable attempt to notify the party who caused the hazardous substance discharge about that party's responsibilities to investigate and clean up the discharge.
4. Continental Properties Company, Inc. agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.
5. Continental Properties Company, Inc. agrees to any other condition that the Department determines is reasonable and necessary to ensure that the Department and any other authorized party can adequately respond to the discharge.

The Department may revoke the determinations made in this letter if it determines that any of the requirements under sections 292.13(1) or (1m), Wis. Stats., cease to be met.

Ms. Kimberley Grimm  
Continental Properties Company, Inc.

DRAFT  
Page 3

Future property owners are also eligible for the exemption under section 292.13, Wis. Stats., if they meet the requirements listed in that statute section. The determinations in this letter regarding a liability exemption, however, only apply to Continental Properties Company, Inc., and may not be transferred or assigned to other parties. The Department will provide a written determination to future owners of this property, if such a determination is requested in accordance with the requirements of section 292.13(2), Wis. Stats.

If you have any questions or concerns regarding this letter, please contact me (at 414-263-8758) or Attorney Judy Ohm (at 608-266-9972).

Sincerely,

DRAFT

Pamela A. Mylotta  
Hydrogeologist, Remediation & Redevelopment Program  
Southeast Region, Milwaukee Service Center

Attachments

c: Judy Ohm--LS/5  
Darsi Foss--RR/3  
Bill Roush - Davis & Kuelthau  
Art Covi - Wisconsin Gas

Ms. Kimberley Grimm  
Continental Properties Company, Inc.  
ATTACHMENT A

DRAFT

SITE CERTIFIED SURVEY MAP  
OR MOST RECENT MAP

Ms. Kimberley Grimm  
Continental Properties Company, Inc.  
ATTACHMENT B

DRAFT

**LIST OF SUBMITTALS for 5400 N. Green Bay Road, Parcels A, B, and C reviewed for the Off-site Exemption Determination for Continental Properties Company, Inc.**

1. Letter from Continental Properties, containing request for an off-site determination from the WDNR, prepared by Graef, Anhalt, Schloemer & Associates, dated December 23, 1997.
2. The following documents prepared by Graef, Anhalt, Schloemer & Associates, Inc.:
  - a. Phase I Environmental Site Assessment for Parcel A, dated December 1997.
  - b. Phase I Environmental Site Assessment for Parcel B, dated December 1997.
  - c. Phase I Environmental Site Assessment for Parcel C, dated December 1997.
  - d. Soil and Groundwater Investigation - Parcel A, dated December 1997.
  - e. Soil and Groundwater Investigation - Parcel B, dated December 1997.
  - f. Soil and Groundwater Investigation - Parcel C, dated December 1997.
3. Environmental Site Assessment, Wisconsin Gas Company North Service Center Property and Parcels A and B, dated December 1996, prepared by Geraghty & Miller, Inc.



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February 11, 1998

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Mr. Art Covi  
Wisconsin Gas Company  
5400 N. Green Bay Road  
Glendale, WI 53209

**SUBJECT:** Off-site Determination Letter

Dear Mr. Covi:

Please find enclosed a copy of the "draft" off-site determination letter we are prepared to issue to Continental Properties regarding the chlorinated solvent compounds migrating onto the Wisconsin Gas property from the north. If you believe Wisconsin Gas also meets the criteria and conditions for receiving this exemption, and Wisconsin Gas would like to receive such a written determination from the Department, please sign the attached form and return it to me. Please specify whether you are requesting the exemption for all of the Wisconsin Gas property or just for Parcels A, B and C, which is what Continental requested. Upon receiving the attached form from you, we will prepare a letter for Wisconsin Gas, similar to the one I have enclosed. Please let me know if you have significant concerns about this letter. The wording is not subject to editorial or format change suggestions at this time.

If you have any questions, please call me at (414) 263-8758.

Sincerely,

Pamela A. Mylotta  
Hydrogeologist, Remediation & Redevelopment Program  
Southeast Region - Milwaukee Service Center

Enclosure

c: K. Grimm - Continental Properties  
J. Ohm - WDNR Legal Counsel