

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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October 5, 2000

Tom McElligott
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, WI 53202

Subject: Lease Liability Clarification Letter as to Environmental Liability for MSF Corporation when leasing property from Packard Avenue Property Trust, at 2334 West Cumberland Court, Mequon, Wisconsin

Dear Mr. McElligott:

You represent MSF Corporation ("MSF") and you have requested clarification that MSF's proposed execution of a lease of property from Packard Avenue Property Trust ("Packard") would not make MSF liable for pre-existing "environmental pollution of the property." The purpose of this letter is to provide MSF Corporation ("MSF") with clarification as to MSF's potential environmental liabilities associated with leasing the property from Packard for office/warehouse purposes or for any other lawful purpose. The Wisconsin Department of Natural Resources ("Department") has completed its review of the request for a lease liability clarification letter submitted by you on behalf of MSF. The property is located at 2334 West Cumberland Court, Mequon, Wisconsin, 53092, with the legal description as set forth on Exhibit A, which is attached to this letter (and will be referred to hereafter as "the Property").

As you are aware, s. 292.55(1)(d)1., Wis. Stats., authorizes the Department to issue a letter to a person seeking assistance concerning the liability of a person owning or leasing a property for environmental pollution of the property. The Department has reviewed the terms of the lease agreement between MSF and Packard and has determined that MSF, as a tenant under the lease agreement, does not "possess or control", as those terms are used in s. 292.11(3), Wis. Stats., any hazardous substance discharges that were present on the Property prior to the lease agreement, conditioned on compliance with the following standards of performance:

- MSF agrees to comply with all applicable state and federal laws that apply to the excavation and disposal of contaminated soils or other materials.
- MSF agrees to provide any responsible party, their consultants and Department personnel with reasonable access to the Property for the purposes of conducting any necessary environmental assessment or remediation activities.
- MSF agrees not to enter into a lease agreement where MSF would exercise "possession or control" of activities on the Property (such as the lease of an underground petroleum storage tank) that results in the discharge of a hazardous substance.

- MSF agrees to minimize, to the extent practicable, the placement of any structures in areas of the property impacted by environmental contamination or construct buildings in such a manner as to allow remedial work to be conducted.
- MSF agrees to comply with the requirements of s. 292.11, Wis. Stats., and the NR 700 rule series, Wisconsin Administrative Code, for the discharge of any hazardous substances that may be caused by MSF as the lessee.
- MSF has not been and will not be associated through common ownership with the person(s) that caused the discharge of any hazardous substances on the Property.

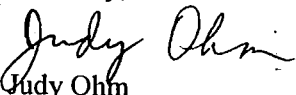
It is important to note that one of the terms of the lease indicates that the "Premises" which are being leased "do not include any and all portions of the real estate below the ground surface, including those subsurface areas which have been affected by the discharge of Hazardous Substances, . . . and that Landlord retains full and complete possession and control thereof" (see paragraph 1, page 1). This makes it clear that the Tenant (MSF) does not possess or control the below-ground surface hazardous substances that were discharged before the lease takes effect, since the lease does not cover any portions of the below-ground surface.

The lease goes on to state that "Tenant (MSF) is aware of the Hazardous Substances that exist in the soil and groundwater located beneath the Premises" and "Tenant acknowledges that Landlord is conducting an investigation to determine the extent of the Existing Conditions, and thereafter Landlord intends to commence and pursue remediation thereof" (see paragraph 8(b), page 3). Further, the lease states that "tenant agrees to pay, as rent, two-thirds (2/3) of all legal, engineering and other fees, costs and expenses incurred by Landlord in connection with the investigation and remediation of the Existing Conditions" and also agrees to pay the remaining one-third of those costs, up to \$100,000 (see paragraph 8(b), page 3). The fact that the rent that MSF pays will go to pay for the investigation and remediation of contamination on the Property does not mean that MSF assumes "possession or control" of the hazardous substance contamination. Instead, it helps to facilitate the cleanup of the contamination, which MSF does not possess or control by virtue of leasing the Property for office/warehouse purposes.

Given these circumstances, the Department agrees not to hold MSF, in its capacity as a tenant under the lease, responsible for investigating or remediating any hazardous substances that are present on the Property prior to the date of the lease agreement, or that may migrate from or onto the Property, unless one of the aforementioned conditions is not satisfied. The Department believes that a memorandum of understanding entered into by the State of Wisconsin and the Federal Environmental Protection Agency ("EPA") provides clarification to companies like yours that EPA is not interested in pursuing cleanup of properties where person(s) are working cooperatively with the Department.

If you have any questions concerning this letter or other related matters, please contact either attorney Judy Ohm at 608-266-9972 or Jim Schmidt at 414-263-8561.

Sincerely,



Judy Ohm
Attorney
Bureau of Legal Services

C: Jim Schmidt- SER

Michael Prager/Anna Thomas-RR/3

EXHIBIT A

Part of the Northwest 1/4 of Section 26, Town 6 North, Range 22 East, in the City of Cudahy, County of Milwaukee, State of Wisconsin, described as follows:
Commencing at a point in the East line of said 1/4 Section, which point is 558.38 feet North of the Southeast corner of said 1/4 Section; running thence West on a line parallel to the South line of said 1/4 Section, 391.38 feet, more or less, to the East line of the right of way of the Chicago & Northwestern Railway Co.; thence South 1° 30' East along the East line of said right of way 223.81, more or less, feet to a point; thence East on a line parallel to the South line of said 1/4 Section 390.7 feet, more or less, to a point in the East line of said 1/4 Section, which point is 335.24 feet North of the Southeast corner of said 1/4 Section; thence North along the East line of said 1/4 Section, 223.81 feet, more or less, to the place of beginning.