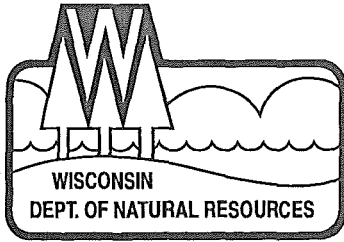


*BF chrono*



**State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES**

Scott McCallum, Governor  
Darrell Bazzell, Secretary  
Ronald W. Kazmierczak, Regional Director

Northeast Region Headquarters  
1125 N. Military Ave., P.O. Box 10448  
Green Bay, Wisconsin 54307-0448  
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April 4, 2001

Mr. Jim Grassman  
City Administrator  
City of De Pere  
335 South Broadway  
De Pere, WI 54115

Subject: General Liability Clarification Letter for the former Better Brite Chrome Shop located at 519 Lande Street, De Pere, WI  
WDNR BRRTS # 02-05-000030

Dear Mr. Grassman:

Please find below the Wisconsin Department of Natural Resources' ("Department") response to the letter submitted by Ms. Judith Schmidt-Lehman on behalf of the City of De Pere ("City") regarding the former Better Brite Chrome Shop property located at 519 Lande Street, De Pere, Wisconsin (hereafter referred to as the "Property" or the "Chrome Shop"). In the letter, you requested that the Department clarify the environmental liability involved if the City were to acquire and reuse the Property. The issue of future liability under Wisconsin state law and certain federal laws is addressed below. The City of De Pere recently received a letter from the US Environmental Protection Agency (EPA) clarifying federal liability and cost recovery issues related to the ongoing remediation project at both the Zinc and Chrome Shops primarily funded by EPA.

### **I. Site Information**

The Better Brite Chrome Shop has been abandoned for over ten years. When it was in business, the facility primarily dealt with chrome plating of industrial equipment. The property is on the EPA's National Priorities List (NPL) and a state lead cleanup is being coordinated by Wisconsin DNR. The Better Brite Chrome Shop is one of two properties that make up what is officially designated as the "Better Brite Plating Chrome & Zinc Shops" NPL site. During the fall of 1999 on-site contaminant stabilization was implemented as the remedy to treat both soil and groundwater impacts (mainly chromium) at the Chrome Shop. Currently groundwater monitoring is being conducted in order to verify the effectiveness of the remedy. Most recent groundwater sampling results indicate that contaminant stabilization has worked well based on the fact that contaminant levels have dropped significantly in the groundwater. Groundwater monitoring will continue until the involved parties are comfortable that the results confirm that the remedy in fact was a success. This monitoring effort is currently funded by EPA and WDNR

## **II. Method of Acquisition**

Under Wisconsin law, Local Governmental Units (LGUs) who acquire property through certain methods are not responsible to investigate or cleanup a hazardous substance discharge at a property. As provided in s. 292.11(9)(e)1m.b., Wis. Stats., an LGU is exempt from s. 292.11(3), (4) and (7)(b) and (c), Wis. Stats., of the Spill Law - which would otherwise require the person who possesses (i.e., owns) the property to conduct an investigation and cleanup of a discharge of a hazardous substance - if the LGU acquires a property through tax delinquency proceedings. It is the Department's understanding that the City is considering working with the County to acquire the Property through tax delinquency and would be eligible for the exemption under s. 292.11(9)(e)1m.b., Wis. Stats. Therefore, the City would not be responsible to investigate or cleanup any hazardous substances on the Property that were discharged before the City acquires title to the Property. While the LGU exemption would apply to the City, please note that the LGU exemption is not transferable to a private party if the City should choose to sell the Property in the future.

In addition to the exemption from state law, the City would also qualify for an exemption from federal Superfund clean up liability if the Property was acquired in a manner that is considered "involuntary" and if other conditions of that federal exemption are met. Federal law and policy indicate that tax delinquency proceedings would be considered an "involuntary" method of acquisition, and thus would allow an LGU to qualify for the exemption from liability under federal Superfund law. For additional information, please refer to the protections in ss. 101(20)(D) and 101(35)(D), of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund), and the "Handbook of Tools for Managing Federal Superfund Liability Risks at Brownfields and Other Sites", Publication Number: EPA 330-B-98-001, November 1998 regarding "involuntary acquisitions" of contaminated properties by government entities.

## **III. Third-Party or Civil liability**

With respect to state law, the City would not be protected by the state civil liability provisions in s. 292.66, Wis. Stats., while they are owners of the Property. If the City were to sell the Property, then the third party or civil liability protections would apply to the City. The City may also qualify for federal Superfund protections concerning third-party liability.

## **IV. Off-site Contamination**

The LGU liability exemption applies to contamination on the Property as well as contaminants migrating from the Property onto off-site properties. The Department is aware that the contamination from the Property has migrated onto adjacent properties (please refer to the attached map and table). Under s. 292.11(9)(e)1m, Wis. Stats., the LGU exemption would continue to apply unless a discharge was caused by some action taken by the City (s. 292.11(9)(e)2a, Wis. Stats.).

## **V. Intended Development and Use of the Property**

The LGU exemption, which was established to encourage redevelopment of blighted areas, also addresses issues of public health and safety. If an LGU intends to retain ownership of a property and

develop or use that property, s.292.11(9)(e)4., Wis. Stats., applies. Under that provision, WDNR may determine that action is necessary to reduce to acceptable levels any substantial threat to public health or safety when the property is developed or put to its intended use. WDNR may direct the LGU to take actions necessary to address that threat. LGUs which do not take action as directed may lose the exemption.

The City has indicated that it intends to utilize the Property for public benefit such as a park or other public use. The area of concern at the site is currently capped with seeded topsoil which should effectively prevent direct contact threats and reduce the potential for any remaining soil contaminants to leach into groundwater. If the City does plan to acquire the Property, a deed restriction may be required to ensure that the existing cap is maintained.

Furthermore, s. 292.11(9)(e)2.a, Stats., says that the LGU exemption does not apply to a discharge of a hazardous substance that is caused by any action taken by a LGU. This provision could apply if the City took actions at the property that exacerbate or cause an additional discharge at the Property. While it does not appear that your proposed use of the property would exacerbate discharges at the Property, we suggest that you continue to work with the WDNR to insure that any proposed actions at the Property do not exacerbate or cause additional discharges of the contamination. You should also be aware that s. 292.11(9)(e)6, Stats., requires that the City allow the WDNR or any party who is responsible for the existing hazardous substance discharge access to the Property for the ongoing monitoring and remedial actions at the Property. The Department would work with the City to ensure that the final intended use would not interfere with ongoing remediation activities, exacerbate the existing contamination, or pose a threat to human health.

The WDNR encourages the City to work with us, especially if new environmental data becomes available or the City proposes to change the use of the Property, and the City has questions or concerns regarding how that new information may affect its LGU exemption status. The WDNR will be happy to review the proposed site "redevelopment plan" to ensure the City continues to qualify for the LGU exemption and any threats to public health and safety are addressed.

In closing, we would like to thank you for the outstanding efforts your community has made towards bringing this property and the former Zinc Shop property back to productive use. We look forward to working with you in the future. If you have any questions about this letter, please contact Keld Lauridsen at (920) 492-5921.

Sincerely,



Bruce G. Urben  
Program Manager  
Remediation & Redevelopment Program - NER

cc: Judith Schmidt-Lehman, City Attorney, City of De Pere  
335 South Broadway, De Pere, WI 54115  
Kathy Erdmann, R&R/NER  
Keld Lauridsen, R&R/NER  
Darsi Foss - RR/3

TABLE 4-1 GROUNDWATER ANALYTICAL RESULTS - HEXAVALENT CHROMIUM AND CHROMIUM

Parameter	Date	Hexavalent Chromium	Chromium
ES			100
PAL			10
Chrome Sump	8/94	620000	694000
	10/94	300200	297000
	4/98	195000	192000
	7/98	132000	
French Drain	8/94	25800	22000
	10/94	32000	31700
	4/98	1060	1010
	7/98	336	312
B-101	8/94	<10	<3.4
	10/94	<10	
MW-106	8/94	7	<2.8
	DUP.	<10	<2.8
	10/94	<10 J	<3.4 J
	DUP.	<10 J	<3.4 J
	4/98	<10	<5
	DUP	<10	<5
MW-106A	8/94	<10	<2.8
	10/94	<10 J	<3.4 J
	4/98	<10	<5
	5/00	<4.2	9.4
MW-106B	8/94	<10	
MW-107	8/94	<10	4.1 BJ
	10/94	<10 J	<3.4
	4/98	<10	<5
	5/00	<4.2	4.2
MW-107A	8/94	<10	<2.8
	10/94	<10 J	<3.4 J
	4/98	<10	<5
	5/00	<4.2	16.0
MW-107B	8/94	<10	
MW-108	8/94	<10	<2.8
	10/94	<10	<3.4 J
	4/98	<10	
	DUP	<10	<5
MW-108A	8/94	<10	3.0 BJ
	10/94	<10	<3.4 J
	4/98	<10	<5
	5/00	<4.2	55.0
MW-108B	8/94	<10	
MW-109	8/94	6780	9570
	10/94	2400	1980
	DUP.	3100	1700
	4/98	16500	18600
	7/98	12200	11100

ES - NR140 Enforcement Standard  
 PAL - NR140 Preventive Action Limit  
 Blacked out - Compound not analyzed  
 Underlined - Concentration exceeds PAL  
 Shaded - Concentration exceeds ES

w:\wpdata\project\new\F119Chrom.TBL

TABLE 4-1 GROUNDWATER ANALYTICAL RESULTS - HEXAVALENT CHROMIUM AND CHROMIUM

Parameter	Date	Hexavalent Chromium	Chromium
ES			100
PAL			10
MW-109A	8/94	<10	<2.8
	10/94	<10	1.3 B
	4/98	<10	<5
	7/98	<10	7
MW-109B	8/94	<10	
	10/94	<10	
MW-110	8/94	<10	3.6 BJ
	10/94	<10	<3.4 J
	4/98	<10	<5
	5/00	<4.2	37.0
MW-110A	8/94	<10	<2.8
	10/94	<10	<3.4 J
	4/98	<10	<5
	5/00	<4.2	25.0
MW-111	8/94	<10	<3.4
	DUP.	<10	<3.4
	10/94	<10	<0.70
	4/98	226	<5
	7/98	22.0	27
	11/98	<0.5	<0.5
MW-112	5/00	<4.2	36.0
	10/94	<10	<0.70
	11/94	<10	<2.5
	4/98	<10	<5
MW-113	5/00	<4.2	4.1
	8/94	140	99.7
	10/94	<10 J	8.6 B
	5/95	43	20.3
	4/98	<10	<5
	7/98	<10	12
MW-114	5/00	<4.2	22.0
	3/95	<10 J	<2.9
	DUP.	<10 J	<2.9
	5/95	<10 J	<1.0
	DUP.	<10 J	<1.0
MW-115	4/98	<10	<5
MW-115A	5/00	<4.2	6.0
MW-116	5/00	<4.2	12.0
	5/00	1600	470
	DUP.	1500	460
	11/00	37	23
	DUP	46	24
PF-MW-2	5/00	<4.2	7.6
MW-3	5/00	230.0	330
	11/00	50	130

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TABLE 4-1 GROUNDWATER ANALYTICAL RESULTS - HEXAVALENT CHROMIUM AND CHROMIUM

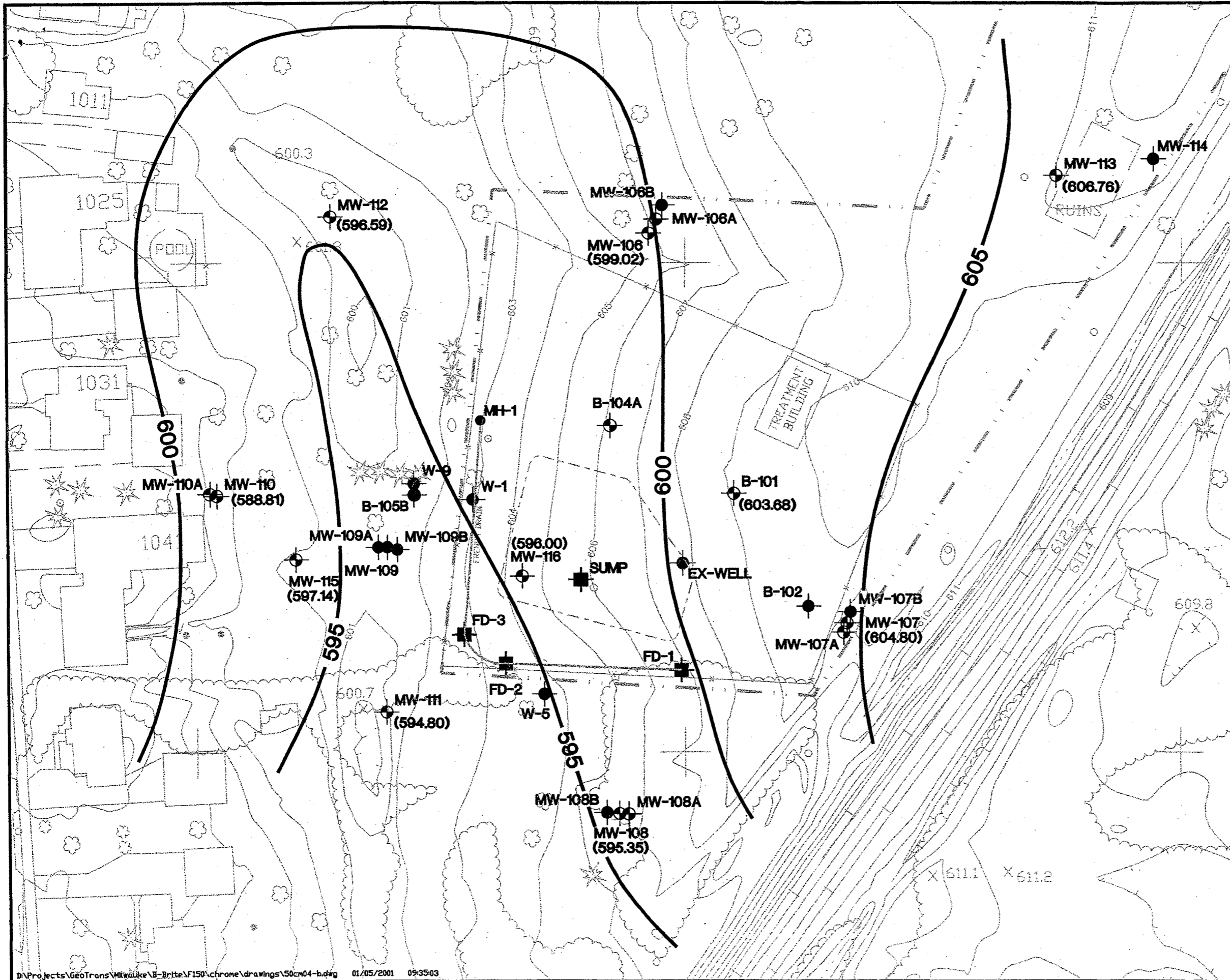
Parameter	Date	Hexavalent Chromium	Chromium
ES			100
PAL			10
MW-4	8/94	<10	<3.4
	DUP	<10	<3.4
	10/94	<10 J	<3.4 J
	DUP	<10 J	<3.4 J
	4/98	<10	<5
	5/00	<4.2	4.6
MW-4A	11/00	<4.2	2.4
	8/94	<10	<3.4
	10/94	<10 J	6.0 B
	4/98	<10	<5
	5/00	<4.2	8.7
MW-4B	11/00	<4.2	3.7
	10/94	<10	<0.70
MW-5	11/94	<10	<2.5
	8/94	1590	827
	10/94	460 J	299 J
	DUP	510 J	763 J
	4/98	212	631
	DUP	207	667
	7/98	1420	1230
	5/00	120	190
MW-5A	11/00	<4.2	6.6
	8/94	<10	<3.4
	10/94	<10	<3.4 J
	4/98	<10	<5
	5/00	<4.2	6.5
MW-5B	11/00	340	390
	8/94		
MW-6	10/94	<10	<5
	8/94	15900	39200
	10/94	47000	41,900 J
	4/98	7650	4560
	5/00	23000	26000
	11/00	26000	23000
MW-6A	8/94	<10	4.9 B
	10/94	<10	<3.4 J
	4/98	<10	<5
	5/00	6.6	22.0
	11/00	<4.2	13
MW-6B	8/94	<10	
MW-7	8/94	<10	6.6 BJ
	DUP	<10	<2.8
	10/94	<10 J	36.4 J
	4/98	<10	<5
	DUP	<10	<5
	5/00	<4.2	3.9
	11/00	<4.2	1.1

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TABLE 4-1 GROUNDWATER ANALYTICAL RESULTS - HEXAVALENT CHROMIUM AND CHROMIUM

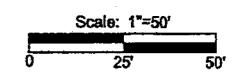
Parameter	Date	Hexavalent Chromium	Chromium
ES			100
PAL			10
MW-7A	8/94	<10	<2.8
	10/94	<10 J	<3.4 J
	4/98	<10	<5
	5/00	<4.2	4.7
	11/00	7.9	5
MW-8	10/94	<10	<0.70
	11/94	<10	<2.5
	DUP.	<10	<2.5
	4/98	<10	<5
	5/00	<4.2	15.0
MW-8A	11/00	13	13
	10/94	<10	<0.70
	11/94	<10	<2.5
	4/98	<10	<5
	5/00	<4.2	16.0
MW-9	11/00	34	34
	8/94	400	697
	10/94	470 J	442 J
	4/98	209	<5
	7/98	60.0	75
MW-10	11/00	13	15
	DUP	19	51
	8/94	60300	53100
MW-11	10/94	60,800 J	43,500 J
	11/00	20,000	18000
	5/95	<10	<1.0
MW-12	4/98	<10	<5
	5/00	<4.2	7.0
	11/00	<4.2	4.1
	3/95	<10 J	<2.9
MW-13	5/95	<10	<1.0
	4/98	<10	<5
	5/00	<4.2	4.8
	11/00	<4.2	6
Zinc Sump	3/95	<10 J	<2.9
	8/94	89000	209000
	10/94	144900	277000
	4/98	66000	38300
	7/98	131000	131000
	5/00	1800	1700
Private	11/00	41000	27000
	8/94	<10	<10
Municipal	8/94	<10	<10
	DUP.	<10	<10
	10/94	<10	<10
	DUP.	<10	<10
USGS	10/94	<10	0.75 B
USGS-A	10/94	<10	11.9


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### EXPLANATION

-  MW-113 MONITOR WELL LOCATION AND DESIGNATION
-  MW-11 ABANDONED WELL (any filled in well symbol)
-  MH-1 MANHOLE LOCATION
-  SUMP BOUNDARY
-  PROPERTY LINE
-  WATER TABLE CONTOURS (Dashed where inferred)
-  (597.14) WATER TABLE ELEVATION



Basemap from Aero-Metric Engineering, Inc. 11/17/91	
BETTER BRITE DePERE, WISCONSIN	DATE: 01/05/01
WATER TABLE MAP (NOVEMBER 30, 2000) CHROME SHOP	DESIGNED: _____
	CHECKED: _____
	APPROVED: _____
	DRAWN: RDH
PROJ.: F150-102	
 <b>GeoTrans, Inc.</b> <small>A TETRA TECH COMPANY</small>	
Figure 4-1	