

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Scott McCallum, Governor
Darrell Bazzell, Secretary
Gloria L. McCutcheon, Regional Director

Southeast region Annex
4041 North Richards
PO Box 12436
Milwaukee, Wisconsin 53212-0436
Telephone 414-229-0800
FAX 414-229-0810

February 27, 2001

Edward B. Witte
Foley & Lardner
777 E Wisconsin Ave.
Milwaukee, WI 53202-5367

SUBJECT: Clarification of Environmental Liability for the Ridgestone Bank Property Located at 13855 W. North Avenue, Brookfield

Dear Mr. Witte:

On May 12, 2000, you sent a request for a liability clarification letter regarding the Ridgestone Bank ("Ridgestone") property at 13855 W. North Avenue in Brookfield (hereinafter "the Property"). This letter will clarify the Department of Natural Resources (WDNR) position on the responsibility of various parties for the cleanup of the Property under State regulations.

Background:

As you explained in your request, Ridgestone Bank, previously a tenant at the site recently purchased the Property, which is commonly referred to as the Brook Country Shops ("the Mall"). Prior to purchase, Ridgestone Bank commissioned McLaren/Hart to conduct Phase I and II assessments for the site. On February 10, 2000, the Wisconsin Department of Natural Resources ("WDNR") was notified that perchloroethylene (PCE) was detected in the soil and groundwater. Marion Mlezko, who had previously operated a dry cleaning facility in the Mall, was identified as the responsible party. On March 13, 2000, the WDNR sent a letter to Mr. Mlezko (under the name Distinctive Dry Cleaners) directing him to investigate and remediate the site. Ridgestone maintains that it has only conducted banking operations at the Mall, and has never handled, stored, treated or disposed of hazardous substances. In addition, McLaren/Hart, at the request of Ridgestone, has determined that another dry cleaner has also operated in the mall. Carol Thompson operated a drycleaning operation at the site from 1984 through 1991, as One-Hour Martinizing/Carol Cleaning; Mr. Mlezko operated a drycleaners at the site from 1991 through 1998, as, variously, One-Hour Martinizing and Distinctive Dry Cleaners. Ridgestone purchased the property from CDJLT Investments on May 31, 2000.

Issues:

You have identified the following issue of concern regarding the Property: Ridgestone's environmental liability under Wisconsin law for the Property, given the identification of Distinctive Dry Cleaners as the responsible party. This issue is addressed in the remainder of this letter.

First of all, the Department recognizes that the state's hazardous substance discharge law, s. 292.11, Stats., imposes liability on the owner of a contaminated property where a hazardous substance discharge is continuing to discharge to the environment from contaminated soil, even if the contamination


was caused by another person. However, the Department has determined that it is in the public interest to exercise its enforcement discretion in situations where the Department has clear evidence that a former owner or occupant of a property has caused the discharge and that the former owner or occupant has the means to conduct future response actions as necessary.

In this situation, the Department has determined that Marion Mlezko is responsible for restoring the environment at the Property, pursuant to s.292.11, Wis. Stats. On March 13, 2000, the WDNR notified Mr. Mlezko that he is responsible for restoring the environment, including investigating the extent of contamination, and selecting and implementing an appropriate remedial action. However, we should note that Mr. Mlezko has not yet commenced an investigation and remediation of the Property. The WDNR has further determined that Ridgestone has not caused or contributed to the release of chlorinated solvents at the Property. In addition, the WDNR has determined that another drycleaner operated at the Property prior to Mr. Mlezko. Under the circumstances, the Department agrees to exercise its enforcement discretion as follows:

The Department can assure Ridgestone Bank and any lender that it will take no legal action to compel it to take responsibility for all or a portion of the environmental contamination that was present on the Property prior to the date of purchase as long as a viable causer is available to initiate and complete the necessary soil and groundwater cleanup. If Mr. Mlezko or another causer of the contamination at the Property is not able to complete the necessary soil and groundwater cleanup, then Ridgestone, as current owner of the Property, would be responsible for restoring the environment at the Property.

I trust that this letter has clarified the Department's position on liability for this Property.

Sincerely,



James C. Delwiche, P.G.
Hydrogeologist
Remediation & Redevelopment

cc: Marion Mlezko
Judy Ohm, LS/5
Darsi Foss, RR/3