



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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August 14, 2001

BRRTS #: 07-16-278429

Gary N. Ostrom
Great River Energy
17845 East Highway 10
Elk River, MN 55330

Subject: General Liability Clarification Letter as to the Potential Environmental Liability Associated with the Installation of an Electrical Transmission Line on Property Owned by Koppers Industries, Inc., in Superior, Wisconsin.

Dear Gary:

Purpose

The purpose of this letter is to provide Great River Energy with clarification as to the potential environmental liabilities associated with the installation of an electrical transmission line on property owned by Koppers Industries, Inc., 436 Seventh Avenue, Pittsburgh, PA 15219. The property is located at 3185 South County Road A, Superior, Wisconsin, in a part of the N ½ of the SW ¼ lying north of the DM&IR railroad; the SE ¼ of the NW ¼ and the SW ¼ of the NE ¼, all in Section 13, Township 48 North, Range 14 West, Douglas County, Wisconsin, as described more specifically in Exhibit A (attached).

The Wisconsin Department of Natural Resources ("the Department") has completed its review of the request for a lease liability clarification letter submitted by Great Rivers Energy. Although a lease liability clarification letter is not appropriate in a situation where a lease is not involved, the Department does have the ability to issue a general liability clarification letter in order to clarify the circumstances under which Great River Energy will not be held responsible under the Hazardous Substance Spills Law, section 292.11, Wis. Stats, for hazardous substances that were discharged on the Koppers Industries, Inc. property prior to the date of this letter.

Determination

Section 292.55(1)(d), Wis. Stats., authorizes the Department to issue a letter to a person seeking assistance concerning their potential liability for environmental pollution. Specifically, the Department has reviewed the following list of documents in order to make a potential liability determination:

Blasland, Bouck & Lee, Inc. (BBL). *Request for Modification of the closure and Long-Term Care Plan Approval and Corrective Action management Unit Demonstration – Koppers Industries, Inc., Superior, Wisconsin Facility* (Syracuse, NY, May 2000).

Fluor Daniel GTI, Inc. Phase III RCRA Facility Investigation Report – Koppers Inc., Superior, Wisconsin Facility. (East Pittsburgh, PA., June 1997)

The Department has reviewed the terms of the easement that Great River Energy proposes to obtain from Koppers Industries, Inc. and has determined that Great River Energy, as grantee under the proposed easement, will not “possess or control,” as those terms are used in section 292.11(3), Wis. Stats., any hazardous substances that were present on the Koppers Industries, Inc. property prior to the date of this letter, conditioned on compliance with the following standards of performance:

- During the installation of the power line poles and all related construction on the Koppers Industries, Inc. property, Great River Energy must sample any extracted groundwater and any excavated soil and analyze the samples for petroleum volatile organic compounds ("PVOCs") and semi-volatile organic compounds ("SVOCs") before discharge of the groundwater or disposal of the soil. Great River Energy must comply with all state and federal laws that apply to the excavation, storage, treatment and disposal of contaminated soils, or other contaminated materials, and the extraction, storage, treatment and discharge of contaminated groundwater.
- Great River Energy must not enter into an agreement where Great River Energy would exercise “possession or control” of activities on the Koppers Industries, Inc. property (such as the lease of an underground petroleum storage tank) that results in the discharge of a hazardous substance.
- Great River Energy must minimize, to the extent practicable, the placement of any structures in areas of the Koppers Industries, Inc. property known to be impacted by environmental contamination and must construct any structures in such a manner as to allow any required remedial work to be conducted. Exact placement of power line poles must be marked in the field and those locations must be agreed upon by Great River Energy, Beazer/BBL and Koppers Industries Inc. before the poles are installed.

Engineering design of the pole installation and footings must provide a seal to avoid breaching the surface clay at the site. The Department, prior to work commencing, must approve specifications and design for sealing pole installations. Clay geology at the site has been credited with preventing deeper migration of contaminants to underlying aquifers. Borings, backfill and footings for the poles must be designed to prevent the pole placement from becoming a conduit for any contamination to reach deeper aquifers from surface water or cross connection with subsurface fractures or silt seams. The pole bores and backfill must be sealed to meet the requirements, or equivalent performance, of the sealing requirements stated in NR 141.13, Wisconsin Administrative Code, for monitoring wells. That is,

backfill around the poles must meet the permeability requirements specified for monitoring well annular space seals of 1×10^{-7} cm/sec or less. In addition, surface water runoff must be diverted and a flexible and self-repairing surface seal with performance similar to the requirements for the ground surface seals as stated in NR 141.13 (3) and (4) must be installed. Seals must be installed with a tremie tube or other suitable method that will avoid bridging or voids in the seal material.

- Great River Energy must comply with the requirements of section 292.11, Wis. Stats., and the NR 700 rule series, Wisconsin Administrative Code, for the discharge of any hazardous substance that may be caused by Great River Energy, including any migration of existing shallow contamination to deeper aquifers that is caused by the inadequate sealing of boreholes, backfill or footings.
- Great River Energy has not and will not receive direct or indirect payment or other consideration from the operation of any entity that caused the discharge of any hazardous substances on the Koppers Industries, Inc. property.

Under these conditions, the Department agrees not to hold Great Rivers Energy, in its capacity grantee under the proposed easement, responsible for investigating or remediating any hazardous substances that were present on the Koppers Industries, Inc. property prior to the date of this letter, or that may migrate from or onto the Koppers Industries, Inc. 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 Linda Meyer at 608-266-7588 or Waste Management Specialist Dan Boardman at 715-365-8943.

Sincerely,

Dan Boardman
Waste Management Specialist
Remediation & Redevelopment Program

C: Linda Meyer – LS/5
Michael Prager/Anna Thomas – RR/3
John Robinson – NOR
Tom Kendziewski – R&R/Spooner, (Koppers II – Superior Mailing List)
David Hennen – Prosource Technologies, Inc., 277 Coon Rapids Blvd., suite 304, Coon Rapids, MN 55433

EXHIBIT A

Easement No. BN-019

Grantor(S):
Koppers Industries, Inc.

An easement across the following described property:

All those parts or parcels of the N.1/2 of the NE-SW of Section 13, Township 48 North, Range 14 West, Town of Superior, Douglas County, Wisconsin described as follows: Commencing at the center one quarter corner (C.1/4) of said section 13 which is marked with a railroad spike driven into then bituminous surface; thence N. 89 degrees 07 minutes 30 seconds W. along the north line of said NE-Sw for a distance of 1196.83' to the easterly right of way line of the Soo Line Railway; thence S. 15 degrees 36 minutes 27 seconds E. along said right of way for a distance of 383.26' to the northerly right of way line Duluth, Missabe & Iron Range Railway, thence N. 86 degrees 20 minutes 30 seconds E. along said right of way for a distance of 1092.53' to the east line of said NE-SW; thence N. 00 degrees 40 minutes 00 seconds E. along said east line for a distance of 283.77' to the place of beginning. Above described parcel contains 8.56 acres more or less. AND Commencing at the center one quarter corner of said Section 13; thence N. 89 degrees 07 minutes 30 seconds W along the north line of said NE-SW for a distance of 1196.83' to the easterly right of way line of the Soo Line Rail Raod; thence continuing N. 89 degrees 07 minutes 30 seconds W. for a distance of 104.29' to the westerly line of the Soo Line Railroad and the place of beginning; thence continuing N. 89 degrees 07 minutes 30 seconds W. for a distance of 18.88' to the Northwest corner (NW) of said NE-SW; thence S. 00 degrees 47 minutes 59 seconds W. along the west line of said NE-SW for a distance of 385.86' to the northerly right of way line of the Duluth, Missabe & Iron Range Railway; thence N. 86 degrees 20 minutes 30" E. along said right of way for a distance of 129.92' to the westerly right of way line of the Soo Line Railroad thence N. 15 degrees 36 minutes 27 seconds W. along said right of way for a distance of 391.68' to the place of beginning. Above described parcel contains 0.65 acres more or less. AND Commencing at the center one quarter corner of said section 13; thence S. 00 degrees 40 minutes 00 seconds W. along the east line of said NE-SW for a distance of 662.25' to the south line of said N. 1/2-NE-SW; thence N. 89 degrees 07 minutes 42 seconds W. along said south line of said N.1/2-NE-SW for a distance of 1003.27' to the easterly right of way line of the Soo Line Railroad; thence N. 15 degrees 36 minutes 27 seconds W. along said right of way for a distance of 205.21' to the southerly right of way line of the Duluth, Missabe & Iron Range Railroad; thence N. 86 degrees 20 minutes 30 seconds E. along said right of way for a distance of 1063.80' to the east line of said NE-SW; thence S. 00 degrees 40 minutes 00 seconds W. along said east line for a distance of 280.81' to the place of beginning. Above described parcel

contains 9.90 acres more or less. AND Commencing at the center one quarter corner of said section 13; thence S. 00 degrees 40 minutes 00 seconds W. along the North-South Quarter line for a distance of 662.25' to the south line of said N. ½-NE-SW; thence N. 89 degrees 07 minutes 42 seconds W. along the south line of the N. ½ of the NE-SW for a distance of 1003.27' to the easterly right of way line of the Soo Line Railroad; thence continuing N. 89 degrees 07 minutes 42 seconds W. along the south line of said N. ½-NE-SW for a distance of 104.29' to the westerly right of way line of the Soo Line Railroad and the place of beginning; thence continuing N. 89 degrees 07 minutes 42 seconds W. along the south line of said N. ½-NE-SW for a distance of 213.98' to the west line of said NE-SW; thence N. 00 degrees 47 minutes 59 seconds E. along said west line for a distance of 176.16' to the south right of way line of the Duluth Missabe & Iron Range Railroad; thence N. 86 degrees 20 minutes 30 seconds E. along said right of way for a distance of 158.88' to the westerly right of way line of the Soo Line Railroad; thence S. 15 degrees 36 minutes 27 seconds W. along said right of way for a distance of 196.79' to the place of beginning. Above described parcel contains 0.78 acres more or less. AND All that part of the SW-NE of Section 13, Township 48 North, Range 14 West, Town of Superior, lying westerly of what was formerly the easterly line of the right of way of the Northwestern Coal Company, described as follows: Commencing at the center ¼ (C.1/4) corner of said section 13 which is marked with a railroad spike driven into the bituminous surface; thence S. 89 degrees 07 minutes 30 seconds E. 33.00' to the east right of way line of C.T.H. "A"; thence N. 00 degrees 40 minutes 00 seconds E. along the east right of way line of C.T.H. "A" for a distance of 24.33' to the easterly right of way line of the Northwestern Coal Railway Company and the place of beginning; thence N. 00 degrees 40 minutes 00 seconds E. along the right of way of C.T.H. "A" for a distance of 1286.89' to the north line of said SW-NE; thence S. 89 degrees 03 minutes 06 seconds E. along the north line of said SW-NE 468.12' to the easterly right of way line of the Northwestern Coal Company; thence S. 20 degrees 41 minutes 20 seconds W. along said right of way for a distance of 1367.22' to the place of beginning. Parcel contains 7.91 acres more or less, Douglas County, Wisconsin. AND Commencing at the North one quarter (N1/4) corner of said Section 13 which is marked with a railroad spike driven into the bituminous surface; thence N. 88 degrees 58 minutes 44 seconds W. along the north line of said Section 13, for a distance of 1331.50' to the Northwest (NW) corner of the NE-NW; thence S. 00 degrees 24 minutes 58 seconds W. along the west line of said NE-NW for a distance of 1312.98' to the Southwest (SW) corner of the NE-NW; thence continuing S. 00 degrees 24 minutes 58 seconds W. along the west line of the SE-NW for a distance of 914.85' to the easterly right of way of the Soo Line Railroad; thence S. 15 degrees 36 minutes 27 seconds E. along said right of way for a distance of 436.07' to the South line of the SE-NW; thence S. 89 degrees 07 minutes 30 seconds E. along the south line of said SE-NW for a distance of 1320.00' to the Southeast (SE) corner of said SE-NW; thence N. 00 degrees 40 minutes 00 seconds E. along the east line of said SE-NW for a distance of 1311.26' to the Northeast corner of said SE-NW; thence continuing N. 00 degrees 40 minutes 00 seconds E. along the east line of the NE-NW

for a distance of 1311.26' to the place of beginning. Parcel contains 79.23 acres more or less.

Said easement lying 35 feet (or the distance to the property line, whichever is less) either side of the following described line: Commencing at the southwest corner of the said parcel; thence N 87 deg. 30 min. 50 sec. E along the south property line a distance of 98.72 feet to the point of beginning; thence N 14 deg. 17 min. 04 sec. W a distance of 100.47 feet to the point of intersection; thence N 70 deg. 47 min. 10 sec. E a distance of 30.13 feet and there terminating; then commencing again after crossing the railroad easement approximately 100.29 feet; thence N 70 deg. 47 min. 11 sec. E a distance of 1244.72 feet to the point of intersection; thence N 2 deg. 01 min. 13 sec. E a distance of 1096.31 feet and there terminating; containing approximately 3.96 acres.