



Department of Commerce

Environmental & Regulatory Services Division  
Bureau of Storage Tank Regulation  
201 West Washington Avenue  
P.O. Box 7837  
Madison, WI 53707-7837

Approval # ERS-TST-063000-01  
(Replaces 940057-U)

## Wisconsin COMM 10 Material Approval

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**Equipment** Alert 1000, 1000-X and 4000 Tank Tightness Testing Methods and Alert 1050 and 1050-X Ullage Tightness Testing Methods

**Manufacturer** Alert Technologies  
5410 Newport Drive Suites 43-44  
Rolling Meadows, Illinois 60005

**Expiration of Approval:** December 31, 2005

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### SCOPE OF EVALUATION

The Alert 1000, 1000-X and 4000 tank test methods and Alert 1050 and 1050-X ullage test methods, manufactured by Alert Technologies have been evaluated for use as tank testing systems complying with **s. COMM 10.61 (3)** of the current edition of the Wisconsin Flammable and Combustible Liquids Code.

### DESCRIPTION AND USE

The Alert 1000-X and Alert 1050-X are similar to the Alert 1000 and 1050 except that the Alert 1000-X and 1050-X have revised software and test procedures that allow an extended range of applicability.

Alert 1000 and 1000-X Test Systems

Alert 1000 and 1000-X are volumetric tank tightness testing methods, which directly measure change in product mass by detecting changes in the buoyancy of a probe. The Alert 1000 and 1000-X tests the tank for leaks below the liquid level only. The systems may be used for tanks containing gasoline, diesel fuel, aviation fuel, fuel oil #4, solvents, waste oil, water, ethylene glycol and other chemicals that will not attack the probe or instruments.

The systems do not detect the presence of water in the bottom of the tank. An inflow of water would be measured as an increase of product. The level of groundwater is to be determined by an observation well near the tank. The test procedure corrects for interference due to the presence of groundwater levels above the tank bottom by calculation of differential pressure from measured water table. Product level is then adjusted for the test. The differential must exceed 0.3 psi.

Tank deformation effects are addressed by beginning the test only when data trends indicate that the tank is stabilized.

Leak rates are calculated using the last data determined to be valid per statistical analysis. A threshold value of 0.05 gallon per hour is used to declare that a tank is leaking below the product level. Test results are considered inconclusive if there is too much variability in the data or if there is an unexplained product volume increase. **The test should not be conducted if the groundwater is in hydrostatic equilibrium with the product in the tank.**

Lengthening the duration of the test beyond the minimum is an acceptable deviation in the standard test protocol. The total time required for a test with these methods, including equipment set up, data collection and equipment removal, is 5 to 12 hours.

#### Alert 4000 Test System

The Alert 4000 is a volumetric tank tightness testing method which directly measures change in product mass by detecting changes in the buoyancy of a probe. The Alert 4000 tests the tank for leaks below the liquid level only. The system may be used for tanks containing gasoline, diesel fuel, aviation fuel, fuel oil #4 and #6, solvents, waste oil, and other chemicals that will not attack the probe or instruments.

The Alert 4000 collects increments of data while the tank is in service between periods of pumping activity. Because the Alert 4000 test will only be valid for portions of the tank that are below the liquid level during the test period, and ullage test is performed immediately after the Alert 4000 test to evaluate non-wetted portions of the tank. Product is not added to the tank during the test period.

Alert 4000 does not detect the presence of water in the bottom of the tank. An inflow of water would be measured as an increase in product. The level of groundwater is to be determined by an observation well near the tank. The test procedure corrects for

interference due to the presence of ground water levels above the tank bottom by testing at multiple products levels.

Tank deformation effects are addressed by beginning the test only when data trends indicate that the tank is stabilized.

Leak rates are calculated using the data from the last data determined to be valid per statistical analysis. A threshold value of 0.05 gallon per hour is used to declare that a tank is leaking below the product level. Test results are considered inconclusive if there is too much variability in the data or if there is an unexplained product volume increase. The test should not be conducted if the groundwater is in hydrostatic equilibrium with the product in the tank.

Lengthening the duration of the test beyond the minimum is an acceptable deviation in the standard test protocol. The total time required for a test with these methods, including equipment set up, data collection and equipment removal, is 24 hours.

#### Alert 1050 and 1050-X Ullage Test Systems

The Alert 1050 and 1050-X systems test tanks for leaks in the non-wetted portion of the tank (ullage). The Alert 1050 and 1050-X must be used with other test methods such as the Alert 1000 or 1000-X to test the tank below liquid level, or the tank must be completely cleaned of product. Leaks are identified by characteristic acoustical signals. Leaks are declared by the presence of increased noise level or ambient pressure in band widths detectable by the system transducer. The Alert 1050 and 1050-X are not affected by product temperature.

If the Alert 1050 or 1050-X is used alone to test an empty tank, the tank must be cleaned of all product, liquid, sludge and waste by a certified cleaner. Documentation from the certified cleaner must be provided when test results are submitted for review. If the tank had never been filled with product, the owner must provide a statement to that affect with test results submitted for review.

Alert 1050 and 1050-X test results will be inconclusive if there is high transient or background noise above thresholds specified by the manufacturer. Interference may be produced by vibration from nearby equipment or dripping condensation. Testing should be conducted only when zero pressure produces a flat line response. Tests should not be conducted if the tank is incapable of holding the test pressure. There are no acceptable deviations in the test protocol.

#### **TESTS AND RESULTS**

The performance of the Alert 1000 and the Alert 1000-X was determined in accordance with the EPA protocol for volumetric tank testing methods. The Alert 1000 was found to have a probability of false alarm ( $P_{(FA)}$ ) of less than five percent. The probability of detection ( $P_{(D)}$ ) of a 0.10 gallon per hour leak was found to be at least

95.5 percent. The Alert 1000-X was found to have a  $P_{(FA)}$  of 2.7 percent and  $P_{(D)}$  of 97.3 percent. The  $P_{(D)}$  and  $P_{(FA)}$  will vary with tank size and test time.

The performance of Alert 4000 was determined in accordance with the EPA protocol for volumetric tank testing methods which was modified to create an alternate evaluation procedure as allowed by the protocol. The Alert 4000 was found to be capable of detecting a leak below liquid level of 0.05 gallon per hour with  $P_{(FA)}$  of 3.7 percent. The  $P_{(D)}$  of a 0.10 gallon per hour leak was found to be 96.3 percent.

The performance of the Alert 1050 and 1050-X was determined in accordance with the EPA protocol for non-volumetric tank testing methods. The Alert 1050 and 1050-X were found to be capable of detecting a leak in the ullage with a  $P_{(FA)}$  of 0 percent. The corresponding  $P_{(D)}$  of 0.10 gallon per hour leak was found to be 100 percent.

The EPA test procedures only addressed the issue of the method's ability to detect leaks and not for safety hazards.

### **LIMITATIONS OF APPROVAL**

Procedures specified by the manufacturer shall be used to install and maintain all equipment and to conduct all tests.

Used alone, the Alert 1000 and 1000-X tank test systems are approved for use as methods of tank tightness testing specified in **s. COMM 10.61 (3)** for tanks at least 95 percent full.

The Alert 1000 system may be combined with the Alert 1050 or 1050-X ullage test systems to test tanks that are at least 60 percent full but not more than 95 percent full. The combined systems meet the requirements of **s. COMM 10.61 (3)**.

The Alert 1000-X system may be combined with the Alert 1050 or 1050-X ullage test systems to test tanks that are at least 20 percent full but no more than 95 percent full. The combined systems meet the requirements of **s. COMM 10.61 (3)**.

The Alert 1000 and 1000-X are approved for tank sizes no larger than 30,000 gallons. The Alert 1050 is approved for use on ullage spaces no larger than 8,000 gallons and tanks of up to 8,000 gallons containing no product. The Alert 1050-X is approved for use on ullage spaces no larger than 24,000 gallons and tanks of up to 24,000 gallons containing no product.

For the Alert 1000, the difference between the temperature of added product and in-tank product shall be no greater than + or - 8.90°F for tanks of 15,000 gallons or less and no greater than for + or -22.9°F for tanks over 15,000 gallons. For the Alert 1000-X, the temperature difference shall be no more than 13.9°F.



The waiting time between filling the tank and the start of the test data collection shall be at least 6 hours for the Alert 1000 or 1050 and 1 hour for the Alert 1000-X or 1050-X. For the Alert 1000, the total time for data collection shall be at least 1 hour for tanks of 15,000 gallons or less and at least 2 hours for tanks over 15,000 gallons. For the Alert 1000-X, the total data collection time shall be at least 2 hours. For the Alert 1050 and 1050-X, the total time for data collection is at least 5 minutes.

Used alone, the Alert 4000 tank test system is approved for use as a method of tank tightness testing specified in **s. COMM 10.61 (3)** for tanks that are 95 percent full, but not overfilled, during the test period.

The Alert 4000 system may be combined with the Alert 1050 or 1050-X ullage test system, or other approved ullage test system, to test tanks that are at least 20 percent full. When an ullage test is used to test the portions of the tank that were above product level during the Alert 4000 test, combined systems meet the requirements of **s. COMM 10.61 (3)**.

The alert 4000 is approved for use with tank sizes no larger than 15,000 gallons.

The tank shall be 20 to 95 percent full during the entire test period. Within these product levels, product may be dispensed from the tank during the test, but may not be added to the tank.

There is no required waiting time between adding product to the tank and the start of test data collection. The total time for data collection shall be at least 24 hours. Testing is conducted while the tank is on operation. A minimum of two hours of non-operation time per 24-hour period is required for a valid test.

All installation, testing and maintenance of this system shall be performed in accordance with the manufacturer's recommendation and all applicable codes. In addition, a qualified technician shall conduct all necessary maintenance and calibration procedures as recommended by the manufacturer to assure continued and proper operation of the system. Inspection must be conducted annually by a qualified technician and all respective documents maintained on site.

This approval will be valid through December 31, 2005, unless manufacturing modifications are made to the product or a re-examination is deemed necessary by the department. The Wisconsin Material Approval Number must be provided when plans that include this product are submitted for review.

### **DISCLAIMER**

The Department is in no way endorsing or advertising this product. This approval addresses only the specified applications for the product and does not waive any code requirement not specified in this document.

Reviewed by: \_\_\_\_\_  
Ahmed Ghalib,  
Code Consultant

Approval Date: \_\_\_\_\_

Approved by: \_\_\_\_\_

## Hvizdak, Thomas

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**From:** Hvizdak, Thomas  
**Sent:** Thursday, November 10, 2005 6:28 AM  
**To:** Brach, Eric M; Riewe, Thomas V.  
**Subject:** RE: FOOD TREE REPLACEMENT WELL #1

Hey guys,

The main concern I have here is that I'm not aware that they've done any kind of monitoring to assess the affect pumping the second well has had on the aquifer. Since the first well doesn't seem to have any good fractures, monitoring the head level in this well while pumping the second well is not going to give them/us a good indication as to what affect pumping the second well has on the aquifer. The only thing I can conclude so far is that because the head level in the first well was not affected by fracking the second well, it doesn't appear that fracking that well had much affect on the bedrock fractures at any great distance from the well. Eric, do you know if they did any kind of head monitoring in any of the monitoring wells or piezometers at the gas station when they ran their pump test?

They are required to install a pizometer between the source and the new potable wells, but to my recelection, they have not done this. I think they need to assess what affect pumping the second well has on the aquifer and contaminant migration before allowing them to frac the first well. In my opinion, the best way for them to do this (given the current situation) is to install the aforementioned required piezometer and run a pump test in the second well while monitoring the head levels in select MWs and PZs.

You can contact me at home (715/352-2326) if you want to discuss this further.

Tom H.

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**From:** Brach, Eric M  
**Sent:** Mon 11/7/2005 11:42 AM  
**To:** Hvizdak, Thomas  
**Cc:** Riewe, Thomas V.  
**Subject:** RE: FOOD TREE REPLACEMENT WELL #1

Hi Tom,

Hope all is going "according to plan".

If you are able, please get back to me with your ideas concerning the "fracking" of #1 well and/or the drilling of yet a third well in the NW portion of the property. Well #2 looks very good @ 6gpm @ 200 feet for 12 continuous hours. Instead of "fracking" #1 well, we may approve using it for water storage from well #2, then pumping to a series of pressure tanks at the Food Tree. According to Jason Junemann (driller), well #1 is a "dry hole" due to a very tight formation with no apparent fractures. Again, it may make more sense to utilize it for storage.

Thanks  
EB

-----Original Message-----

**From:** Hvizdak, Thomas  
**Sent:** Friday, November 04, 2005 10:32 AM  
**To:** Brach, Eric M  
**Subject:** Out of Office AutoReply: FOOD TREE REPLACEMENT WELL #1

## Hvizdak, Thomas

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**From:** Brach, Eric M  
**Sent:** Monday, November 07, 2005 11:43 AM  
**To:** Hvizdak, Thomas  
**Cc:** Riewe, Thomas V.  
**Subject:** RE: FOOD TREE REPLACEMENT WELL #1

Hi Tom,

Hope all is going "according to plan".

If you are able, please get back to me with your ideas concerning the "fracking" of #1 well and/or the drilling of yet a third well in the NW portion of the property. Well #2 looks very good @ 6gpm @ 200 feet for 12 continuous hours. Instead of "fracking" #1 well, we may approve using it for water storage from well #2, then pumping to a series of pressure tanks at the Food Tree. According to Jason Junemann (driller), well #1 is a "dry hole" due to a very tight formation with no apparent fractures. Again, it may make more sense to utilize it for storage.

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-----Original Message-----

**From:** Hvizdak, Thomas  
**Sent:** Friday, November 04, 2005 10:32 AM  
**To:** Brach, Eric M  
**Subject:** Out of Office AutoReply: FOOD TREE REPLACEMENT WELL #1

I am out of the office from November 1 through December 14, 2005. However, I will be checking my e-mail once or twice a week during this period.

## Hvizdak, Thomas

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**From:** Swimm, David [dswimm@commerce.state.wi.us]  
**Sent:** Monday, November 07, 2005 10:30 AM  
**To:** Hvizdak, Thomas  
**Subject:** Auto Aid Denial

**Attachments:** 110705\_CostCapMod\_Denied.doc



110705\_CostCapMod\_Denied.doc (...)

Hope everything is going well for you.

Please find attached. I will wait until KSA provides documentation that they have finished the work under the bid. Besides, they should not be storing water waste in drums over the winter.



## Hvizdak, Thomas

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**From:** Brach, Eric M  
**Sent:** Monday, November 07, 2005 11:43 AM  
**To:** Hvizdak, Thomas  
**Subject:** FW: FOOD TREE REPLACEMENT WELL #1

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**From:** Riewe, Thomas V.  
**Sent:** Thursday, November 03, 2005 10:33 AM  
**To:** Brach, Eric M  
**Cc:** Putra, Mark F.  
**Subject:** RE: FOOD TREE REPLACEMENT WELL #1

Hi Eric,

As I recall from our conversations several weeks ago -- regarding the possibility of hydrofracturing of replacement well #1 -- you and Tom Hvizdak seemed to be of the opinion that it would be too risky. If my memory serves me correctly, what, if anything has changed your opinions to now think hydrofracturing is a viable option and not so risky? You may have told me in our last conversation, but I don't remember what you may have said.

 *Tom Riewe*

Private Water Systems Section  
Bureau of Drinking Water & Groundwater  
Wisconsin Department of Natural Resources  
(☎) phone: (608) 266-8697  
(☎) fax: (608) 267-7650  
(✉) e-mail: [thomas.riewe@dnr.state.wi.us](mailto:thomas.riewe@dnr.state.wi.us)

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**From:** Brach, Eric M  
**Sent:** Thursday, November 03, 2005 8:14 AM  
**To:** Riewe, Thomas V.  
**Subject:** FOOD TREE REPLACEMENT WELL #1

Good morning Tom,

As a follow-up to our phone conversation the other day regarding us (DNR) allowing fracing of well #1 at the RPs own risk? The project engineer, Dave Grutzik, wants something in writing from us stating same. What think ye? Do we need to confer with our attorneys?

Thanks,  
EB

Mark M. Mejac

STS Consultants, Ltd.

11425 West Lake Park Drive

Milwaukee, WI 53224-3025

Phone: 414-359-3030

Fax: 414-359-0822

Direct: 414-577-1364

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## Hvizdak, Thomas

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**To:** Hvizdak, Thomas  
**Subject:** FW: FOOD TREE REPLACEMENT WELL #1

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 *Tom Riewe*

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(☎) fax: (608) 267-7650  
(✉) e-mail: [thomas.riewe@dnr.state.wi.us](mailto:thomas.riewe@dnr.state.wi.us)

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**From:** Brach, Eric M

**Sent:** Thursday, November 03, 2005 8:14 AM  
**To:** Riewe, Thomas V.  
**Subject:** FOOD TREE REPLACEMENT WELL #1

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Thanks,  
EB

**Hvizdak, Thomas**

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**From:** Giesfeldt, Mark F.  
**Sent:** Thursday, November 03, 2005 12:01 PM  
**To:** DNR\_RR\_STATE  
**Subject:** Team Sponsors

I wanted to take a moment to update you on the latest Team Sponsor changes the RRMT discussed and I decided to implement. They are as follows:

<u>Team</u>	<u>Team Leader</u>	<u>Team Sponsor</u>
Automation	Ed Lynch	John Robinson
Spills	Roxanne Chronert	Bruce Urban*
Petroleum	Lee Liebenstein	Pat McCutcheon*
Dry Cleaners	Terry Evanson	Pat McCutcheon
Manuf. Coal Gas	John Feeney	Walt Ebersohl*
Land Recycling	Michael Prager	Darsi Foss
Outreach	Laurie Egge	Darsi Foss
Standards & Streamlining	Jane Lemcke	Mark Gordon
Site Assessment	Mike Netzer	Mark Gordon*
Ability to Pay	Shelley Fox	Bill Evans
Contaminated Sediments	Margaret Brunette+	Mark Giesfeldt++

**Footnotes:**

- \* New Assignment
- +Program Representative
- ++ RRMT Contact

## Hvizdak, Thomas

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**From:** Brach, Eric M  
**Sent:** Friday, October 14, 2005 8:38 AM  
**To:** Hvizdak, Thomas  
**Subject:** FW: Food Tree Replacement Well Construction

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**From:** Riewe, Thomas V.  
**Sent:** Monday, October 10, 2005 3:16 PM  
**To:** Brach, Eric M  
**Cc:** Putra, Mark F.; Ingram, Barbara J; Hvizdak, Thomas  
**Subject:** Food Tree Replacement Well Construction

Hi Eric,

As we discussed last week, Juneman Well Drilling constructed the second Well Comp. replacement well on the triangular parcel west of both Hwy 34 and the Food Tree contamination site. This second well was drilled toward the north side of this parcel, some distance to the west of the Hwy and therefore a significantly greater distance away from the Food-Tree than the first well attempt, which is near the south side of the parcel and close to the Hwy.

You indicated the drillers took careful watch -- for evidence of potentially available groundwater -- as they drilled the hole down into the crystalline bedrock formation, to the 500-foot depth. They found water at or just below the 35-foot depth and again near a rock fracture, at about the 58-foot depth. From the 58 foot-depth, all the way down to the bottom of the hole -- at the 500-foot depth -- there was virtually no evidence of available water.

They now want to know how to proceed with the completion of this well. i.e how deeply to case and cement-grout it and whether or not to hydrofracture the bedrock hole.

I discussed this situation with Mark Putra and have come to the following conclusions:


- This well should be cased and cement-grouted to at least the 55-foot depth. I do not feel comfortable allowing the well to be cased only to the 30-34 foot depth, i.e. to attempt to 'use' the water from the fractured zone at about the 35-foot depth. We initially specified -- in the Well Comp. award letter -- 100 feet of cement-grouted casing, so reducing the specification that significantly, in my mind, is just too risky.
- If you and Tom Hvizdak feel O.K. with hydrofracturing this new drillhole -- below the 55-foot depth -- i.e. you do think the hydrofracturing process poses an unacceptable hazard that could allow the VOC contamination plume to migrate over from the "Food Tree property" -- then you can tell the driller to go ahead with that. The hole should be "fracked" from the bottom-up, in stages, if possible. The packer should only be raised up the hole to a depth as far as necessary to obtain an adequate quantity of safe, uncontaminated groundwater -- and, of course, the packer must not be extended up into the casing.


Hope this answers your questions. If not, let me know. TVR

 **Tom Riewe**

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 e-mail: [thomas.riewe@dnr.state.wi.us](mailto:thomas.riewe@dnr.state.wi.us)

## Hvizdak, Thomas

---

**From:** Brach, Eric M  
**Sent:** Thursday, September 29, 2005 10:23 AM  
**To:** Hvizdak, Thomas  
**Subject:** FW: Rudolph well

-----Original Message-----

**From:** Dave Grutzik [mailto:dgrutzik@cwengineers.com]  
**Sent:** Thursday, September 29, 2005 9:26 AM  
**To:** Brach, Eric M  
**Cc:** Pamela Schaefer  
**Subject:** Rudolph well

Eric: Per our previous phone conversation, Junneman well drilling will begin drilling the second well for the food tree project. I have obtained the necessary corp approval.

I have contacted NRP for possible water testing on well no. 2 next week.

The second well will be drilled with 40 feet of casing, & the annulus will temporarily grouted with bentonite. The well will be drilled to a 500 foot depth. After test pumping, the casing depth will be analyzed. Final casing depth will be determined based on the characteristics of the well. It is probable that the second well will have 40 feet of casing. We want to make sure that the project has an adequate water supply.

I am going duck hunting in South Dakota starting this afternoon through next week. If you need correspondence from my office, contact Dr. Dave Ozsvath of our office. Dave is a hydrogeologist & is familiar with the project. Daves' e-mail is dozsvath@cwengineers.com


## Hvizdak, Thomas

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**From:** Kafka, Terence  
**Sent:** Wednesday, September 28, 2005 2:06 PM  
**To:** Brach, Eric M; Hvizdak, Thomas; Chris.K.Knotts@mvp02.usace.army.mil;  
mkrzykowski@co.wood.wi.us  
**Subject:** Brar WQC (IP-WC-2005-72-0595WC)



IP-WC-2005-72-05  
95CW\_\_Federal\_...

 Terence M. Kafka  
Water Management Specialist  
Wisconsin Department of Natural Resources  
473 Griffith Ave.  
Wisconsin Rapids, WI 54494

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(🌐) url: <http://dnr.wi.gov/org/water/fhp/waterway/>



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

Jim Doyle, Governor  
Scott Hassett, Secretary

Place Holder DNR Address Line 1  
473 Griffith Street  
Wisconsin Rapids, Wisconsin 54494  
Telephone 715-421-7815  
FAX 715-421-7830

September 28, 2005

IP-WC-2005-72-0595CW  
Corps # 2005-2106-CKK

Inderbans Brar  
1809 Savannah Way  
Waunakee, WI 53597

Dear Mr. Brar:

The Department of Natural Resources has evaluated your request for water quality certification pursuant to Section 401 of the federal Clean Water Act and Chapter NR 299, Wisconsin Administrative Code to construct a fill pad for a well site. This project affects 0.088 acres of wetlands.

Our records indicate your project is located in the SW¼, S20, T23N, R6E, Town of Rudolph, Wood County.

Your application is complete, and the Department has determined that this activity complies with the conditions of the Corps general permit and state water quality certification. One of the conditions of this permit is that you shall allow Department personnel reasonable entry and access to the site to inspect the discharge for compliance with certification and applicable laws. All fill material associated with the Water Quality Certification Permit (IP-WC-2004-72-0337CW) issued in 2004 shall be removed and deposited on an upland location.

You are responsible for obtaining any permit or approval that may be required for your project by local zoning ordinances or by the U.S. Army Corps of Engineers before starting your project.

You should also obtain any required wetland, grading or similar permits from your local Zoning office prior to commencing this project.

No further information is required of you before you begin your project. Please keep this letter as a confirmation of your contact with us.

Sincerely,

Terence M. Kafka  
Water Management Specialist

cc: Mr. Chris Knotts, U.S. Army Corps of Engineers  
Mr. Eric Brach, DNR Water Supply  
Mr. Tom Hvizdak, DNR Hydrogeologist  
Mr. Marvin Krzykowski, Wood County Zoning Administrator  
Mr. Dave Grutzik, CWE, 5707 Schofield Ave., Weston, WI 54476





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Scott Hassett, Secretary  
Scott Humrickhouse, Regional Director

Wisconsin Rapids Service Center  
473 Griffith Avenue  
Wisconsin Rapids, Wisconsin 54494  
Telephone 715-421-7800  
FAX 715-421-7830

PROJECT: Food Tree 2001 Release REFERENCE #: 03-72-284956  
PERSON CONTACTED: Pam Schaefer COMPANY/AGENCY: Amg  
PHONE #: Inconis DATE: 9/28/05 TIME: 13:50

Topic: \_\_\_\_\_

• 1<sup>st</sup> Well Cased to 100' → No Water

• 2<sup>nd</sup> Well Is Going In This Week

- Point of Contention, They want to hydro frac, DG does not want it. → I told her she needs to talk to Eric Bruch & Tom Reine
- Joe Renuille is pushing for spills agreement → I told he - I was getting pressured too. Pam brought up that they're having problems with water production in the new wells. I told her there's a clause in the agreement for this situation allowing for add'l time. Pam said that the wording was too loose and someone could say that they should've known that they'd have trouble getting water and adjusted to deal with it.

CC:

J-HM

Tom Hvizdak  
Hydrogeologist

# Dakota Intertek Corp.

16600 W. National Ave, New Berlin, WI 53151  
Phone: 414.507.5571 Fax: 262.560.1963  
E-mail: Jfassbender@DakotaIntertekCorp.com

September 25, 2005

RECEIVED  
WI DEPT OF NATURAL RESOURCES

SEP 27 2005

WI RAPIDS SERVICE CENTER  
WI RAPIDS, WI

Tom Hvizdak  
Wisconsin Department of Natural Resources  
473 Griffith Avenue  
Wisconsin Rapids, WI 54494

RE: Proposal: Food Tree Convenience Store Passive Diffusion Bag  
Sampler Project

Dear Tom:

Thank you for the opportunity to respond to the Wisconsin Department of Natural Resources' (WDNR) request for proposal for the Food Tree Convenience Store Passive Diffusion Bag Sampler Project, dated August 24, 2005. I am certain that we have assembled a team of professionals whose background, experience, and qualifications will provide the WDNR with the high-quality environmental assistance and legal testimony support required to successfully carry out this project. My own prior relationship with the WDNR as well as the experiences of the other members of the team makes us particularly cognizant of the WDNR's standards of excellence for environmental projects. We will meet or exceed these standards for work conducted under this contract.

Dakota Intertek Corp. (Dakota) staff have a reputation for technical excellence in project management/project coordination especially with respect to meeting the goals of project on time and on budget. Our reputation is especially strong for projects such as this where multiple parties are involved and communication is critical. Our Staff have performed similar data collection and evaluation for other clients including the Milwaukee Metropolitan Sewerage District, FF/NN Landfill PRP group, and previous projects for the WDNR. Our commitment to your project is demonstrated by the staff we are proposing including myself as Project Manager and Don Callen as Quality Manager.

Tom Hvizdak  
Proposal: Food Tree PDB Sampling Project  
Page 2

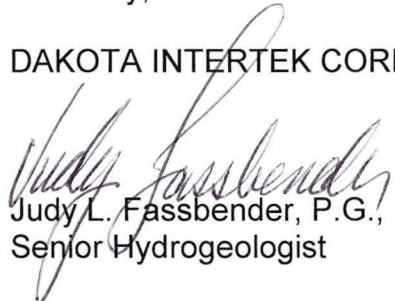
Key to our approach for completing the investigation is our past experience with using Passive Diffusion Bag Samplers, evaluating data collected from fractured rock sequences and previous experience working with the Wisconsin Department of Natural Resources. Dakota's quality service and past experience will allow the WDNR to receive the highest quality data at the lowest overall cost. We also have experience providing expert testimony, should that be required in support of the WDNR at some point in the future.

We know our team will develop numerous additional ideas and approaches to improve efficiency, enhance data collection, and reduce investigation expenses for the WDNR. I am convinced that our technical approach and methodology, innovative investigation technologies, knowledge of applicable state and local rules and regulations, and organizational structure will provide the WDNR with the highest quality environmental services while continuing to provide excellent value.

Please contact me if you have any questions regarding this proposal at (414) 507-5571. I look forward to the opportunity to work with you on this project.

Sincerely,

DAKOTA INTERTEK CORP.



Judy L. Fassbender, P.G., P.H.  
Senior Hydrogeologist

9/29/05  
Called Maria, she  
said she'll start  
routing the contracts  
around this afternoon

TJ



RECEIVED  
WI DEPT OF NATURAL RESOURCES

SEP 27 2005

WI RAPIDS SERVICE CENTER  
WI RAPIDS, WI

# **PROPOSAL FOR FOOD TREE CONVENIENCE STORE PASSIVE DIFFUSION BAG SAMPLER PROJECT**

Prepared For

Tom Hvizdak  
Wisconsin Department of Natural Resources  
473 Griffith Avenue  
Wisconsin Rapids, WI 54494

Prepared By:

Dakota Intertek Corp.  
16600 W. National Avenue  
New Berlin, WI 53151  
414.507.5571

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# 1.0 INTRODUCTION

The August 25, 2005 Scope of Work for the Food Tree Convenience Store Passive Diffusion Bag Sampling Project provided a brief description of the project as follows:

The scope of work sets forth the requirements for conducting video logging and water monitoring in potable wells in the vicinity of the Food Tree site, located at 1759 Greenfield Avenue, in the NE¼, Section 32, T23N, R6E, Township of Rudolph, Wood County.

The study area consists of 4 potable wells located down gradient from the Food Tree convenience store. The wells were all impacted by a petroleum-related release from the Food Tree and are currently not in use. Potable and bulk water is currently being provided to the residences.

A summary table of the VOC analysis results for water samples collected from three of the wells included in the study is included as Attachment A to the scope of work. The fourth well has never been sampled.

The geology beneath the study area consists of 4 to 10 feet of silty sand overlying fractured granitic bedrock.

The potable wells included in the project are all cased into the underlying bedrock.

One assumption for this project is that the vertical migration within the well is negligible.

Site specific information is available in the DNR case files for the Food Tree site (BRRTS #03-72-000555 & #03-72-284956).

Dakota Intertek Corp (Dakota) staff understand the intricacies of sample collection using Passive Diffusion Bag Samplers and related data analysis. Dakota staff also understand Wisconsin Department of Natural Resources' (WDNR) need to have technically excellent data collected and presented in a timely and cost effective manner. Dakota is pleased to present the WDNR with this proposal which we believe will provide you with an exceptional work product, while at the same time using innovative approaches to optimize data collection efforts to save you money.

This proposal has been divided into eight sections. Section 2.0 presents a summary of our understanding of the project requirements. Section 3.0 briefly describes our project approach, including our ideas for optimizing data collection to minimize project costs. The benefits to be gained through using the proposed innovative technology is also summarized in this section. A summary of our

project management approach is presented in Section 4.0. Section 5.0 highlights our firm's qualifications, followed by a summary of the key employee qualifications in Section 6.0. Section 7.0 presents our proposed subcontractors and a summary of their qualifications. Section 8.0 presents our schedule. Finally, Section 9.0 summarizes our cost estimate.

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## 2.0 PROJECT REQUIREMENTS

The following section describes Dakota's understanding of the project requirements. The project requirements have been designed to meet the project goals. Dakota understands the site investigation goals include:

- Describe the fracture frequency and identify any fracture zones that may facilitate preferential groundwater flow by video-logging the entire depth of three of the potable wells.
- Using the laboratory results for water samples collected from Passive Diffusion Bag Samplers, determine the vertical gradient of the contaminant plume in the bedrock aquifer and identify any fracture zones acting as a preferred pathway for contaminant migration.

Dakota's project understanding is based on the Scope of Work provided by the WDNR dated August 24, 2005, and incorporates the proposed Dakota project approach presented in Section 3.0. In order to accomplish the project goals and requirements outlined by the WDNR, Dakota will complete a Work Plan that includes a timeline for all tasks to be completed as well as specific details about the work to be undertaken and a Waste Handling Plan. Dakota will obtain access agreement from the property owners for continued access to the wells for WDNR investigation activities. Throughout the project, Dakota will furnish portions of the reports or other information or data relating to this work as is required to enable the WDNR to carry out or proceed with related phases of the project or needed so the WDNR can provide Dakota with information needed to proceed with the work. A Draft and Final report will be submitted to the WDNR. In addition, Dakota understands that we may be called upon to provide legal testimony.

Dakota's understanding of the requirements of each of these tasks is described below.

### Work Plan

Dakota will prepare and submit a draft Work Plan within 30 calendar days of contract award. The Work Plan will be based on the review and understanding of this Scope of Work. The Work Plan will include both Sampling and Analysis Plan and Quality Assurance/Quality Control Plan components to follow NR 716.09(2)(f), Wis. Adm. Code, and will describe, with sufficient detail, the investigative techniques to be performed. The sampling and analysis requirements of NR 716.13, Wis. Adm. Code will be met.

The plan will include figures which identify the proposed horizontal sampling locations, including the Food Tree Convenience Store location. The plan will identify sampling objectives, sample location and frequency, sample designation,



analytical methods and method detection limits, and sampling equipment and procedures.

The quality control and quality assurance procedures will be described and shall meet the requirements of ch. NR 716.13, Wis. Adm. Code. These procedures will include, but not be limited to, sample preservation techniques, chain-of-custody, and shipping procedures. The plan will describe methods for preventing cross-contamination among samples and identify decontamination procedures used for sampling equipment. The plan will provide information on replicate samples, detection limits, field and trip blanks, and matrix spike analysis. The plan will also identify the proposed laboratory to be contracted for analyses.

Upon WDNR approval of the Draft, Dakota will make any necessary changes and provide 2 copies of a Final Work Plan to the Project Manager within 14 days of receiving comments on the Draft plan. The Work Plan will include a time line for all tasks to be completed as well as specific details about the work to be undertaken based on the Scope of Work.

A Site Safety Plan will also be developed as part of the Work Plan and will be followed by Dakota and our subcontractors. This plan will reference all current Occupational Health and Safety Administration (OSHA) standards for worker safety. Dakota is responsible for site safety of its personnel, subcontractors, and any observers. Dakota is not responsible for liability, claims, and costs arising from activities of WDNR personnel. Dakota understands receipt of this plan will be acknowledged, but not approved or disapproved by the WDNR project manager.

#### Waste Handling Plan

Dakota will submit a waste handling plan for all potential wastes to be generated during investigation at the site. The plan addressing investigative waste management will be developed and followed according to the General Interim Guidelines for the Management of Investigative Wastes. This plan will meet the requirements of NR 716.09, Wis. Adm. Code. As required by WDNR, hazardous wastes will be handled through the State's Hazardous Waste contractor, Onyx Environmental Services. Dakota will be responsible for proper collection, containerization/storage, transportation, and treatment or disposal of investigative waste. Dakota will take into consideration the Interim Policy for Promoting the In-State and On-site Management of Hazardous Wastes in the State of Wisconsin.

#### Access Agreements

Dakota will obtain access agreements from the property owners (as necessary) for continued access to the potable wells for the WDNR related investigation activities. The standard WDNR access permission form will be used to secure access. The access agreements will be submitted to the WDNR.

### Video Logging Report

Dakota will prepare an Interim Report after completion of video logging the wells and prior to installing the PDB samplers in the wells. The Interim Report will be submitted to the WDNR Project Manager, Tom Hvizdak, in the Department's Wisconsin Rapids Service Center located in Wisconsin Rapids and 2 copies will be forwarded to the Remediation & Redevelopment ("R&R") Bureau in Madison. The Interim Report will include copies of the video-logs and recommendations regarding the placement of the PDB samplers. The Interim Report will be submitted within 30 days after the completion of the video-logging.

### Passive Diffusion Bag Sampling

A minimum of four rounds of ground water samples will be collected from four potable wells near the Food Tree Store. Initially, four PDB samples are planned for collection from each of three of the wells per round. The fourth well will have one sample collected per round as the well is only 26 feet deep. The number of samples collected per well in addition to the depth of the sampling interval will be determined based on the results of the video-logging. Field work will begin within 14 calendar days of approval of the final Site Investigation Work Plan. All groundwater samples will be analyzed for PVOCs, EPA Method 5030/8021 (unless another method is approved by the WDNR project manager). Appropriate quality control samples, including trip blanks, duplicate and matrix spike/matrix spike duplicate samples will be collected. The analyses of samples, where applicable, will be performed in accordance with the requirements of NR 700.13 and 716.13, Wis. Adm. Code. All samples to be analyzed at a laboratory will be analyzed by a laboratory certified under ch. NR 149 for the appropriate analytical test category. Sample collection will be performed in accordance with WDNR guidelines and requirements. Transmittal of all results for residential water supplies will be performed by or with the approval of the WDNR project manager.

### Coordination with WDNR

Dakota will confer with the WDNR during the progress of the work, and will prepare and present such information and studies as may be pertinent and necessary or as required by the WDNR to enable it to pass judgment on the features of the work. Dakota will make such changes, amendments, or revisions in the detail of the work as may be required by the WDNR.

Dakota will notify the WDNR project Manager at least 48 hours prior to the start of any field activities.

At the request of the WDNR, and during the progress of the work, Dakota will furnish portions of reports, or other information or data relating to this work under this contract as may be required to enable the WDNR to carry out or to proceed

with related phases of the project not covered by this contract, or which may be necessary to enable the WDNR to furnish information to Dakota upon which to proceed further with the work.

### Data Report

Dakota will prepare a Draft and a Final Data Report. The report will include figures indicating vertical contaminant isoconcentration contours for the parameters that most accurately depict the degree and extent of the contamination. The concentration for that parameter will be presented for each well. The report will also include technical data such as video tapes, well logs and construction forms, water level measurements, groundwater sampling results including summary statistics, chain-of-custody documentation, etc. Two copies of both the Draft and Final Data Report will be submitted to the WDNR Project Manager, Tom Hvizdak, in the Department's Wisconsin Rapids Service Center and 2 copies to Remediation & Redevelopment ("R&R") Bureau in Madison. The Draft will be submitted within 30 days of the receipt of the final analytical data. The final report will be submitted within 14 calendar days after Dakota receives WDNR comments on the draft report. The reports will be printed on recycled paper and both sides of the pages will be used whenever possible.

### Legal Testimony

We understand that Dakota may be called upon to provide testimony in a legal action. Any costs associated with such testimony will be contracted for separately.

### Progress Reports

Progress reports will be submitted with each reimbursement request that details the accomplishments for the time period of the request. These reports will describe activities undertaken during each time period. These will include but not be limited to: material review, subcontractor bidding, surveys performed, site preparation, samples collected, problems encountered and/or resolved, progress on report preparation, etc.

In addition, Dakota will provide the WDNR with a minimum of weekly verbal or e-mail progress reports during the active periods of the project. The weekly progress reports will provide brief updates to the WDNR project manager of the status and progress of the project, along with any possible concerns and proposed solutions.

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## 3.0 PROJECT APPROACH

This section presents a brief summary of the Dakota project approach. The approach has been designed to address the site investigation goals. Dakota understands the site investigation goals include:

- Describe the fracture frequency and identify any fracture zones that may facilitate preferential groundwater flow by video-logging the entire depth of three of the potable wells.
- Using the laboratory results for water samples collected from Passive Diffusion Bag Samplers, determine the vertical gradient of the contaminant plume in the bedrock aquifer and identify any fracture zones acting as a preferred pathway for contaminant migration.

The following is a brief summary of the Dakota plan for completing the site investigation and preparing the sampling activities and reporting. The complete project approach will be presented in the Work Plan for this project, as outlined in Section 2.0.

### General Project Information

There are 4 idle potable bedrock wells that will be included in this project. Multiple Passive Diffusion Bag (PDB) samplers will be placed in, and removed from, the wells on a quarterly basis. Three of the potable wells will be video logged to determine placement of the PDB samplers. The fourth well is too shallow to warrant video logging (approximately 26 feet deep) and the PDB sampler will be placed near the bottom of this well. Two of the potable wells (Stimac & Schlotman wells) contain a down-hole pump, which must be removed to facilitate video logging and PDB monitoring.

### Video Taping the Potable Wells

Three of these potable wells will be video taped to identify high-density fracture zones and highly weathered zones within each well. A video log and a written fracture frequency log of these wells are required. A measuring tape must be installed in the well prior to video-logging it to document the depth of the well as it's being logged. The well logs for the 3 wells that will video logged are included in Attachment A of the Scope of Work.

### Passive Diffusion Bag Sampling

Conceptual models of the subsurface must reflect not only the transport process, but also the distribution of contaminants. This makes it possible to consider both

current and future contaminant impacts under different remedial scenarios, and to identify the mass most likely to require cleanup.

Therefore, after zones of fracture flow have been identified, passive diffusion bag (PDB) samplers will be installed in the four potable wells identified for this investigation. The PDB samplers will be used to collect VOC samples at discrete intervals identified as the most likely to be productive based on the video logging evaluation. Samples will be collected in accordance with the USGS guidance *User's Guide for Polyethylene-Based Passive Diffusion Bag Samplers to Obtain Volatile Organic Compound Concentrations in Wells* (Water-Resources Investigations Report 01-4060).

The PDB samplers were selected because they can be deployed at discrete intervals in the open borehole. This method is superior to sample pumps or bailers for this application because those samples would likely draw water from numerous fractures, possibly biasing the sample. PDB samplers also eliminate the generation of purge water and are significantly less expensive than standard sampling methods. Results from this sampling will confirm which of the identified fractures are contributing VOC contamination in the water supply well.

On average, there will be 4 PDB samplers placed in each of the three videotaped wells at any one time. The placement of the PDB samplers shall be determined using the results from the video and fracture frequency logs, and concurrence regarding the placement of the samplers must be obtained from the WDNR Project Manager prior to placing the samplers in the wells. The fourth potable well is a shallow bedrock well and only one PDB sampler placed near the bottom of the well every quarter is required in this well.

Passive Diffusion Bag (PDB) samplers shall be installed and removed on a quarterly basis. PDB samplers shall remain in the well for approximately 90 days before sampling. Water from the PDB sampler shall be placed into pre-preserved VOA vials immediately after the sampler is removed from the well.

### Chemical Analyses

The analyses of samples shall be performed in accordance with the requirements of Ch. NR 716 Wis. Adm. Code. Dakota will collect and analyze water samples collected from the PDB samplers to determine PVOC contaminant concentrations in the water. All water sample results shall be reported in units of ug/L. Water samples shall be analyzed for the presence of PVOCs.

### Technical Data Report

All technical data such as video tapes, video logs, geologic logs, fracture frequency logs, water level measurements, PDB water sampling results including summary statistics, chain of custody documentation, etc., shall be included in the Data Report. Bedrock property and fracture information shall be presented in

graphic formats. All physical and chemical analytical results and water level measurements shall be presented in tabular format and presented in the report.



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## 4.0 PROJECT MANAGEMENT

The project manager for this project will be Ms. Judy L. Fassbender, P.G., P.H. Ms. Fassbender has directed numerous project for the WDNR, including the Pittsville Municipal Well Contaminant Source Investigation, North Oshkosh TCE source identification investigation, the Better Brite Superfund sites RI/FS/RD/RA in DePere, and the Refuse Hideaway Landfill Superfund site RI/FS in Middleton. This experience has made her extremely familiar with the policies and procedures required to complete work for the WDNR and will allow Dakota to provide unsurpassed customer service. Ms. Fassbender will be responsible for the day-to-day management of the project, coordination with sub-consultants, and project communication. The quality manager for this project will be Mr. Don Callen, Operations Manager at Dakota. Mr. Callen has over 15 years of experience managing complex projects with numerous sub-consultants. Additional information on the project management personnel is provided in Section 6.0, Key Personnel.

Dakota believes that planning and communication are essential to effective project management. Therefore, Dakota will plan a project kick-off meeting via conference call before beginning work on this project. This meeting will be used to clearly communicate project goals to the entire project team, answer questions, and assign responsibilities. Dakota will also hold project team meetings before the implementation of all field activities for all personnel including subcontractors to assure that everyone has a clear understanding of their roles and responsibilities.

Ms. Fassbender will be responsible for communicating progress to the WDNR. She will assure that progress reports are submitted as required, and will telephone or e-mail the WDNR a minimum of once a week when the project is active to provide the WDNR with status updates. Dakota anticipates meeting with the WDNR upon project award, after the video logging is complete, and after submittal of the draft Technical Data Report.

Dakota staff have an excellent reputation for using innovative technologies to investigate environmental contamination. The staff are unsurpassed with respect to outstanding communications during all aspects of projects. Their reputation for completing work on time and under budget while exceeding project goals is well known. We look forward to providing this level of project management and quality service to the WDNR on this project.



## 5.0 FIRM QUALIFICATIONS

Dakota Intertek Corp. is an environmental contracting and technical services company that is MBE, EBE, DBE, and SBA 8(a) certified. Established in 1994, our honest, and prompt service has ensured our continued success. Since 1997, Dakota has established itself as a major environmental contracting force in Wisconsin. Dakota's highly trained crews have successfully completed over 1,500 environmental technical services and construction projects with total worth in excess of \$25 million dollars.

Dakota staff have a proven track record of managing large complex projects for numerous clients including the Wisconsin Department of Natural Resources. Ms. Fassbender managed several site investigations and remediations for the WDNR while working for previous employers. Dakota staff members' project management responsibilities have included:

- Collection of groundwater samples using Passive Diffusion Bag Samplers,
- Conducting hydrogeologic characterization studies and environmental site assessments,
- Providing hydrogeologic oversight and onsite management for soil and groundwater remediation,
- Managing four Superfund sites in Wisconsin
- Coordination of, and participation in, field data acquisition,
- Evaluation of geologic, hydrogeologic, and chemical data,
- Technical report and feasibility study preparation,
- Work plan/cost proposal preparation, and
- Promotion of good client relations.

Our clients include: Federal government agencies (US EPA, US Army Corps of Engineers, US Navy, HUD, Veterans Administration, Regional and Municipal entities (Wisconsin Department of Natural Resources, Wisconsin Department of Transportation, Milwaukee City and County, City of Madison, Milwaukee Metropolitan Sewerage District), as well as a wealth of Industrial and Private clients such as Mitsubishi, Ameritech, and WI Energy Corporation.

Our commitment to quality, technical excellence, and innovative approaches allows us to provide our clients with outstanding solutions to their environmental needs. Our commitment to client service and communication is unsurpassed. Dakota is looking forward to applying our management skills to finding solutions to your environmental needs.

Dakota' Mission - Dakota's Mission is to keep our client's satisfaction our top priority. At Dakota, we pride ourselves in establishing trust between our clients and ourselves through long-term effort; that is why we have built the concept of "trust" into the core of our mission statement.



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## 6.0 KEY PERSONNEL AND PROJECT ROLES

The project manager in charge of this project will be Ms. Judy L. Fassbender, P.G., P.H. Ms. Fassbender has nearly 20 years of experience directing complex projects with multiple stakeholders. Ms. Fassbender has directed numerous projects for the WDNR. This experience has made her extremely familiar with the policies and procedures required to complete work for the WDNR and will allow Dakota to provide unsurpassed customer service. Ms. Fassbender will accept personal responsibility for the ongoing satisfaction of the WDNR throughout the course of this contract.

**Ms Fassbender has past experience using Passive Diffusion Bag Samplers**, including previous use on another project for the WDNR in Pittsville, Wisconsin. The Pittsville work had many similarities to the Food Tree site, including visible identification of fracture zones in granitic rock to determine placement of the PDB samplers, multiple sampling intervals in a single well, and coordination of pump removal prior to video logging and sampling activities.

The quality manager for this project will be Mr. Don Callen. With over 14 years of experience, Don has directed Dakota's technical services department since 1997. His responsibilities include: all facets of Technical Services Department Management, Environmental Consulting, Design, Project Management, and Regulatory Agency Liaison. Mr. Callen has managed projects covering the full spectrum of environmental consulting including: remedial system design, plan development & implementation, soil & groundwater modeling, remedial system operation & maintenance, liaison for IDNR, WDNR, USEPA, landfill investigation & closure, Phase I, II, & III ESA, SI/RAP, pilot studies, asbestos & lead inspection, emergency response, first response, and a variety of industrial compliance issues.

Field technical support will be provided by Mr. Paul Grittner. Mr. Grittner is a Geologist and Assistant Project Manager for Dakota. He has five years of professional experience that includes: subsurface investigations, soil sampling, groundwater monitoring (including natural attenuation analysis), quality assurance/quality control, field project documentation, technical report writing, and evaluating geologic and chemical data. Mr. Grittner also assists with universal waste handling and permitting.

We are confident that we have assembled a project team that will exceed WDNR expectations for responsiveness and high quality.





## 7.0 SUBCONTRACTORS

Dakota has selected several highly qualified subcontractors for all required subcontract services. In order to receive the best value for the WDNR, Dakota has solicited three bids for subcontracted services whenever possible. Dakota has selected the following companies to provide subcontract services:

Steve's Plumbing in Wisconsin Rapids will be contracted to provide pump removal and video logging services. Steve's Plumbing is a multi-faceted plumbing company, with professional plumbers and experience logging wells with a down hole camera. Clients receive excellent service due to Steve's personal approach and professional attitude.

EON products will be contracted to provide Passive Diffusion Bag Samplers. EON will provide a complete "out-of-the-box-and-into-the-well" setup. This includes a retrieval system for each well to deploy and retrieve the tethers, compression caps with a hanging system to hold the PDBs suspended in the well, and pre measured attachment point clips to ensure accurate placement of the samplers. They are dedicated to providing professional, quality service using the latest technology available to accomplish the client's mission.

Test America will be contracted to complete the required laboratory analyses. Test America is State of Wisconsin certified and has full state-of-the-art laboratory facilities providing a wide range of analytical analyses. Test America takes great pride in providing multiple levels of data quality review in addition to their analytical capabilities and expertise. In addition to review by project managers, group leaders and analysts, a final data validation team reviews projects on an as need basis. This additional validation ensures that specific data quality objectives are met thereby limiting liability for their clients.

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## 8.0 SCHEDULE

The Work Plan completed by Dakota will include a detailed gant chart presenting a schedule for completing the major elements of the project. The schedule will include projected completion times for submittal of the Work Plan, Hazardous Waste Plan, Interim Video Logging Report, sampling schedule and the draft and final technical data deliverables. Dakota estimates that the initial, presampling phases of this project can be completed within 6 weeks of the notice to proceed, with the four quarterly rounds of sampling to follow.



## 9.0 COST ESTIMATE

Attached is the Dakota cost estimate to complete the scope of work using the proposed approach. The cost estimate itemizes the following for each task: labor (staff position, title, and labor rate), time, materials, travel costs, equipment, and other rental costs. Dakota will hold working meetings with the WDNR at the completion of each project phase. The goal of these meetings will be to confirm WDNR concurrence on the appropriate tasks to be completed during the next phase of the investigation. This project will be billed on a time and materials, not to exceed basis. The WDNR will only be billed for work actually completed for this project.

All reimbursement requests shall be made on the State of Wisconsin Invoice for Professional Service. Requests shall itemize costs following the format:

1. labor (staff position, title, and labor rates)
2. time
3. materials
4. travel costs
5. equipment and other rental costs.

Progress letters will be submitted with each reimbursement request which detail the accomplishments for the time period of the pay request. Dakota understands pay requests submitted without the progress letter will be considered incomplete.

Dakota is confident that our quality service and previous experience will provide the WDNR with the best overall project value. The proposed innovative approaches will allow us to collect high quality data at a reasonable price. Dakota is looking forward to providing the WDNR superior service at an excellent value.

# Private Well PDB Sampling - Wisconsin Rapids

Wisconsin Department of Natural Resources

November 29, 2004

		Task 1	Task 2	Task 3	Task 4	Task 5	Task 6		Total
	Hourly Rate	Work Plan Preparation	Video Log Remove Pump	Initial PDB Sampling	2nd Quarter Sampling	3rd Quarter Sampling	4th Quarter Sampling	Management & Reporting	
<b>Staff</b>									
Hydrogeologist	\$85.00	20 \$1,700.00	24 \$2,040.00	38 \$3,230.00	16 \$1,360.00	16 \$1,360.00	14 \$1,190.00	32 \$2,720.00	160 Hours \$13,600.00
<b>Rebillables</b>									
Vehicles			\$110.40	\$220.80	\$110.40	\$110.40	\$110.40		\$662.40
Field Equipment/Supplies		\$50	\$50.00	\$100.00	\$50.00	\$50.00	\$50.00	\$200.00	\$550.00
Subsistence			\$150.00	\$150.00	\$150.00	\$150.00	\$150.00		\$750.00
Subtotal Rebillables		\$50.00	\$310.40	\$470.80	\$310.40	\$310.40	\$310.40	\$200.00	\$1,962.40
<b>Outside Services</b>									
Pump Removal/Video Well			2,400.00						\$2,400.00
Analytical Laboratory				\$675.00	\$675.00	\$675.00	\$675.00		\$2,700.00
PDB Sampler Costs				\$1,000.00	\$350.00	\$350.00	\$350.00		\$2,050.00
Waste Disposal									\$0.00
Subtotal Outside Services		\$0.00	\$2,400.00	\$1,675.00	\$1,025.00	\$1,025.00	\$1,025.00	\$0.00	\$7,150.00
10% Mark-up on Outside Services		\$0.00	\$240.00	\$167.50	\$102.50	\$102.50	\$102.50	\$0.00	\$715.00
<b>Total Estimated Budget</b>		\$1,750.00	\$4,990.40	\$5,543.30	\$2,797.90	\$2,797.90	\$2,627.90	\$2,920.00	\$23,427.40



DATE: September 1, 2005

FILE REF: RR/3

TO: Marie Stewart

FROM: Tom Hvizdak - WCR



FILE COPY

SUBJECT: "Food Tree" Passive Diffusion Bag sampling

To my knowledge Judy Fassbender, currently with Dakota Environmental, is the only consultant in this State that has any experience using Passive Diffusion Bag (PDB) samplers. Ms. Fassbender was the consultant the State hired to conduct vertical profiling in Pittsville's Municipal Well #6 using PDB samplers. Therefore, I would like to use Dakota Environmental to conduct the Food Tree PDB sampling project.



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Scott Hassett, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2621  
FAX 608-267-3579  
TTY Access via relay - 711

August 29, 2005

Ms Judy Fassbender  
Dakota Environmental  
16600 W. National Ave.  
New Berlin, WI 53151

Subject: Request for Proposal – “Food Tree” Video Logging

Dear Ms. Fassbender:

We are pleased to inform you that your firm has been selected to submit a Proposal for professional services for the video logging and monitoring of 4 potable drinking water wells in the vicinity of the Food Tree Convenience Store, located at 1759 Greenfield Ave, Town of Rudolph in Wood County.

Enclosed are the scope of work for the investigation and copies of the Department’s Access Agreement form and the Invoice for Professional Services form. The WDNR Project Manager, Tom Hvizdak, will arrange a pre-proposal site meeting with you.

Please submit 2 copies of a Proposal no later than September 27, 2005, to the following addresses:

Department of Natural Resources  
Attn: Marie Stewart RR/3  
101 S. Webster Street  
P.O. Box 7921  
Madison, WI 53707-7921  
(One copy)

Department of Natural Resources  
Attn: Tom Hvizdak  
473 Griffith Ave.  
Wisconsin Rapids, WI 54494

(One copy)

You can contact Mr. Hvizdak at (715) 421-7850 to answer your questions on the scope of work.  
Thank you for your interest in serving the Department’s needs.

Sincerely,

Marie Stewart, Program Coordinator  
Bureau for Remediation & Redevelopment  
State Funded Response

Enclosure

cc: Tom Hvizdak - WCR, Wis. Rapids.  
Dave Behn – FN/1



**Engineers • Architects • Scientists • Surveyors**

5707 Schofield Avenue  
P.O. Box 107  
Weston, WI 54476-0107  
www.cwengineers.com

Tel 715.359.9400  
Fax 715.355.4199  
Toll-free 800.261.5707  
general@cwengineers.com

Department of Natural Resources  
Waterway & Wetland Regulations  
1300 West Clairemont Ave.  
Eau Claire, WI 54701

Attn: Terry Kafka

Subject: Water Quality Certification  
Food Tree Convenience Store

RECEIVED  
WI DEPT OF NATURAL RESOURCES  
AUG 26 2005  
WI RAPIDS SERVICE CENTER  
WI RAPIDS, WI

Dear Mr. Kafka,

Central Wisconsin Engineers and Architects are working in conjunction with the owners of the above referenced project. This project is the conclusion of an ongoing water contamination problem. The owners have received a permit to fill 0.088 acres of wetlands on the site on July 23, 2004. The permit # is IP-WC-2004072-0337CW, Corps # MVP-2004-2106-CKK.

The Food Tree Convenience Store is located in Wood County, north of the City of Wisconsin Rapids. More specifically, it is located just east of STH "34" and north of CTH "P". In 1990, leaking underground fuel tanks were detected on the property. Eight homes, located north and east of the Food Tree site have private water wells contaminated with fuel byproducts.

Since the first detection of contaminants, the owners of the Food Tree have supplied bottled drinking water to the affected residents. Installing two low capacity wells, up gradient of the contaminant site will provide the affected residents with an alternate safe water supply. The areas up gradient and adjacent to the contamination source are classified as wetlands beyond the roadway toe of slope.

Constructing only the two low capacity wells and associated piping within the wetland area will minimize impact to wetlands. A building with a pressure tank will also be required for this project. The building will be located east of STH "34" on the Food Tree Site. The required water main will be installed via directional bore from the west side of STH "34" to the east side. A temporary gravel access road to the two wells will be constructed off of STH "34". Upon construction of the two wells, the driveway will be removed within road right of way. The proposed roadway will affect less than 0.10 acre of wetlands. See site plan.

In August of 2005, one water supply well was drilled at the previously sited location. The well is constructed to a 500-foot depth with casing set to 100-feet.

The Wisconsin Rapids DNR office has recommended the casing and drilling depth in order to minimize future water contamination risk. Eric Brach is the local drinking water specialist who is monitoring the project.

The recently drilled well has very low water capacity. It is almost dry. The well was drilled to depth & the water blown out of the hole on Monday, August 22. As of noon the next day, some water did migrate into the hole, but the water depth was estimated to be greater than 400 feet. I was on site on Tuesday, August 23, to discuss the situation with Eric Brach.



The parcel of land that the well is drilled on is large enough to accommodate a second well, about 250-feet to the north. Eric has suggested that a second water supply well be drilled on the second site. The casing depth will be determined at the time of the drilling, and will probably be less than 100-feet. Hydrofracing the first well may be approved, depending on the results of the second well.

The entire parcel of property has been classified as a wetland during the initial permit process. During construction of the first drive location, it is noted that the site conditions consist of about 6-inches of black dirt on top of clean sand. The water table is about 2-feet from the surface. Granite bedrock is about 10-feet from the surface.

I am requesting a permit to drill a second well, 250-feet north of the recently drilled location on an exploratory basis. In order to minimize effects on the wetland, I am requesting that the access road to the well be placed on a temporary basis. The existing black dirt will be salvaged, and 6 inches of road base will be placed on the clean sand in order to provide access to the truck mounted drill rig.

If the second well site is not successful, the rock will be removed and the black dirt will be replaced. If the second well is useable, a Water Quality Certification will be obtained through the DNR and Corp of Engineers.

Construction of the second water supply well will proceed as soon as I have resolution on the impacted wetlands. Your cooperation is appreciated. Hopefully, the project will bring closure to the contamination problem that was initially detected in 1990.

Erosion control measures are shown on the site plan and include installation of silt fence adjacent to the affected area. Disturbed areas shall be seeded immediately in an effort to establish vegetation growth.

Enclosed for your review is Form 3500-53, state application for water regulatory permits and approvals.

Please contact me with any questions concerning this project.

Sincerely,



David J. Grutzik, PE

kn/404ltr

cc: Tom Hvizdak, WDNR  
Jeff Morris, Reihnhart Law  
Kris Knotts, COE

PLEASE COMPLETE BOTH PAGES 1 & 2 OF THIS APPLICATION. PRINT OR TYPE. The Department requires use of this form for any application filed pursuant to Chapter 30, Wis. Stats. The Department will not consider your application unless you complete and submit this application form. Personally identifiable information on this form will not be used for any other purpose, but it must be made available to requesters under Wisconsin's open records law [s. 19.31-19.39, Wis. Stats.].

1. Applicant (Individual or corporate name) <b>INERBANS BRAR</b>		Agent/Contractor (firm name) <b>CENTRAL WISCONSIN ENGINEERS</b>	
Address <b>1809 SAVANNAH WAY</b>		Address <b>5707 SCHOFIELD AVENUE</b>	
City, State, Zip Code <b>WAUNAKEE WI 53597</b>	Fire Number	City, State, Zip Code <b>WESTON WI 54476</b>	
Telephone No. (Include area code) <b>680.635.7139</b>	Tax Parcel Number	Telephone No. (Include area code) <b>715.359.9400</b>	

3. If applicant is not owner of the property where the proposed activity will be conducted, provide name and address of owner and include letter of authorization from owner. Owner must be the applicant or co-applicant for structure, diversion and stream realignment activities.

Owner's Name <b>INDERBANS BRAR</b>	Address <b>1809 SAVANNAH WAY</b>	City, State, Zip Code <b>WAUNAKEE WI 53597</b>
---------------------------------------	-------------------------------------	---

4. Is the applicant a business?  Yes  No

If YES, is the permit or approval you are applying for necessary for you to conduct this business in the State of Wisconsin?  
 Yes  No

If YES, please explain why (attach additional sheets if necessary):

5. Project Location **STH 34, NW quadrant at the intersection of**  
 Address **CTH P**  
 Village/City/Town **TOWN OF RUDOLPH**  
 Fire Number \_\_\_\_\_ Tax Parcel Number \_\_\_\_\_  
 Waterway **N/A**  
 County \_\_\_\_\_  
 Govt. Lot \_\_\_\_\_ OR SW 1/4, SW 1/4, of Section 20,  
 Township 23 North, Range 6 (East) (~~West~~)

6. Adjoining Riparian (Neighboring Waterfront Property Owner) Information

Name of Riparian #1 <b>Christine &amp; James Bushmaker</b>	Address <b>5641 STH 34</b>	City, State, Zip Code <b>Rudolph WI 54475</b>
Name of Riparian #2	Address	City, State, Zip Code

7. Project Information (Attach additional sheets if necessary)

(a) Describe proposed activity (include how this project will be constructed) **Construction of one low capacity water well. Construction will include installation of a gravel access drive.**

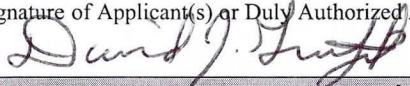
(b) Purpose, need and intended use of project **Construction of the low capacity well will create an alternate water supply for residential homes affected by contaminated ground water**

(c) I have applied for or received permits from the following agencies: (Check all that apply)  
 Municipal  County  Wis. DNR  Corps of Engineers

(d) Date activity will begin if permit is issued **Sept 1, 2005**; be completed: **October 1, 2005**

(e) Is any portion of the requested project now complete?  Yes  No  
 If yes, identify the completed portion on the enclosed drawings and indicate here the date activity was completed:

I hereby certify that the information contained herein is true and accurate. I also certify that I am entitled to apply for a permit, or that I am the duly authorized representative or agent of an applicant who is entitled to apply for a permit. Any inaccurate information submitted may result in permit revocation, the imposition of a forfeiture(s) and requirement of restoration.

Signature of Applicant(s) or Duly Authorized Agent 	Date Signed <b>August 24, 2005</b>
---	---------------------------------------

LEAVE BLANK - FOR RECEIVING AGENCY USE ONLY		
Corps of Engineers Process No.	Wisconsin DNR File No.	
Received By	Date Received	Date Application Was Complete

INFORMATIONAL REQUIREMENTS FOR PRACTICABLE ALTERNATIVES ANALYSIS

All of the questions must be answered in detail and supported with documentation (attach additional sheets if needed).

I. Background/Description of Project

A. Describe the purpose and need for the project

This project will construct one low capacity water well on the affected site. The well will create an alternate water supply for 8 residential home affected by contaminated groundwater.

Source of contamination has been identified as a leaking fuel tank from the Food Tree Convenience Store.

B. Is your project an expansion of existing work or is it new construction? Explain.

This project is part of an ongoing environmental investigation since the discovery of the contaminated water in 1990. The site was selected by owners representatives and DNR personnel as being the logical location for an alternate water supply. The proposed site is upgradient of the contamination site.

C. When did you start to develop a plan for your project?

Development of construction plans began in the spring of 2004. The preliminary construction plans re a result of ongoing environmental investigation since 1990.

D. Explain why the project must be located in or adjacent to wetlands.

An alternate water supply must be located up gradient of the ground water contamination source. All areas up gradient of the contamination site have been identified as wetlands.

II. Alternatives (your analysis should address the following questions).

A. How could you redesign or reduce your project to avoid the wetland, and still meet your basic project purpose?

In lieu of installing alternate water supply wells, the project area could be served with municipal water from the City of Wisconsin Rapids. A watermain extension to the Wisconsin Rapids City limits would be required.

B. Other sites

1. What geographical area(s) was searched for alternative sites?

Areas up gradient of the contaminate source.

2. Were other sites considered?

Yes, a site south of CTH P was a possible site. Site also classified as a wetland.

3. Have you sold any lands in recent years that are located within the vicinity of the project? If so, why were they unsuitable for the project?

No

- C. For each of the alternatives you identified, explain why you eliminated the alternative from consideration (include cost comparisons, logistical, technological, and any other reasons).

Alternative A was eliminated based on high construction cost and public resistance to annexing into the City of Wisconsin Rapids.

Alternative B was eliminated based on high construction cost and potential impacts of wetlands located in surrounding areas.

- D. What are the consequences of not building the project? (include social and economic consequences):

The consequences of not building the project are continued hardships placed on private residents due to contaminated drinking water. The health of the affected residents will be improved by providing a safe alternative water supply.

If you have chosen an alternative that would result in wetland impacts:

- E. Summarize why your alternative was selected.

The project site was selected based on the fact that it is up gradient to the source of contamination. All property up gradient and adjacent to the project site contain wetlands.

- F. Explain what you plan to do to minimize adverse effects on the wetlands during your project (e.g. erosion control, best management practices, setbacks, etc.).

Adverse effects of the wetlands will be minimized by constructing only the well and associated piping. The building required for the pressure tank will be located east of STH 34 and will not adversely affect any wetland.



**WELL SITE PLAN  
GREENFIELD AVENUE  
NON-COMMUNITY WATER SUPPLY  
IMPROVEMENT PROJECT**

REVISIONS:

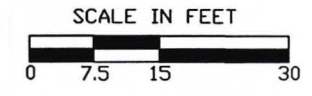
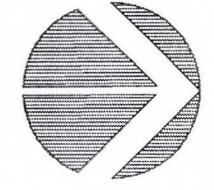
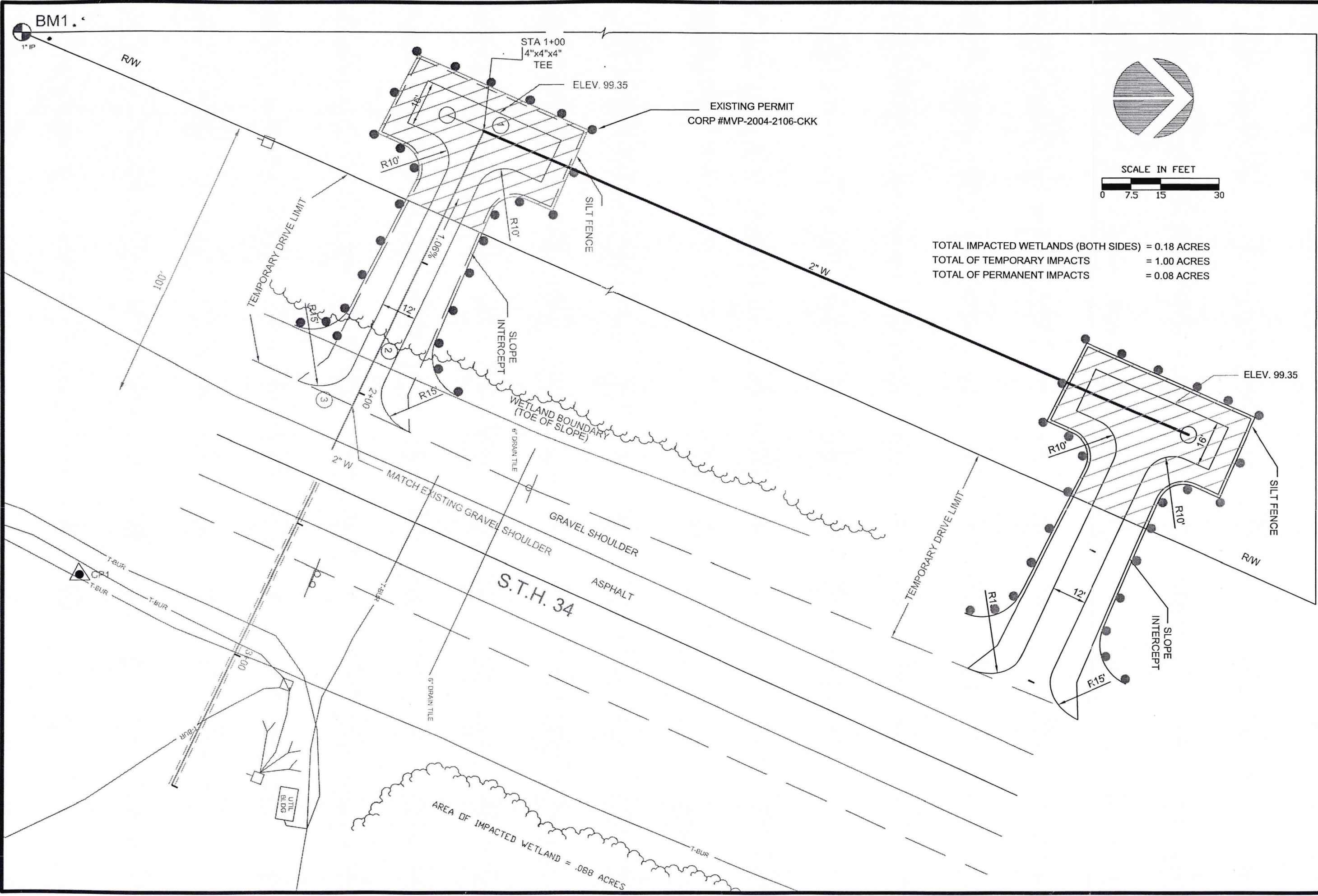
DRAWN BY:  
R.L.A.

CHECKED BY:  
D.J.G.

APPROVED BY:  
H.Z.

DATE:  
8.24.05

SW-1



## CORRESPONDENCE/MEMORANDUM

DATE: August 24, 2005

FILE REF: [Click **here** and type file ref.]

TO: Marie Stewart

FROM: Tom Hvizdak *JAH*

FILE COPY

SUBJECT: Passive Diffusion Bag sampling

To my knowledge, Applied Environmental Solutions, Inc., is the only consultant in this State that has any experience using Passive Diffusion Bag (PDB) samplers. Applied Environmental Solutions, Inc., was the consultant the State hired to conduct vertical profiling in Pittsville's Municipal Well #6 using PDB samplers. In addition, Ms. Jennifer Ronk Applied Environmental Solutions, Inc., has quite a bit of experience using this sampling method and is listed as a contact person on ITRC's passive Diffusion Bag Sampling webpage. Therefore, I would like to use Applied Environmental Solutions, Inc., to conduct the Food Tree PDB sampling project.





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Scott Hassett, Secretary  
Scott Humrickhouse, Regional Director

Wisconsin Rapids Service Center  
473 Griffith Avenue  
Wisconsin Rapids, Wisconsin 54494  
Telephone 715-421-7800  
FAX 715-421-7830

PROJECT: Food Tree 2001 Release REFERENCE #: 03-72-284956  
PERSON CONTACTED: Diane Glenn COMPANY/AGENCY: Culligan of Mesinee  
PHONE #: 800/388-7288 DATE: 8/04/05 TIME: 16:00  
TR

Topic: Cancellation of drinking water service to the residences affected by The Food Tree Petroleum Release

I asked ~~the~~ Diane if The Brars canceled the drinking water service to the residences along Greenfield Ave in Rapids. Diane told me "No", Culligan was terminating service because The Brars have not paid an invoice in over one year and that ~~she~~ <sup>she</sup> has they have not been successful in collecting the money owed them by The Brars. She said they (Culligan) regrets doing this but they cannot continue this service if ~~they~~ <sup>they</sup> The Brars fail to pay their bills.

I told Diane I will look into this.

CC:

T-HM  
Tom Hvizdak  
Hydrogeologist



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

Jim Doyle, Governor  
Scott Hassett, Secretary  
Scott Humrickhouse, Regional Director

Wisconsin Rapids Service Center  
473 Griffith Avenue  
Wisconsin Rapids, Wisconsin 54494  
Telephone 715-421-7800  
FAX 715-421-7830

PROJECT: Food Tree 2001 Release REFERENCE #: 03-72-284956  
PERSON CONTACTED: Dawn Schlotman COMPANY/AGENCY: -  
PHONE #: Inconity DATE: 8/04/05 TIME: 15:40

Topic: Drinking water service being discontinued.

Dawn told me that she was informed by Culligan that she would not be receiving any more drinking water.

Dawn asked if they can do this and I told her that I'll do what I can to make sure their drinking water service continues.

CC:

T-HM

Tom Hvizdak  
Hydrogeologist

Wisconsin Rapids Service Center  
473 Griffith Avenue  
Wisconsin Rapids, WI 54494  
Phone: (715)421-7800  
Fax: (715)421-7830

**Department of  
Natural Resources**



# Fax

To: Joe Renville From: Tom Huizduk  
Fax: 608/266-6983 Date: 5/05/05  
Phone: \_\_\_\_\_ Pages: (Including Cover Page) 22  
Re: \_\_\_\_\_ CC: \_\_\_\_\_

Urgent     For Review     Please Comment     Please Reply     Please Recycle

•Comments:

Here's a copy of the settlement between The  
Brans and affected homeowners.

**CORRESPONDENCE/MEMORANDUM**

DATE: May 2, 2005  
 TO: Linda Meyer – LC/5  
 FROM: Terry Evanson – RR/3  
 SUBJECT: Food Tree Site

I have reviewed the 1999 Closure Request from the Food Tree Site (BRRTS #03-72-000555) submitted by Envirogen (referred to as Owner #1) and the summary package of information from 2001/2002 put together by Tom Hvizdak for the Food Tree site under BRRTS #03-72-284956 (referred to as Owner #2). The consultant for Owner #2 is NRP.

Summary

Eight homes are currently receiving bottled water for drinking or bulk water to entirely replace the home's water supply due to high levels of benzene and MTBE in the water supplies wells for the homes. The primary questions are:

- Is the Food Tree service station the likely source of the contamination?
- If Food Tree is the source, is the contamination in the private wells from a new release (Owner #2) or from the previous release (Owner #1).

Source of contamination

It seems likely that Food Tree is the source of the current contamination to the private wells. I base this conclusion on the following information:

1. *Pattern of private well contamination.* The 1991 release resulted in contamination of several private wells in the area. The pattern of contamination to private wells in 2001 mimics the pattern that was seen in the early 1990's.

Well Location (owner in 2001)	1991 Contamination	2001 Contamination
1759 Greenfield (Food Tree)	11 WQ samples between 4/91 & 6/98. <b>Benzene</b> above ES between 4/91 – 8/95. Less than PAL 8/95 – 6/98. Abandoned 1998 or 1999.	No private well. Highest concentration at a bedrock piezometer (P-3): <b>Benzene = 240 ppb</b> <b>MTBE = 200 ppb</b>
1749 Greenfield (Pechinski)	15 WQ samples between 12/91 & 3/00. <b>Benzene</b> between PAL & ES 4/91 – 3/97 except 5/93 (64 ppb – max. concentration detected). Well generally tested clean between 9/97 – 3/00 (low level benzene in 9/98 & 3/00	11/01, <b>Benzene = 290 ppb</b> <b>MTBE = 170 ppb</b>

	sample).	
1736 Greenfield (Stimac)	20 WQ samples between 7/91 & 2/00. <b>Benzene</b> detected above ES 3 times (9/91 – 39 ppb; 6/94 – 11 ppb; 11/94 – 35 ppb). All other samples less than PAL or ND.	11/01, <b>Benzene</b> = 520 ppb <b>MTBE</b> = 460 ppb
1697 Greenfield (Tiegs)	6 WQ samples between 4/92 & 9/98. <b>Benzene</b> detected at 0.3 ppb on 4/92. All other samples ND.	2 WQ samples – 12/01 & 5/02. <b>Benzene</b> = 56 ppb & 83 ppb <b>MTBE</b> = 39 ppb & 72 ppb
1717 CTH P (F&M Bank)	12 WQ samples between 4/92 & 9/98. <b>Benzene</b> detected below PAL 8/95 & 3/97. All other samples ND.	11/01. <b>Benzene</b> = 0.23 ppb <b>MTBE</b> = 0.52 ppb
5239 Fountain (Hamus)	4 WQ samples between 9/92 & 1/97. All <b>ND</b> .	12/01 <b>ND</b>
5274 Fountain (Laramee)	7 WQ samples beteen 4/92 & 9/98. All <b>ND</b> .	12/01 <b>ND</b>

In the 2001/2002 sampling events, several additional wells (besides those listed in the table) have shown benzene & MTBE contamination extending east along Greenfield Ave. beyond the Pechinski & Tieg wells. The above table is intended to point out that while the contamination levels in the private wells were much lower in the early 1990's, the wells in which benzene was detected are the same wells where benzene is detected in 2001/2002. The Hamus and Laramee wells, located northeast of Stimac showed no contamination during either occurrence.

While the data can not rule out another source of contamination, it is an established fact that Food Tree was the source for petroleum contamination in specific private wells surrounding Food Tree in the early 1990's. The contaminant concentrations declined to less than PALs in all instances by 1997. The same wells that had detectable petroleum contamination (represented by benzene in the table) in the early 1990's are also contaminated with petroleum contamination in 2001/2002. The difference between the two contamination incidents relates to concentration of the contaminants and the presence in 2001/2002 of MTBE.

2. *Pattern of groundwater flow around Food Tree.* The small number of current monitoring wells, their placement, and data available are not adequate to define the groundwater flow direction at the site. In the early 1990's, Envirogen's used considerably more monitoring wells and piezometers at the site in an effort to define groundwater movement and found that groundwater flow direction varies considerably due to the wetlands and river systems in the vicinity of Hwy. P and Greenfield Ave. However, Envirogen clearly showed that in the bedrock system, groundwater at least seasonally flows east to east-northeast of Food Tree, toward the Stimac & Pechinski residences & Greenfield Ave. In other seasons and in the



shallow water table, groundwater gradients are toward the northwest or west, which explains why the F&M Bank well occasionally shows low level petroleum contamination. Envirogen also showed groundwater at certain bedrock depths to flow to the north and to the southwest.

While groundwater flow patterns are difficult to establish at this site, it is expected that the same basic flow patterns exist in 2001/2002 as did exist in the early 1990's. The reports I have reviewed give no indication of changes in groundwater pumping or other land use that would have significantly affected groundwater flow patterns.

The 2002 report by NRP claims groundwater flow in the shallow water table is toward the north-northwest. However, MW-4 (the most northeasterly of any current monitoring wells) consistently has the lowest water level, indicating that the likely component of flow in the shallow system is at least north-northeast. The 2002 piezometric water level maps are unreliable because a stable water level reading at P-3 (on the west of Food Tree) has not been obtained. Given the lack of reliable information from the 2001/2002 investigation, the data from Envirogen and the pattern of private well contamination must be relied upon to determine likely groundwater flow patterns from the Food Tree property.

3. *Concentration levels in private wells vs. those found on the Food Tree property.* The NRP report argues that because benzene and MTBE concentrations on Food Tree are only half that found at the Stimac well, that Food Tree is not the likely source. Contaminant flow in fracture bedrock (especially fractured granite) is notoriously difficult to monitor. It is likely that the fractures carrying the high levels of contamination to the Stimac well have not been intercepted by the piezometers on the Food Tree property. In addition, contamination is likely entering the bedrock directly from the source of the release (through the pea gravel below the dispenser island) rather than flowing through native soils. A release of petroleum directly through the gravel to bedrock would lead to very high contaminant levels in bedrock, which explains why the contaminant levels in the private wells in 2001 are so much higher than the levels in the early 1990's.

#### Has a second release occurred at Food Tree?

Given the presence of MTBE in Food Tree's monitoring wells and in private wells and the very high concentrations of petroleum currently present in private wells, it is likely that a new release occurred after early 2000.

1. *Previous clean up efforts.* The cleanup efforts at this site (including complete upgrading of the tank system, removal of 1,400 yd<sup>3</sup> of contaminated soil, groundwater extraction and soil venting) brought the groundwater concentrations of petroleum down to below ES levels in all private wells and monitoring wells by the end of 1998. It is important to note that at no time during the cleanup process (including groundwater extraction) was MTBE found on the Food Tree property. In all the data I have reviewed, MTBE was detected once in MW-5B in 6/97 at 0.49 ppb. That detection was never confirmed.



In early 2000, private well monitoring conducted by the DNR showed less than PAL concentrations of several petroleum constituents in the Pechinski water supply well. In August 2000, DNR gave final closure to Owner #1 after Owner #1 had placed a deed restriction on the Food Tree property for soil contamination remaining on the property and a groundwater use restriction for remaining groundwater contamination.

2. *Presence of MTBE.* Several issues surround MTBE.

- a. Integrity of the existing tank system. Tank tightness tests were performed at the Food Tree property. These tests have limits of detection so that slow leaks may not be detectable. While tanks are double lined and there are leak detection systems, these do not catch every possible leak and protection systems do fail. For instance, it's not clear whether a release accompanied the crack discovered in 3/01 in the flexible line in the premium submersible pit.
- b. Constituents of petroleum product delivered to Food Tree. Food Tree claims that MTBE containing gasoline was never sold at their facility. The fact is that owners never know what gasoline additives are in each load of fuel delivered to the property. Even though reformulated gasoline is not required in Wood County, it would not be unusual for a load of fuel that contains MTBE to be delivered. Food Tree claims they've tested their gasoline for MTBE, but they would have to test every delivery to be certain that there was no MTBE in their fuel.
- c. Presence of MTBE on Food Tree property. The fact is that MTBE is found on Food Tree, in the location of the dispenser island.

Well	Location	MTBE concentration
MW – 6 (water table well)	Beside dispenser island	72 ppb
P-3 (screened 20 – 25' below ground)	Northeast of dispenser island	200 ppb

At no time during the cleanup of the 1991 release was MTBE detected in any concentration approaching these. As mentioned previously, there was a one-time detection of 0.49 ppb MTBE in a single piezometer. There was never any confirmation of the presence of MTBE in the 1990's. If MTBE had been present in the groundwater, it would have been present in the groundwater extraction system discharge. No MTBE was ever detected in the water from the extraction system.

- d. Movement of MTBE in groundwater. MTBE is very soluble and mobile in groundwater. It moves conservatively (that is, it is not retarded by soils) and often defines the extent of groundwater contamination. MTBE will move more quickly in groundwater than benzene and is less likely to be degraded than benzene. If MTBE had been present in the groundwater at Food Tree before 2000, we can expect that it would have been observed in the private wells during the early 2000 water quality sampling. The 2000 sampling of Stimac and Pechinski did not detect any MTBE. MTBE was first detected in November 2001 due to a complaint from the Stimac residents. It is likely that the release occurred between early 2000 and late 2001.

3. *Possible contamination scenario.* The earlier excavation of 1,400 yd<sup>3</sup> beneath the dispenser island was backfilled with pea gravel. The pea gravel extends to the bedrock surface and is much more permeable than the surrounding soils. In addition, there are downward vertical gradients at the site. It seems likely that a petroleum release from the tank area or at the dispenser island would move readily through the gravel backfill and down through the pea gravel into the bedrock. This would explain the higher concentrations in the bedrock with fairly low contaminant concentrations in the surrounding shallow soils. Contaminant movement through the backfill and into the bedrock below the dispenser island would readily enter the deeper flow system. The private wells in the area generally have 40 feet of casing with open boreholes to various depths below the casing.

#### Consideration for Future Efforts at Food Tree

1. Sampling of private wells. Monitoring to date indicates that the MTBE and benzene plume continues to migrate east along Greefield Ave. Monitoring efforts need to be concentrated on the private wells near the distal edge of the plume, particularly Kitts, John Freeberg, Reese, Koch and Duda. In addition, because flow in fractured rock is so difficult to predict, periodic sampling of all nearby private wells should be undertaken.
2. Efforts to halt spread of MTBE plume. Efforts should begin as soon as possible to halt the spread of the contaminant plume. This likely means design and installation of a groundwater pumping system at the Food Tree property. The groundwater flow in the fracture system is likely quite fast. Cutting off the plume movement should lead to a fairly rapid response in the private wells.
3. Additional site investigation. A full NR 716 site investigation needs to be undertaken ASAP. Geoprobe sampling of the tank bed and dispenser island should help identify possible flow paths for the release and lead to a source control remedy. Groundwater flow direction and gradients need to be identified, particularly in the bedrock. Additional piezometers need to be installed on and off the Food Tree property to understand the likely flow paths and where extraction wells will have the greatest effect.

Wisconsin Rapids Service Center  
473 Griffith Avenue  
Wisconsin Rapids, WI 54494  
Phone: (715)421-7800  
Fax: (715)421-7830



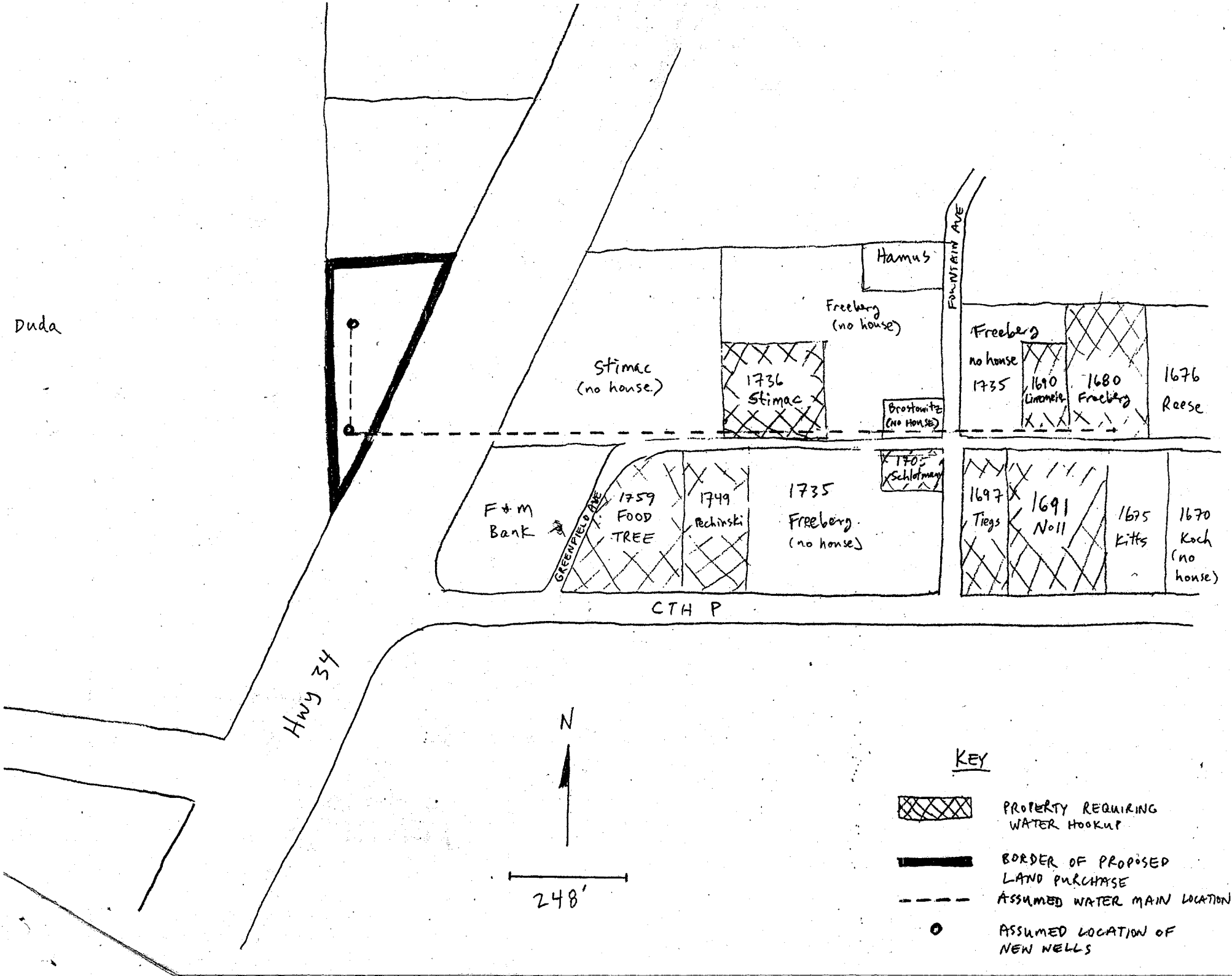
# Fax

**To:** Tom Riewe                      **From:** Tom Hvizdak  
**Fax:** 608/207-7650                  **Date:** 4/21/05  
**Phone:**                                      **Pages:** (Including Cover Page) 2  
**Re:**    **CC:**

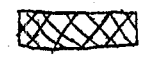
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**•Comments:**  
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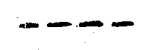
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PROPERTY REQUIRING WATER HOOKUP



BORDER OF PROPOSED LAND PURCHASE



ASSUMED WATER MAIN LOCATION



ASSUMED LOCATION OF NEW WELLS

**Hvizdak, Thomas**

---

**From:** Joan Lalor [jlalor@reinhardt.com]  
**Sent:** Wednesday, April 20, 2005 11:34 AM  
**To:** Hvizdak, Thomas  
**Subject:** From Pam Schaefer

<<25626\_5.DOC>>

Here is the revised Negotiated Spill Response and Settlement Agreement for The Food Tree.

This e-mail and any attachments may contain privileged or confidential information. This e-mail is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this e-mail, you are hereby notified that any copying, distribution, dissemination or action taken in relation to the contents of this e-mail and any of its attachments is strictly prohibited and may be unlawful. If you have received this e-mail in error, please notify the sender immediately and permanently delete the original e-mail and destroy any copies or printouts of this e-mail as well as any attachments. To the extent representations are made herein concerning matters of a client of the firm, be advised that such representations are not those of the client and do not purport to bind them.

**Hvizdak, Thomas**284956  
03-72-28459

**From:** Hvizdak, Thomas  
**Sent:** Tuesday, April 19, 2005 2:56 PM  
**To:** 'Buettner, Mary'  
**Cc:** jimjudd@wctc.net; Zoellner, Dee; 'Pamela H. Schaefer'  
**Subject:** RE: F&M Bank, Town of Rudolph, BRRTS No. 03-72-540165

Mary,

Looking at the tables it appears that MTBE is below the PAL in the sample collected from the potable well. Can you please confirm that the lab detected 0.512 ppb MTBE in that sample.

Because you have determined that this is a medium risk site, and because the plume from this source is not co-mingled with a hazardous substance, other than petroleum products from a petroleum storage tank, NR 746 requires that this case be transferred to Commerce, and I have no problem doing so. However, I would greatly appreciate it if the Bank would continue to copy me on all correspondences and reports regarding this case and that when Commerce approves closure for this case, that the Bank offer to transfer to the Food Tree the ownership of any of the monitoring wells and piezometers that the Food Tree's consultant deems beneficial to their investigation and cleanup.

Thank you  
 Tom

-----Original Message-----

**From:** Buettner, Mary [mailto:Mary.Buettner@earthtech.com]  
**Sent:** Tuesday, April 19, 2005 2:00 PM  
**To:** Hvizdak, Thomas  
**Cc:** jimjudd@wctc.net  
**Subject:** FW: F&M Bank, Town of Rudolph, BRRTS No. 03-72-540165

Tom,

The purpose of this email is to provide you with a brief status report and recent groundwater monitoring data for the potable well at F&M Bank. We installed two soil borings, six monitoring wells, and one piezometer in March 2005. I have attached the tabulated soil and groundwater analytical results and a site map.

We collected one round of groundwater samples from the new monitoring wells and the potable well on March 30, 2005. MTBE, chloromethane, and lead were detected in the potable well at concentrations exceeding PALs. The analytes detected in the potable well do not appear to be related to the fuel oil LUST at F&M Bank.

MTBE was previously detected in the bank's potable well during a Food Tree sampling event in November 2001, and can likely be attributed to the second Food Tree LUST release.

Based on my limited review of Food Tree data from your files, it appears that there have been no previous detections of chloromethane or lead in the F&M Bank well; however, I don't know if these parameters have been included in previous analyses. According to Jim Salkowski of US Filter, chloromethane is a likely contaminant from the sample vial's septa cap. If the Teflon seal of the silicon septa has a pin-size hole or is somehow damaged during tightening, chloromethane may be detected in the sample.

Lead is not a component of fuel oil, and only low-levels of lead were detected in some of the site monitoring wells. Possible sources of lead contamination in the potable well may include the building's water system or the Food Tree LUSTs. The well at F&M Bank is not used for drinking.

I also wanted to discuss with you the possibility of transferring this LUST case to Commerce. Given the current data, it appears to be a "medium risk" site; however, I thought your involvement in the adjacent Food Tree case might warrant that the site stay with you. Please contact me when you have a chance. Thank you.

06/20/2005

Mary M. Buettner  
Earth Tech, Inc.  
200 Indiana Avenue  
Stevens Point, WI 54481  
Ph: 715-342-3034  
Fx: 715-341-7390

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draft

TABLE 2-1 SOIL SAMPLE ANALYTICAL RESULTS NR 716 SITE INVESTIGATION FARMERS & MERCHANTS BANK TOWN OF RUDOLPH, WISCONSIN											
Sample ID.: Date Collected: Sample Depth (feet): PID (L.U.):			B-1	B-2	MW-1	MW-2	MW-3	MW-4	MW-5	MW-6	PZ-2
			3/14/2005	3/16/2005	3/14/2005	3/16/2005	3/16/2005	3/16/2005	3/16/2005	3/14/2005	3/14/2005
			5 to 6	4.5 to 5.5	4 to 5	4.5 to 5.5	4 to 5	4 to 5	4 to 5	4 to 5	4 to 5
			0	0	25	0	0	0	0	0	0
Analyte	NR 720 RCL	NR 746/Comm 46 SSL	Results								
DRO (mg/kg)	100	NE	15.7 <sup>D2A D2B</sup>	148 <sup>D2A D2B</sup>	<5.62	<5.45	<5.81	<5.55	<5.70	<6.53	<5.31
Lead (total) (mg/kg)	50	NE	6.63	3.75	32.5 <sup>DUP S1L</sup>	20.0	8.00	4.58	5.35	10.6	8.21
PVOCs (mg/kg)											
Benzene	0.0055	8.5	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025
Ethylbenzene	2.9	4.6	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025
Methyl t-Butyl Ether	NE	NE	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025
Toluene	1.5	38	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025
1,2,4-Trimethylbenzene	NE	83	<0.025	0.0364 <sup>J</sup>	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025
1,3,5-Trimethylbenzene	NE	11	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025
Xylene (total)	4.1	42	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025	<0.025
	Interim Guidance RCLs										
	Groundwater Pathway	Direct Contact Pathway	Results								
PAHs (mg/kg)											
Acenaphthene	38	900	<0.00524	<0.00514	<0.00528	<0.00513	<0.00547	<0.00522	<0.00536	<0.00614	<0.00499
Acenaphthylene	0.7	18	<0.00736	<0.00721	<0.00742	<0.0072	<0.00767	<0.00733	<0.00763	<0.00862	<0.00701
Anthracene	3,000	5,000	<0.00234	<0.00236	<0.00236	<0.00229	<0.00244	<0.00233	<0.00239	0.0591 <sup>S2L DUP</sup>	<0.00223
Benzo(a)Anthracene	17	0.088	<0.00457	<0.00448	0.00957 <sup>J</sup>	<0.00447	0.012 <sup>J</sup>	0.018	0.0245	<0.00535	0.00494 <sup>J</sup>
Benzo(a)Pyrene	48	0.0088	<0.00256	0.0193	0.0213	<0.00251	0.0215	0.0243	0.0298	0.0586 <sup>S2L DUP</sup>	<0.00244
Benzo(b)Fluoranthene	360	0.088	<0.00234	0.0133	0.0167	0.00625 <sup>J</sup>	0.0134	0.0189	0.0195	0.0504	0.00528 <sup>J</sup>
Benzo(k)Fluoranthene	870	0.88	<0.00323	0.00351 <sup>J</sup>	<0.00326	<0.00316	0.00341 <sup>J</sup>	0.00566 <sup>J</sup>	0.00529 <sup>J</sup>	0.0242	<0.00308
Benzo(ghi)Perylene	6,800	1.8	0.073	0.00964	0.0327	<0.00229	0.0176	0.0243	0.0189	0.046	<0.00223
Chrysene	37	8.8	<0.00256	<0.00251	<0.00258	0.00373 <sup>J</sup>	<0.00267	0.0226	<0.00262	0.088 <sup>S2L DUP</sup>	<0.00244
Dibenzo(a,h)Anthracene	38	0.0088	<0.00156	<0.00153	<0.00157	<0.00153	<0.00163	<0.00155	<0.0016	<0.00183 <sup>DUP</sup>	<0.00149
Fluoranthene	500	600	0.0866	0.0777	0.0436	0.0106	0.055	0.0927	0.0941	0.503	0.0137
Fluorene	100	600	<0.00223	<0.00219	<0.00225	<0.00218	<0.00233	<0.00222	<0.00228	<0.00261	<0.00213
Indeno(1,2,3-cd)Pyrene	680	0.088	0.0358	0.00943	0.0211	<0.00174	0.0126	0.0155	0.0125	0.0398	0.00872
1-Methyl Naphthalene	23	1,100	0.0229	0.00819 <sup>J</sup>	<0.00393	<0.00382	0.00867 <sup>J</sup>	0.0118 <sup>J</sup>	<0.00399	0.0244	<0.00372
2-Methyl Naphthalene	20	600	<0.00457	0.012 <sup>J</sup>	0.00991 <sup>J</sup>	<0.00447	0.0112 <sup>J</sup>	0.0178	0.0129 <sup>J</sup>	0.0467	<0.00436
Naphthalene	0.4	20 (2.7)*	0.0252	0.0117	0.0105	<0.00174	0.00758	0.0133	0.0101	0.0326	<0.0017
Phenanthrene	1.8	18	0.07	0.0545	0.0227	0.00483 <sup>J</sup>	0.0217	0.041	0.0441	0.274	0.0058 <sup>J</sup>
Pyrene	8,700	500	0.0736	0.0596	0.0491	<0.00229	0.0452	0.0791	0.0979	0.504	0.00993

Notes:

- RCL - Residual Contaminant Level for DRO, lead, and PVOCs at non-industrial sites as listed in Tables 1 and 2 of Chapter NR 720, Wisconsin Administrative Code, and suggested generic RCLs for PAHs at non-industrial sites as listed in Table 1 of DNR's April 1997 (Corrected) Interim Guidance.
- SSL - Applicable "Soil Screening Level" as listed in Table 1 of Chapter Comm 46/NR 746, Wisconsin Administrative Code.
- \* - The value in parentheses is the SSL for naphthalene, as listed in Table 1 of COMM 46/NR 746.
- NE - Not Established.
- Bold indicates RCL exceedence.
- <sup>D2A</sup> The chromatogram is characteristic for a light petroleum product. (i.e. gasoline, aged or degraded gasoline, mineral spirits, etc.)
- <sup>D2B</sup> The chromatogram is characteristic for a heavier petroleum product other than diesel. (i.e., motor oil, hydraulic oil, etc.)
- <sup>DUP</sup> Result of duplicate analysis in this quality assurance batch exceeds the limits for precision.
- <sup>J</sup> Estimated concentration below laboratory quantitation level.
- <sup>S1L</sup> Sample matrix spike recovery was low. Sample result may be biased low.
- <sup>S2L</sup> Sample matrix spike duplicate recovery was low. Sample result may be biased low.



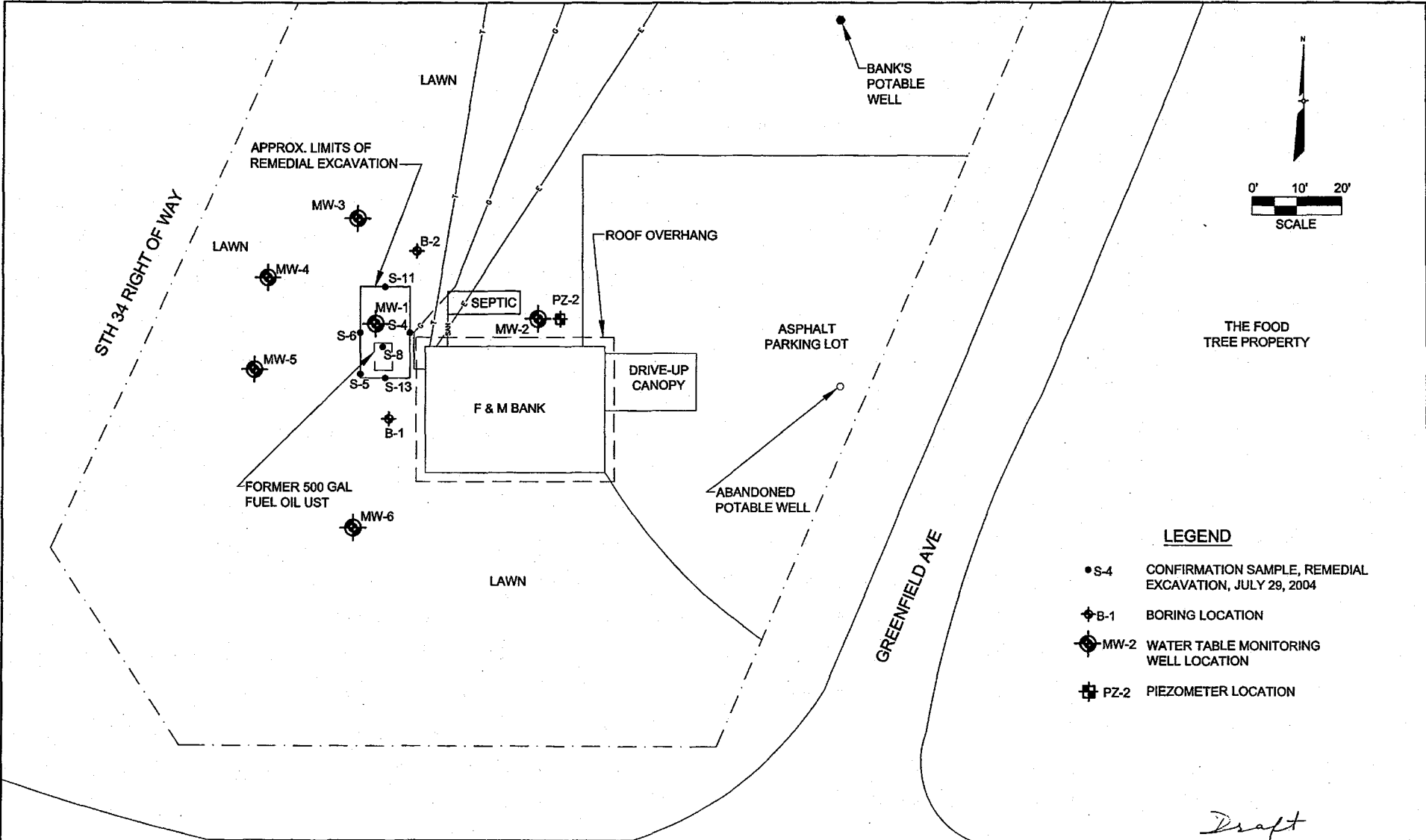
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**TABLE 2-2  
GROUNDWATER SAMPLE ANALYTICAL RESULTS  
NR 716 SITE INVESTIGATION  
FARMERS & MERCHANTS BANK  
TOWN OF RUDOLPH, WISCONSIN**

Well No.:	MW-1	MW-2	PZ-2	MW-3	MW-4	MW-5	MW-6	Potable Well		
	Date Collected:	3/30/2005	3/30/2005	3/30/2005	3/30/2005	3/30/2005	3/30/2005	3/30/2005		
Analyte	ES (ug/l)	PAL (ug/l)								
Dissolved Lead (ug/l)	15	1.5	<0.6 (<0.6)	0.7	<0.6	0.8	0.7	<0.6	0.7	4.90
<b>VOCs (ug/l)</b>										
Chloromethane	3	0.3	<0.29 (<0.29)	<0.29	<0.29	<0.29	<0.29	<0.29	<0.29	0.812 <sup>J</sup>
Methyl t-Butyl Ether (MTBE)	60	12	<0.3 (<0.3)	<0.3	<0.3	<0.3	<0.3	<0.3	<0.3	0.512 <sup>J</sup>
<b>PAHs (ug/l)</b>										
Acenaphthene	NE	NE	<0.066 (<0.06)	<0.06	<0.06	<0.066	<0.06	<0.06	<0.066	<0.06
Acenaphthylene	NE	NE	<0.066 (<0.06)	<0.06	<0.06	<0.066	<0.06	<0.06	<0.066	<0.06
Anthracene	3,000	600	<0.055 (<0.05)	<0.05	<0.05	<0.055	<0.05	<0.05	<0.055	<0.05
Benzo(a)Anthracene	NE	NE	<0.044 (<0.04)	<0.04	<0.04	<0.044	<0.04	<0.04	<0.044	<0.04
Benzo(a)Pyrene	0.2	0.02	<0.0187 (<0.017)	<0.017	<0.017	<0.0187	<0.017	<0.017	<0.0187	<0.017
Benzo(b)Fluoranthene	0.2	0.02	<0.022 (<0.02)	<0.02	<0.02	0.98	<0.02	<0.02	1.30	<0.02
Benzo(k)Fluoranthene	NE	NE	<0.044 (<0.04)	<0.04	<0.04	<0.044	<0.04	<0.04	<0.044	<0.04
Benzo(ghi)Perylene	NE	NE	<0.055 (<0.05)	<0.05	<0.05	<0.055	<0.05	<0.05	<0.055	<0.05
Chrysene	0.2	0.02	<0.022 (<0.02)	<0.02	<0.02	<0.022	<0.02	<0.02	<0.022	<0.02
Dibenzo(ah)Anthracene	NE	NE	<0.066 (<0.06)	<0.06	<0.06	<0.066	<0.06	<0.06	<0.066	<0.06
Fluoranthene	400	80	<0.066 (0.688)	0.189 <sup>J</sup>	<0.06	2.25	0.261	<0.06	2.08	<0.06
Fluorene	400	80	<0.132 (<0.12)	<0.12	<0.12	<0.132	<0.12	<0.12	<0.132	<0.12
Indeno(1,2,3-cd)Pyrene	NE	NE	<0.055 (<0.05)	<0.05	<0.05	<0.055	<0.05	<0.05	<0.055	<0.05
1-Methyl Naphthalene	NE	NE	0.218 <sup>J</sup> (0.25 <sup>J</sup> )	<0.08	0.091 <sup>J</sup>	0.195 <sup>J</sup>	0.108 <sup>J</sup>	<0.08	0.427	<0.08
2-Methyl Naphthalene	NE	NE	0.276 <sup>J</sup> (0.386)	<0.11	0.16 <sup>J</sup>	0.289 <sup>J</sup>	0.173 <sup>J</sup>	<0.11	0.79	<0.11
Naphthalene	40	8	0.154 <sup>J</sup> (0.204 <sup>J</sup> )	<0.1	<0.1	<0.11	0.125 <sup>J</sup>	<0.1	0.397	<0.1
Phenanthrene	NE	NE	<0.088 (<0.08)	0.227 <sup>J</sup>	<0.08	<0.088	0.102 <sup>J</sup>	<0.08	1.07	<0.08
Pyrene	250	50	0.663 (1.32)	0.264 <sup>J</sup>	<0.09	2.27	0.179 <sup>J</sup>	<0.09	<0.099	<0.09

Notes:

1. ES - Enforcement Standard identified in Chapter NR 140, Wisconsin Administrative Code.
2. PAL - Preventive Action Limit identified in Chapter NR 140, Wisconsin Administrative Code.
3. NE - Not Established.
4. Bold data indicates exceedence of PAL.
5. Only VOCs which were detected at or above the laboratory detection limit are listed in this table.
6. <sup>J</sup> means "Estimated concentration below laboratory quantitation level."
7. 1,4-Dichlorobenzene was detected at an estimated concentration of 1.88<sup>J</sup> ug/l in the VOC trip blank sample collected March 30, 2005.



**LEGEND**

- S-4 CONFIRMATION SAMPLE, REMEDIAL EXCAVATION, JULY 29, 2004
- ◆ B-1 BORING LOCATION
- ⊕ MW-2 WATER TABLE MONITORING WELL LOCATION
- ⊕ PZ-2 PIEZOMETER LOCATION

*Draft*

CTHP



FIGURE 2  
SITE MAP  
FARMERS & MERCHANTS BANK  
5218 STH 34  
TOWN OF RUDDOLPH, WISCONSIN

DECEMBER 2004

79362

*April 2005*

**Hvizdak, Thomas**

---

**From:** Pamela H. Schaefer [pschaefe@reinhardt.com]  
**Sent:** Wednesday, April 13, 2005 2:08 PM  
**To:** Hvizdak, Thomas  
**Cc:** Joan Lalor  
**Subject:** RE: Negotiated Spill Response

Tom I have re-read the revised draft we sent on Feb 23rd, it is still ok. I will have my secretary email another copy to you. If you have made subsequent changes, I do not have them.

---

**From:** Hvizdak, Thomas [mailto:Tom.Hvizdak@dnr.state.wi.us]  
**Sent:** Thursday, April 07, 2005 3:52 PM  
**To:** Pamela H. Schaefer  
**Subject:** Negotiated Spill Response

Pam,

Now that the dust has settled a little I'd like to get back to finalizing the Negotiated Spill Response Agreement. I still need to run the document past our Legal Dept. I would like to send something to them by the end of next week, but would like to have it as complete as possible before sending to them. Could you please look at the latest draft and let me know if there's anything we need to discuss or change. I've got a lot of field work scheduled through next Tuesday so I'd appreciate it if you could get back to me next Wednesday or Tuesday regarding this issue.

Thank  
Tom

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**Hvizdak, Thomas**

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**From:** Joan Lalor [jlalor@reinhardt.com]  
**Sent:** Wednesday, April 13, 2005 2:18 PM  
**To:** Hvizdak, Thomas  
**Subject:** From Pam Schaefer

<<25626\_2.DOC>>

Mr. Hvizdak,

Attached is the Negotiated Spill Response and Settlement Agreement from Pam Schaefer.

This e-mail and any attachments may contain privileged or confidential information. This e-mail is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this e-mail, you are hereby notified that any copying, distribution, dissemination or action taken in relation to the contents of this e-mail and any of its attachments is strictly prohibited and may be unlawful. If you have received this e-mail in error, please notify the sender immediately and permanently delete the original e-mail and destroy any copies or printouts of this e-mail as well as any attachments. To the extent representations are made herein concerning matters of a client of the firm, be advised that such representations are not those of the client and do not purport to bind them.

DRAFT

NEGOTIATED SPILL RESPONSE AND  
SETTLEMENT AGREEMENT

WHEREAS, ~~N.B. Oil Company, doing business as the Food Tree (hereinafter referred to as "N.B. Oil")~~ Inderbans Brar and Kuljeet Brar ("the Brars"), ~~is~~ are the currents owner of certain real property located at 1759 Greenfield Avenue, Town of Rudolph, Wood County, Wisconsin more particularly described as Lot 1 of Wood County Certified Survey Map No. 1333, as recorded in Volume 5 of Surveys, page 133, ~~in~~ being part of the Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$ , of Section 32, Township 23 North, Range 6 East, in the Town of Rudolph, Wood County, Wisconsin ("the Property").

WHEREAS, the Department of Natural Resources ("DNR" or "the Department") has determined, based on the results of investigations conducted on the Property to date, that the Property is a source of petroleum contaminants in the soil and groundwater on, and in the vicinity and downgradient of the Property, that originated on the Property prior to the date of this Agreement ("the Contamination").

WHEREAS, without admitting any fault, legal liability, or responsibility and without waiving any of its rights to contest ~~its~~ their legal liability or responsibility under applicable law for the contamination, ~~N.B. Oil has~~ the Brars have agreed to replace ~~all seven (7)~~ seven (7) potable wells that have been impacted (as of February 28, 2005) above the Wisconsin Administrative Code s. NR 140, Preventative Action Enforcement Standard Limit exceedances with a shared well located by ~~you~~ the Brars' consultant, complete a limited site investigation in accordance with Wisconsin Administrative Code s. NR-700 through NR750, and pay to the Department applicable review fees regarding the site investigation workplan and report as provided in this Agreement.

NOW THEREFORE, in consideration of, and in exchange for the mutual promise and mutual covenants contained herein, the parties agree as follows:

PARTIES BOUND

This Agreement is entered into pursuant to §292.11 (7)(d), Wis. Stats., by the Department and ~~N.B. Oil~~ the Brars. This Agreement shall be enforceable under §292.11 (7)(e), Wis. Stats.

NO ADMISSION OF LIABILITY

~~N.B. Oil does~~ The Brars do not admit to any fact or to any liability under, or violation of, federal, state or local law and no part of this Agreement shall constitute or be interpreted as any such admission. This Agreement (and any action taken pursuant to this Agreement) may not be offered or received in evidence in any action or proceeding as an admission of fault, liability or responsibility by any party. This Agreement shall not constitute or be used as evidence of any admission of liability, responsibility or waiver of any right or defense by ~~N.B. Oil~~ the Brars except as expressly set forth herein.

WORK TO BE PERFORMED

The parties to this Agreement hereby agree that ~~N.B. Oil~~ the Brars shall conduct the activities listed in the following table, in compliance with statutes and administrative rules that are applicable to investigations and remedial actions, within the time limits specified in the compliance date column in the following table, except as otherwise provided in this Agreement:

Activity Number	Description of Activity	Compliance Date
1	<p>Install replacement potable wells to supply water to the nearby homes (<u>see list, paragraph 2</u>) that have been impacted above Wisconsin Administrative Code s. NR 140, <del>Preventative Action Limit</del> <u>Enforcement Standard</u>, by the release from the <del>Food Tree</del> <u>Property</u>, and ensure that the replacement wells are fully operational and that the water quality from the replacement wells <u>meets the Enforcement Standard set forth in NR 140 for benzene and MTBE and is safe (see NR _____) and free of VOCs.</u></p>	6 months after the Effective Date of the Agreement
2	<p>Continue to supply potable water at the following residences:</p> <ul style="list-style-type: none"> <li>• 1680 Greenfield Avenue,</li> <li>• 1690 Greenfield Avenue,</li> <li>• 1691 Greenfield Avenue,</li> <li>• 1697 Greenfield Avenue,</li> </ul> <p>and continue supply potable water and bulk water at the following residences:</p> <ul style="list-style-type: none"> <li>• 1705 Greenfield Avenue,</li> <li>• 1739 Greenfield Avenue,</li> <li>• 1749 Greenfield Avenue,</li> </ul> <p>until an alternative safe water source has been installed, <u>and meets the standard set forth above in Section 1.</u> <u>The water quality will be at least the same as existed at each of the impacted homes prior to the contaminate release from The Food Tree. tested safe and has been demonstrated to be adequate for routine daily use by these residences. Concurrence must be obtained from DNR before eliminating any of these residences from being supplied with potable or bulk water. In addition, DNR reserves the right to add additional residences to this list if conditions warrant it.</u></p>	On the Effective Date of the Agreement
3	<p>Install a piezometer half way between the Food Tree property and the location of the replacement potable wells prior to, or in conjunction with, the installation of</p>	1030 business days after the Effective Date of the Agreement

	the replacement wells required in Activity Number 1, develop the piezometer and monitor it on a quarterly basis for PVOCs	
4	Continue to conduct <del>bi</del> -annual groundwater monitoring for PVOCs according to the <u>previously established schedule</u> , at monitoring well locations: MW-3, MW-4, MW-5, MW-6, MW-7, PZ-1, PZ-2, AND PZ-3, and annual groundwater monitoring for PVOCs according to the <u>previously-established schedule</u> at monitoring well locations: MW-1 and MW-2, unless concurrence is obtained from DNR to eliminate, or reduce the frequency at, any of these monitoring well locations.	10 business days after the Effective Date of the Agreement
5	Continue to conduct bi-annual monitoring ( <u>with the standard currently being utilized</u> ) for PVOCs at the following potable well locations: <ul style="list-style-type: none"> <li>• 1690 Greenfield Avenue,</li> <li>• 1697 Greenfield Avenue,</li> <li>• 1680 Greenfield Avenue,</li> </ul> and annual monitoring for PVOCs at the following potable well locations: <ul style="list-style-type: none"> <li>• 1717 CTH "P",</li> <li>• 5239 Fountain Avenue,</li> <li>• 5247 Fountain Avenue,</li> <li>• 1675 Greenfield Avenue.</li> </ul> <u>After Section 1 work is completed, monitoring will continue under the site investigation work plan for a period of time to be negotiated with the DNR.</u> <del>Concurrence must be obtained from DNR before eliminating, or reducing the frequency at, any of these potable well locations. In addition, DNR reserves the right to increase the frequency and add monitoring locations if conditions warrant it.</del>	10 business days after the Effective Date of the Agreement
6	Submit a Draft Site Investigation Work Plan to complete the site investigation in accordance with Wis. Admin. Stat. s. NR 716	12 weeks after the <u>report is received from</u> <del>completion of the passive diffusion bag sampling program conducted by DNR at the idle potable wells.</del>
7	Submit a Final Work Plan to DNR for approval	<del>1030</del> business days after receipt of DNR comments
8	Begin implementation of work outlined in Investigation	No later than <del>twentysixty</del>

	Work Plan	business days after DNR approval of the WorkPlan
9	Submit bi-annual site investigation and groundwater monitoring status reports to DNR.	<u>Within 45 days of completion of the biannual sampling events. No later than the twentieth day in the months of April and October.</u>
10	Submit short monthly report via e-mail to DNR Project Manager describing the progress regarding the planning, installation, <u>and testing and monitoring of the replacement potable wells. This requirement for testing of the replacement wells and monthly reports will end upon the completion of the work in Section 1.</u>	No later than the 5 <sup>th</sup> day of every month.
11	Submit a draft site investigation report to DNR for review and comments	60 days after completion of the work specified in the approved site investigation workplan.
12	Submit a final site investigation report to DNR for approval.	<del>1030</del> business days after receipt of DNR concurrence that the site investigation is complete.

#### PAYMENT OF REVIEW FEES

~~N.B. Oil agrees~~ The Brars agree to pay to DNR the review fees that are listed in ch. NR 749 for each of the deliverables required for activities ~~listed in Sections 6 and 11~~ in the above table for which a review fee is specified. Payment shall be made in the form of a check made payable to the Department of Natural Resources, to be submitted to the Department's West Central Regional Headquarters in Eau Claire, Wisconsin, with one copy of each of the required deliverables. Another copy of each of the required deliverables shall be submitted to Tom Hvizdak or his successor at the Department's Service Center in Wisconsin Rapids, Wisconsin.

#### FORCE MAJEURE

A. ~~N.B. Oil~~ The Brars shall cause all work to be performed within the time limits specified in the above table, unless the schedule is amended in writing by mutual agreement of the parties or unless performance is delayed by events that constitute a force majeure. For the purposes of this Agreement, a "force majeure" is an event arising from causes beyond the control of ~~N.B. Oil~~ the Brars, and any consultant, contractor or other entity hired by ~~N.B. Oil~~ the Brars to conduct any of the activities required under this Agreement, which delays or prevents



performance of any obligations under this Agreement. Force majeure events include, but are not limited to, denial or delay in obtaining access to adjacent or affected properties that is necessary to implement the work, or a permit or other authorization from a governmental agency or other party that is necessary to implement the work, provided, however, that ~~N.B. Oil~~ the Brars ~~has~~ have submitted a timely application for any access, permit or authorization. Increases in cost or changes in economic circumstances do not by themselves constitute a force majeure. However, an event that would otherwise constitute a force majeure shall be deemed a force majeure, even though such an event also results in increased costs or changed economic circumstances.

B. ~~N.B. Oil~~ The Brars shall notify the Department in writing no later than ten (10) business days after ~~N.B. Oil~~ the Brars becomes aware of any event that ~~N.B. Oil contends~~ the Brars contend is a force majeure. Such notification shall describe the anticipated length of the delay. The Department shall promptly provide ~~N.B. Oil~~ the Brars with a written decision as to whether the event constitutes a force majeure. If the Department agrees that a delay is attributable to a force majeure, the compliance date that has been established for the performance of any activity required under this Agreement that has been delayed by the force majeure shall be extended by adding to the compliance date the number of days attributable to the delay caused by the force majeure.

#### DISPUTE RESOLUTION

A. The parties shall use their best efforts to in good faith resolve all disputes or differences of opinion that may arise. If, however, any dispute arises concerning any matter under this agreement which the parties are unable to resolve informally, ~~N.B. Oil~~ the Brars shall present a written notice of such dispute to the Department, which shall set forth specific points of dispute, the position of ~~N.B. Oil~~ the Brars, and the technical basis therefor, and any actions which ~~N.B. Oil considers~~ the Brars consider necessary. All information submitted by ~~N.B. Oil~~ the Brars to the Department in the course of dispute resolution under this section shall become part of the administrative record for the Site. The procedures set forth in the Dispute Resolution section of this Agreement shall not apply to actions to taken by the Department to enforce this Agreement if ~~N.B. Oil~~ the Brars ~~has~~ have not previously submitted written notice of a dispute concerning the provision that the Department seeks to enforce.

B. Within ten (10) business days of receipt of such written notice, the Department shall provide a written response to ~~N.B. Oil~~ the Brars setting forth its position and the basis therefor. ~~N.B. Oil~~ The Brars may respond to the Department's written response within ~~five~~ ten (10) business days of its receipt. During the ~~five~~ ten (10) business days following receipt of ~~N.B. Oil's~~ the Brars' response to the Department's stated position, the Department shall attempt to negotiate in good faith a resolution of the differences.

C. Following the expiration of the time periods described in paragraph (B.) of this Section, if the Department concurs with the position of ~~N.B. Oil~~ the Brars, ~~N.B. Oil~~ the Brars shall be so notified in writing and this Agreement shall be modified to include any necessary extensions of time, variances of work or reversal of the Department's determinations.

D. If the Department does not concur with the position of ~~N.B. Oil~~ the Brars, the Department shall resolve the dispute in good faith, taking due account of the position of ~~N.B. Oil~~ the Brars and, based upon and consistent with the terms of this Agreement and applicable law, and shall provide written notification and justification of such resolution to ~~N.B. Oil~~ the Brars ("Department Resolved Matters").

E. The pendency of dispute resolution under this Section and any available remedies under applicable law shall affect the time period for completion of work or other obligations to be performed under this Agreement that are directly related to the dispute. However, in such event, if ~~N.B. Oil~~ the Brars have demonstrated a good faith basis for the dispute, applicable time periods shall be extended only to the actual time that it takes to resolve the dispute. Elements of work and obligations not affected by the dispute shall be completed in accordance with the schedule contained in this Agreement.

F. Upon resolution of any dispute, whether informally or using the procedures in this section, any additions or modifications required as a result of such dispute resolution shall immediately be incorporated, if necessary, into the appropriate plans or procedures and to this Agreement. ~~N.B. Oil~~ The Brars shall proceed with all remaining work according to the modified plan or procedure.

G. In any proceeding to enforce the terms of this Agreement, ~~N.B. Oil~~ the Brars may defend on the basis that the Department Resolved Matters of any properly invoked dispute was arbitrary and capricious, in addition to any other defenses that are available under this Agreement or applicable law. If the court finds that the Department's resolution of any dispute was arbitrary and capricious or otherwise contrary to law, the court may exercise such legal and equitable powers as it deems appropriate.

#### EFFECTIVE DATE

This Agreement shall be executed by ~~N.B. Oil~~ the Brars before being executed by the Department. When the Department executes this Agreement, the Department shall enter an effective date immediately below the Department's signature which shall be 510 business days after the date of mailing (by first class postage prepaid) by the Department to ~~N.B. Oil~~ the Brars of a fully executed copy of the Agreement (the "Effective Date").

#### SUBSEQUENT AMENDMENT

This Agreement may be amended by mutual agreement of the Department and ~~N.B. Oil~~ the Brars. Any amendment of this Agreement shall be in writing, signed by the Department and ~~N.B. Oil~~ the Brars and shall have as the effective date that date on which the last party signed such amendment.

#### TERMINATION AND SATISFACTION

The provisions of this Agreement shall be deemed satisfied and this Agreement shall terminate upon receipt by ~~N.B. Oil~~ the Brars of written notice from the Department that ~~N.B. Oil~~ the Brars have performed all work as described in the Work to be Performed Section,

including any modified or additional work or amendments, in accordance with applicable law, and has made the payments required under this Agreement. Upon such demonstration by ~~N.B. Oil the Brars~~, said written notice shall not be unreasonably withheld or delayed by the Department.

### COVENANT NOT TO SUE

Except as otherwise provided in the Reservation of Rights paragraph of this Agreement, from the effective date of this Agreement, for as long as the terms herein are complied with, and upon or after termination of this Agreement pursuant to the provisions of the Termination and Satisfaction Section, the Department covenants not to sue ~~N.B. Oil the Brars~~ for any claims or liability arising from the Contamination, including past costs incurred by the Department and costs that the Department may incur in the future to address the Contamination. However, nothing within this Agreement should be deemed to release any claim by the Department, the State of Wisconsin or ~~N.B. Oil the Brars~~ against any other person or entity.

### WAIVER

~~N.B. Oil The Brars~~ hereby waives notice and its statutory right to demand a hearing before the Department of Natural Resources regarding the requirements of this Agreement under §227.42, Wis. Stats., or under any other provision of law, and waives its right to challenge this Agreement in circuit court under §§227.52 and 227.53, Wis. Stats., or any other provision of law, except that, in any proceeding initiated by the Department to enforce the terms of this Agreement, ~~N.B. Oil the Brars~~ may defend on the basis that the Department's resolution of Department Resolved Matters was arbitrary and capricious, in addition to any other defenses that are available under this Agreement or applicable law.

### RESERVATION OF RIGHTS

The parties to this Agreement reserve all rights, claims and defenses that they may have in connection with or arising out of any matters not covered by this Agreement.

The parties, whose signatures appear below, or on separate signature pages, hereby agree to the terms of this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized by the Department or ~~N.B. Oil the Brars~~, as the case may be, to execute and legally bind the respective parties to the terms of this Agreement.

~~N.B. Oil Company~~

By: \_\_\_\_\_  
Printed Name: Inderbans Brar

Title:

\_\_\_\_\_

Kuljeet Brar

Date signed: \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES  
For the Secretary

By: \_\_\_\_\_

Name: Robert E. Strous, Jr.

Title: Chief of Fiscal & Program Evaluation Section  
Bureau for Remediation and Redevelopment

Effective Date: \_\_\_\_\_

**Hvizdak, Thomas**

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**From:** Hvizdak, Thomas  
**Sent:** Thursday, April 07, 2005 1:31 PM  
**To:** Riewe, Thomas V.; Brach, Eric M; Evans, William J.  
**Subject:** Response to Eric Brach's 4/7/05 memo to me - Food Tree Potable Wells



040705MemoToDG.  
doc

DATE: 4/7/05

BRRTS #03-72-284956

TO: Tom Riewe, Eric Brach – DG, Bill Evans – R&R

FROM: Tom Hvizdak – R&R

SUBJECT: Response to Eric Brach's 04/07/05 to me

**Please supply information to the DG Bureau – Tom Riewe as follows:**

- 1). Reason for keeping the old, VOC contaminated wells for : Freeberg, Freeberg (Stimac), Kobza, Linzmeier, Noll, and Schlotman?

The plans are to modify the contaminated wells into bedrock piezometers for plume monitoring and compliance purposes.

Recently I received a grant from EPA to conduct some groundwater monitoring using passive diffusion bag (PDB) samplers in the 4 wells that are currently not in use. Initially, I will be conducting a fracture analysis of the wells by videotaping 3 of the wells (the 4<sup>th</sup> well is a shallow bedrock well). Following the fracture analysis I will be conducting one year of quarterly monitoring by placing the PDB samplers at multiple depths within each well as determined by the fracture analysis for each well (the shallow bedrock well will only have one sampler placed near the bottom of the well).

The data collected during the PDB study will be used in conjunction with any other information we deem necessary to determine how all of the wells will be modified into piezometers. More information regarding PDB samplers can be found at the following web addresses:

<http://sc.water.usgs.gov/publications/difsamplers.html>

<http://diffusionsampler.itrcweb.org/common/>

- 2). Type of monitoring wells?

PCV bedrock piezometers

- 3). Detailed re-construction info. ?

The wells will be grouted up to the desired monitoring interval for each well location, followed by installing the sand-pack and overlying seal for the PVC piezometer.

- 4). Length of time needed?

The wells will be needed until closure of the LUST case.

- 5). To be sampled by whom?

The PDB study will be conducted by a contractor hired by DNR. The consultant hired by the

Food Tree will conduct the modifications needed to convert the wells into piezometers and the subsequent groundwater monitoring from these wells.

6). To be sampled how often?

Quarterly at first, with modifications to that schedule likely after 1 to 2 years of monitoring by the Food Tree's consultant.

DATE: 4/7/05

FILE REF: 3320

TO: Tom Hvizdak – R&R

FROM: E. Brach - DG

SUBJECT: FOOD TREE AREA – CONTAMINATED WELLS – FUTURE MONITORING USE

**Please supply information to the DG Bureau – Tom Riewe as follows:**

- 1). Reason for keeping the old, VOC contaminated wells for : Freeberg, Freeberg (Stimac), Kobza, Linzmeier, Noll, and Schlotman?
- 2). Type of monitoring wells?
- 3). Detailed re-construction info. ?
- 4). Length of time needed?
- 5). To be sampled by whom?
- 6). To be sampled how often?



## Hvizdak, Thomas

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**From:** Hvizdak, Thomas  
**Sent:** Tuesday, April 05, 2005 11:26 AM  
**To:** 'Pamela H. Schaefer'  
**Subject:** RE: Food Tree area potable well sample results

Yes he does own it. But I have to warn you, apparently the Freebergs/Stimacs only received \$20 for the triangular piece of property on the west side of Hwy.34 and he's pretty upset over that. He sounded like he's willing to talk to you about an easement, but it may come at a price.

-----Original Message-----

**From:** Pamela H. Schaefer [mailto:pschaefer@reinhardt.com]  
**Sent:** Tuesday, April 05, 2005 9:56 AM  
**To:** Hvizdak, Thomas  
**Subject:** RE: Food Tree area potable well sample results

I'm not sure that Freeberg owns that parcel.could you check?

---

**From:** Hvizdak, Thomas [mailto:Tom.Hvizdak@dnr.state.wi.us]  
**Sent:** Tuesday, April 05, 2005 7:48 AM  
**To:** Pamela H. Schaefer  
**Subject:** RE: Food Tree area potable well sample results

Sure, if they refuse I'll call Mr. Judd. However, I don't think the Spills Law will have a lot of muscle in this situation so about all I'll be able to do is plead with him to allow you access. Have you tried asking John Freeberg if you could cross his land instead? He may be a little more cooperative seeing as he has a vested interest in getting this system up and running.

-----Original Message-----

**From:** Pamela H. Schaefer [mailto:pschaefer@reinhardt.com]  
**Sent:** Monday, April 04, 2005 5:19 PM  
**To:** Hvizdak, Thomas  
**Subject:** RE: Food Tree area potable well sample results

Tom we are negotiating with F and M bank for an easement to run the line on the North end of their land.if they refuse can DNR assist us in gaining access?**From:** Hvizdak, Thomas [mailto:Tom.Hvizdak@dnr.state.wi.us]  
**Sent:** Monday, April 04, 2005 12:13 PM  
**To:** Riewe, Thomas V.  
**Cc:** Pamela H. Schaefer; Evans, William J.; Brach, Eric M; Scott, Michael D.  
**Subject:** Food Tree area potable well sample results

Tom,

The Stimac, Pechinski, and Schlottman wells were taken off-line back in 2001 because they had benzene concentration in excess of 100 ppb. Because these wells have been idle for so long it would be quite an involved process to collect a representative sample from them and it would also generate a considerable amount of contaminated water which need special handling and disposal.

The bedrock aquifer in this area has been routinely monitored since 2001. The bedrock piezometers on the Food Tree property, as well as some potable wells downgradient from the Stimac, Pechinski, and Schlottman wells, continue to have benzene concentrations above 5 ppb. Therefore, even though the sample data from the Stimac, Pechinski, and Schlottman wells is over 2 years old, it is reasonable to conclude that these wells are still above safe levels and continue to be at-risk.

Please call me if you want to discuss this further (715/421-7850).

Thanks  
Tom Hvizdak

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JAMES W. GARDNER\*  
KENT I. CARNELL\*  
VICTOR M. ARELLANO†  
KURT C. KOBELT  
THOMAS P. GERMAN  
DIXON R. GAHNZ  
DOUGLAS J. PHEBUS  
BRETT C. PETRANECH  
RICHARD THAL  
GINGER L. MURRAY  
JOHN C. CARLSON, JR.  
HEATHER L. CURNUTT

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CIVIL TRIAL ADVOCATE  
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LICENSED IN WISCONSIN  
AND NEW YORK

RECEIVED  
WI DEPT OF NATURAL RESOURCES

APR 04 2005  
WI RAPIDS SERVICE CENTER  
WI RAPIDS, WI

DATE: APRIL 1, 2005  
TO: PLAINTIFFS – TIEGS, ET AL. V. BRARS, ET AL.  
FROM: JAMES A. OLSON  
RE: SETTLEMENT

Dear Friends:

Enclosed are copies of the Settlement Agreement and Well Trust Agreement that all of you signed yesterday. Also, by copy of this letter, I have provided copies of the enclosed documents to Thomas Hvizdak of the Wisconsin DNR for his files.

Yours very truly,

**LAWTON & CATES, S.C.,**

  
James Olson

JAO:bdh  
Enclosures

LORI TIEGS, et al.,

Plaintiffs,

vs.

Case No.: 02-CV-161

ALLEN WEILAND and EVA WEILAND,

Honorable John V. Finn

Defendants,

and

INDERBANS BRAR and KULJEET BRAR,

Circuit Court Portage County Wis  
**FILED**

Defendants and  
Third-Party Plaintiffs,

MAR 31 2005

vs.

**BERNADETTE A. FLATOFF**  
CLERK OF COURTS

SOCIETY INSURANCE, a Mutual Insurance Company,

Intervening Defendant,

vs.

**ZURICH AMERICAN INSURANCE COMPANY,**

Third-Party Defendant.

**SETTLEMENT AGREEMENT AND RELEASE**

WHEREAS, Plaintiffs commenced an action in the Circuit Court for Wood County, Wisconsin, identified as Case Number 02-CV-161, alleging contamination of Plaintiffs' groundwater and naming Inderbans and Kuljeet Brar ("the Brars") and Allen and Eva Weiland ("the Weilands") as Defendants; and

WHEREAS, the parties have concluded that it is in their mutual interest to resolve their disputes and avoid the time commitment, cost and risks attendant to continued litigation; and



**WHEREAS**, the parties have agreed to enter into this Settlement Agreement and Release as a compromise between the parties for the complete and final settlement of their claims, differences, causes of action and all matters arising out of the facts and claims as set forth in the above-captioned action and with respect to the above-referenced dispute; and

**WHEREAS**, it is expressly understood and agreed between the parties that this Settlement Agreement and Release, and compliance with any of the terms set forth within said Agreement, shall not constitute or be construed to be an admission of liability on any part of the Defendants or as evidencing or indicating in any degree an admission of the truth or correctness of any claims asserted by any party; and

**WHEREAS**, it is the object of this Settlement Agreement to provide the Plaintiffs with water that is of the same quality as the water they were receiving from their own wells prior to the events causing the WDNR issuance of the "Responsible Party" letter to Inderbans Brar on December 11, 2001;

**WHEREAS**, it is the objective of this Settlement Agreement that the new water system will cost the Plaintiffs no more than it would cost them if they were using and maintaining their own private wells;

**WHEREAS**, the parties have agreed to compromise and settle their disputes in the manner hereinafter set forth:

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein and for the good and valuable consideration set forth within, the sufficiency of which is hereby acknowledged, the Plaintiffs and the Defendants agree as follows:

1. The Brars have purchased the land across Highway 34 from the State and will install two water supply wells and arrange for piping of the water from the water supply wells to a pipeline along Greenfield Avenue, and the construction or remodeling of a pumphouse at The Food Tree, where the water will be accumulated in two separate tanks ("New Water Supply"). The New Water Supply for the properties whose wells have been contaminated will be operated by a Private Water Supply Trust as described below. Those properties are as follows:

- a. Lori and Paul Tiegs (owned by Carol Kobza, a non party)
- b. Robert and Frances Noll
- c. David and Bonnie Linzmeier
- d. Gary and Janet Stimac (property now owned by John and Lori Lea Freeberg, non parties)

- e. James and Lillian Pechinski
- f. \_\_\_\_\_ and Dawn Scholtman
- g. John Freeberg and Carol Kobza (not parties to this action – will sign a separate agreement)
- h. The Food Tree

2. The Plaintiffs agree to submit applications to the State's well compensation fund for purposes of helping to defray the costs of installing the new wells. In addition, the Plaintiffs also agree to make application to any other government subsidy/grant program (including the NR 738 fund) that may be available to help subsidize the costs of the new wells, provided that such applications result in no cost to Plaintiffs. The Plaintiffs will assign the checks they receive from the well compensation fund and NR 738 to the Reinhart Boerner Van Deuren trust account of the Brars, to be used to assist in paying for the nNew wWater sSupply.

3. Plaintiffs named in 1.a. through f, above, agree to allow access to the Brars and their engineering consultant to install a lateral water line from the pipe on Greenfield Avenue to their homes. The Brars will pay the cost of the seven lateral lines, not to exceed \$2,500 for each lateral line. Plaintiffs will not pay any costs in connection with the laterals. Plaintiffs named in 1.a. through f, above, will allow the Brars and their engineering consultant access to their closed drinking wells for purposes of further groundwater monitoring after the New Water Supply is installed, without any compensation to Plaintiffs from the Brars. The cost of closing the old wells will be born by the Brars.

4. The cost of the New Water Supply not covered by well compensation funds (or by other government funds subsequently obtained) will be the responsibility of the Brars, provided, however, in no event shall the total contribution of the Brars to the cost of the New Water Supply exceed \$150,000. Plaintiffs will not pay any of the costs associated with the installation of the new system except as set forth in paragraph 2 above. In the event the water system cannot be completed for this amount and construction of the system is not completed, or if the water obtained from the new wells does not conform with the enforcement standard groundwater quality standards of Chapter NR 140, Wis. Adm. Code or contains iron bacteria above the any applicable state standard current levels in Plaintiffs' wells. Plaintiffs shall be entitled to reopen this action without regard to any otherwise applicable statutes of limitations. The total settlement contribution of the Weilands will be \$15,000, as described in paragraphs 5 and 6 below.

5. The Brars and the Weilands will make a total contribution of \$21,500.00 toward the Plaintiffs' costs and expert fees. On or before ~~February 28~~ March 31, 2005, the Brars will pay \$11,500; the Weilands will pay \$10,000. The respective

obligations of the Brars on one hand and the Weilands on the other to make these payments and the payments in paragraph 6 is several only, not joint and several.

6. The Brars and the Weilands will make a total contribution of \$5,000 towards the Plaintiffs' attorney fees, within six months of the dismissal of the lawsuit. The Brars will pay \$5,000; the Weilands will pay \$5,000. This obligation is several only; not joint and several.

7. Because the water supply wells will serve a number of properties, a water trust will be formed by the owners of the properties to be serviced by the wells for the purpose of owning, managing and maintaining the wells in the future, and conducting any necessary water quality tests. The Brars will contribute \$10,000 as the initial funding for the Private Water Trust maintenance fund. The funds will be placed in a bank account designated by the Water Trust. Thereafter, the members of the Trust will assess themselves a quarterly fee for this purpose the maintenance fund. Each of the Plaintiffs named in 1.a. through f, above, will sign the water trust agreement, as a requirement of this settlement. The Brars will pay the cost of a consultant to the trust (a licensed plumber) for a period of three years; the amount not to exceed \$800 per year. The Brars will grant an easement to the Water Trust for use of the pump house ~~of~~ at The Food Tree. *The Brars will pay the cost of re-piping the line between the wells + the ~~water~~ connection to Grant's house, if*

8. The Brars will pay the cost of sampling the water quality (one time only) at the tap of each of the Plaintiffs' residence to ensure that the water meets the water quality standards of Chapter NR 140, Wis. Adm. Code before the water may be used. The Brars or any subsequent owner of The Food Tree Water Trust maintenance fund will pay the costs of any annual water sampling required by WDNR, commencing January 1, 2006. *as necessary, for 10 years from the date of the agreement.*

9. <sup>Brars</sup> The Plaintiffs will pay the cost of conventional water softeners ~~in their residences~~. However, <sup>for the</sup> if there are costs for additional treatment systems, such as chlorination systems or iron bacteria filtration systems that are necessary to meet NR 140 water quality standards ~~of~~ in accordance with this Agreement, the costs and the maintenance of such system(s) will be the responsibility of the Brars. <sup>the</sup> The choice of any <sup>additional</sup> ~~treatment~~ the system to be utilized and the determination of its necessity will be made by the Brars in consultation with DNR. *New Water Supply for the system to be installed in the pump house*

*10c) Brars will pay a Linzmeier's \$8,200 to replace their <sup>existing</sup> snow and system.*

10. In return for the promise to make the payments set forth above, the Plaintiffs named in paragraph 1 above shall dismiss all claims against the Brars and the Weilands with prejudice and without costs to any party and the Brars shall dismiss all crossclaims against the Weilands with prejudice and with no award of costs, by signing and filing the attached Stipulation and Order for Dismissal in the above-captioned action within seven (7) business days of the execution of this Settlement Agreement. In addition, the Plaintiffs will assign any third party rights



17. This Settlement Agreement sets forth the entire agreement between the parties hereto respecting the subject matter described herein. There are not promises, terms, conditions or obligations other than those contained in the Settlement Agreement. This document supersedes all previous communications, representations or agreements, either verbal or written, between the parties.

18. This Settlement Agreement may not be modified or amended except by written agreement between the parties hereto.

19. This Settlement Agreement, consisting of seven (7) pages, including the signature page, may be executed in separate counterparts, each of which shall be deemed an original and may be executed by facsimile with original signature page to follow by mail within three (3) business days.

**CAUTION: READ BEFORE SIGNING!**

PLAINTIFFS:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Lori Tiegs

Dated: \_\_\_\_\_

\_\_\_\_\_  
Paul Tiegs

Dated: 3-31-05

James Pechinski  
James Pechinski

Dated: 3-31-05

Lillian Pechinski  
Lillian Pechinski

Dated: \_\_\_\_\_

Mr. \_\_\_\_\_ Schlotman

Dated: 3-31-05

Dawn Schlotman  
Dawn Schlotman

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gary Stimac

Dated: \_\_\_\_\_

\_\_\_\_\_  
Janet Stimac

Dated: 3-31-05

David Linzmeier  
David Linzmeier

Dated: 3-31-05

Bonnie Linzmeier  
Bonnie Linzmeier

Dated: 3-31-05

Robert Noll  
Robert Noll

Dated: 3-31-05

Frances Noll  
Frances Noll

DEFENDANTS:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Allen Weiland

Dated: \_\_\_\_\_

\_\_\_\_\_  
Eva Weiland

Dated: 03-31-05

Inderbans Brar  
Inderbans Brar

Dated: 3-31-05

Kuljeet Brar  
Kuljeet Brar

Approved as to Form:

LAWTON & CATES, S.C.

Dated: 3-31-05

James A. Olson  
James A. Olson  
Attorney for Plaintiffs  
Lori and Paul Tiegs, et al.

REINHART BOERNER VAN DEUREN S.C.

Dated: \_\_\_\_\_

Pamela Schaefer  
Pamela Schaefer  
Attorney for Defendants and Third-Party  
Plaintiffs Inderbans Brar and Kuljeet Brar

**DECLARATION OF WATER TRUST FOR  
GREENFIELD AVENUE WATER USERS ASSOCIATION**

The Food Tree

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DECLARATION OF WATER TRUST  
FOR GREENFIELD AVENUE HOMEOWNERS ASSOCIATION

RECITATIONS

WHEREAS, Inderbans and Kuljeet Brar (the "Brars") are owners of The Food Tree gas station located in the Town of Rudolph at 1759 Greenfield Avenue, Wisconsin Rapids, Wisconsin 54495.

WHEREAS, several adjacent homeowners have alleged in a lawsuit against the Brars that their drinking water wells have been impacted by petroleum contamination from The Food Tree gas station and, in settlement of their dispute, the Brars have agreed to create a Water Trust to provide for clean drinking water for the following affected homes and The Food Tree. Members of the Trust ("Water Users") shall include:

1. Carol Kobza~~Lori and Paul Tiegs~~
2. Robert and Frances Noll
3. David and Bonnie Linzmeier
4. John and Lori Lea Freeberg~~Gary and Janet Stimac~~
5. James and Lillian Pechinski
6. \_\_\_\_\_ and Dawn Scholtman
7. John and Lorilea Freeberg (current owners of former Stimac residence)
7. ~~John Freeberg and Carol Kobza~~
8. The Food Tree or its designee (its current tenant Mike Mahendra (Mike) Batia)

WHEREAS, the Water Supply System will be built with the capacity to provide water for the designated ~~seven~~ six seven (7) homes and The Food Tree gas station, while maintaining an adequate supply of water and sufficient water pressure levels.

WHEREAS, it is necessary to create a system for administering the Water Supply System in the future.

WHEREAS, the Brars will construct the Water Supply System as part of the settlement of the litigation. It is anticipated that once it is constructed, the Water Supply System will be conveyed to the Water Trust and the Water Trust will administer and maintain the system in the future. The Water Supply System will qualify as a private water supply system governed under NR 811.01 – Applicability.

## DECLARATION

NOW, THEREFORE, Inderbans and Kuljeet Brar grant, transfer, and convey to the Trustees and their successors in office, ownership of the Water Supply System and the right to manage and operate the Water Supply System and the duty to maintain, repair and replace the Water Supply System for the purpose of providing water service to the designated Water Users stated above.

### 1.01 Definitions.

(a) The definition of terms as set forth in section 1.01 of this Declaration of Water Trust shall control for the purposes of this Declaration.

(b) "Water Supply System" shall mean:

(1) "Water Source, Supply and Pump System" which consists entirely of two water supply wells located on the north side of Highway 34 in the Town of Rudolph on land further described as:

That part of the NE 1/4 of the NE 1/4 of Section 32, Township 23 North, Range 6 East, Town of Rudolph, Wood County, Wisconsin, lying West of State Trunk Highway 34, except the North 594 feet thereof. (Tax Key No. 17-00582E).

and pumps, a reservoir, storage tanks, controls, pump house and related equipment located on the nearby Food Tree property.

(2) "Water Mains and Distribution System" which consists of water pipes leading from the two supply wells to the pump house and to individual Water Users' homes.

It is anticipated that the pump house will be located at The Food Tree gas station and the owners of The Food Tree will grant an easement to the Water Trust for any usage of the building and pertinent equipment in the building. These two systems shall be referred to collectively as the "Water Supply System."

(c) "Water User" shall mean the owner of real estate served by the Water Supply System for daily water needs and specifically those properties and users listed above. For purposes of assessing a quarterly fee, each lateral line will be deemed to be a separate "water user."

(d) "Association" shall mean the Greenfield Avenue Water Users Association, an unincorporated association, created hereunder.

(e) "Trustees" shall mean those individuals elected by the Water Users as provided in section 3.01 of this Water Trust.

## THE ASSOCIATION

### 2.01 Creation.

(a) Establishment of Association. Inderbans and Kuljeet Brar hereby create and establish a nonprofit, unincorporated Water Users association to be known as the "Greenfield Avenue Water Users Association" with all rights, powers, privileges and obligations as provided in this Water Trust.

(b) Term of Existence of Association. The Association shall exist during the term of this Water Trust and shall automatically terminate upon termination of this Water Trust.

### 2.02 Membership.

(a) Membership. Each Water User shall automatically be a member of the Association and shall be entitled to one membership and one vote ~~and for each connection to the Water Supply System with connection to the Water Supply System~~ for daily water needs as the sole qualification for membership.

(b) Assignment or Transfer of Ownership Interest in Water Supply System. Association membership and voting rights shall not be assigned, conveyed or transferred in any way except upon transfer of an ownership interest in the real estate upon which the connection to the Water Supply System is located. No membership or voting rights shall be retained except upon retention of title to the real estate upon which the connection to the Water Supply System is located. Any attempt to make a prohibited transfer or retention of such rights shall be null and void.

(c) Membership of Inderbans and Kuljeet Brar. Notwithstanding any provisions in this Declaration to the contrary, Inderbans and Kuljeet Brar ~~or their tenant~~ shall be entitled to one membership and one vote in the Association. This right may be conveyed to any future owners of The Food Tree gas station, which is located at 1759 Greenfield Avenue, Wisconsin Rapids, Wisconsin 54495.



### 2.03 Voting.

(a) Voting. The vote appurtenant to the real estate upon which a connection is located shall be cast as a whole by the owner or co-owner of the title to the real estate. Fractional votes will not be allowed. All decisions and actions of the Association, except as otherwise specifically provided in this Declaration, shall be by a majority of the votes present and entitled to be cast. A Water User shall not be entitled to vote on a matter if any Quarterly Fees or Special Assessment against the Water User are delinquent.

(b) Quorum. A quorum for voting purposes shall consist of 50% or more of the votes entitled to be cast.

### 2.04 Association Meetings.

(a) Notice. Written notice of all meetings of the Association stating the time, place and purpose for which the meeting is called shall be given to each Water User not less than 5 nor more than 30 days prior to the date of such meeting; provided, however, that notice of any meeting may be waived in writing before or after the meeting.

(b) Annual Meeting. The annual meeting of the Association shall be held during the second week in May of each year for the purpose of electing Trustees.

(c) Special Meetings. Special meetings of the Association shall be held whenever called by a written request signed by Water Users with one-third or more of all votes entitled to be cast.

## TRUSTEES

### 3.01 Selection, Vacancies and Meetings.

(a) Selection of Initial Trustees. There will be three (3) Trustees. Initially, the Trustees shall consist of three or more individuals appointed jointly by Inderbans and Kuljeet Brar and Attorney James Olson ~~Christopher J. Blythe~~ or his successor, the legal counsel for the named Water Users.

(b) Election of Trustees. Trustees shall be elected in the following manner: After initial period of service of one year by the appointed

Trustees at the annual meeting of the Water Users at the Association meeting, three Trustees will be elected.

(c) Term of Office. Appointed Trustees shall serve for a period of one year from the date of their appointment. Elected Trustees shall serve for a two-year term.

(d) Meetings. An Annual Meeting of the Trustees shall be held immediately after the Annual Meeting of the Association. Regular meetings of the Trustees shall be held at such times and places as the Trustees determine to be appropriate. Written notice stating the place, date and hour of the meeting shall be given to each Trustee not less than 7 nor more than 14 days before the meeting, either personally or by mail, or at the direction of the Trustees.

(e) Special Meetings. Special meetings of the Trustees may be called by any two Trustees on three days' prior notice to each Trustee, given orally or in writing.

(f) Action by Consent. Any action of the Trustees authorized under this Declaration may be taken upon the unanimous consent of all Trustees without a meeting.

(g) Bonds. No bond shall be required for the Trustees unless so determined by the Water Trust, in which case the premiums shall be paid for by the Water Trust as a common expense.

(h) Trustees shall serve without compensation but will be entitled to the reimbursement of expenses including travel costs, up to \$200/year.

### 3.02 Powers and Duties.

(a) Management of Water Supply System. The Trustees shall operate and manage the Water Supply System, which will have previously been constructed by Inderbans and Kuljeet Brar under the terms and conditions of a settlement agreement between the Brars and the plaintiffs in the lawsuit entitled *Tiegs v. Weiland and Brar, et al.*, Wood County Circuit Court; Case No. 02-CV-161. The Trustees shall determine the water rates and shall collect from the Water Users service charges as herein provided. The Trustees shall keep the Water Supply System in good repair and maintenance and shall pay all taxes levied on said Water Supply System and shall take such other actions including provision of proper insurance and the execution of any fire protection and aid agreements as are necessary to expand, extend, operate and manage the Water Supply System. The Trustees will arrange to conduct any necessary testing of the

water or Water Supply System as required by NR 809 or the Wisconsin Department of Natural Resources or other applicable laws.

(b) A Water Supply system maintenance fund (Water Trust Maintenance Fund) will be established at a local bank. An initial contribution of \$10,000 shall be made by Brars to the fund. Each user will make a quarterly contribution to the fund (See Section 5.01)

(bc) Maintenance of Water Supply System. The Water Trust shall be responsible for the maintenance of the Water Supply System and Distribution System and the Water Source, Supply and Pump System up to the laterals leading from the Distribution System to each home. The Water User or any third party connected to the Water Supply System shall be responsible for all maintenance from the supply line to the residence through a lateral line.

(ed) Accounts. The Trustees shall keep true and correct accounts of all income and expenses, which book of accounts shall be subject to inspection by any of the Water Users at reasonable times after reasonable notice. The trustees may use the funds described in Sections 3.02 (b) and 5.01 to maintain, repair and test the Water system and the water from the system as they deem necessary and appropriate. The trustees may retain a plumber or other professional to maintain the Water Supply system.

(de) Inspection and Repair. The Trustees or their delegate, shall have the right to enter upon any portion of the Water Supply System for the purpose of inspection, repairs, upkeep and other purpose which shall be incidental or necessary to maintain the Water Supply System.

3.03 Rules and Regulations. The Trustees shall from time to time, adopt rules and regulations relating to the use of the Water Supply System. Such rules and regulations shall be effective upon the mailing of such rules and regulations to the Water Users. Each Water User shall be bound by the rules and regulations so adopted and mailed. Water Users are prohibited from filling swimming pools or any other high volume water usage of the Water Supply System.

3.04 Indemnification. Trustees shall not be liable for any damage or claims relating either to the loss or injuries from use of water from the Water Supply System nor for any expenses incurred in repairing, replacing or maintaining the components of the Water Supply System, except to the extent any such Trustee acted in bad faith or in a grossly negligent manner. The cost of any response to or defense or payment of such damage or claims shall be paid by the Water Trust Maintenance Fund. Indemnification of Trustees shall be as provided in the Wisconsin Statutes.

## WATER CONNECTION AND USE

4.01 Rights of Use. Each Water User shall have the right of access to the Water Supply System, subject to the same right as other Water Users and may draw water from the Water Supply System as provided. Each Water User shall be bound by such rules and regulations relating to the use of the Water Supply System as may be promulgated by the Trustees.

4.02 Connection. Each Water User shall connect to water laterals of the Water Supply System for the purpose of supplying water for their personal and daily use in their home. The laying and connecting to, ~~and the maintenance and replacement of lateral pipes from the lot line to the home shall be the expense of the Water User Brars. Thereafter, the costs of maintenance of the lateral pipe will be borne by the Water User.~~

~~4.03 Water Meters. Each Water User ~~must~~ may have a water meter approved by the Trustees at the time of connection to the Water Supply System. The meter shall be purchased and installed by the Water User, however, upon connection to the Water Supply System the meter shall become the property of the Water Trust and be owned and maintained by the Trust. Failure to install a meter constitutes a violation of the agreement and means that the Water User will no longer be entitled to access water from the Water Supply System.~~

4.04 Private Well Connection Prohibition. No Water User receiving water service from the Water Supply System shall directly or indirectly connect a private well to the Water Supply System.

4.05 Additional Water Users. Additional Water Users may be added to the Water Supply System only upon a unanimous vote of all the existing Water Users. It is anticipated that if more Water Users are added to the Association, there may be additional costs for testing the water because the system will no longer qualify as a "private system." In the event that an additional proposed user applies for inclusion in the Water Trust, inclusion will only be granted upon the unanimous approval of the currently-existing Water Users at either the annual meeting as set forth in paragraph 2.03(b) above or upon a special meeting duly noticed pursuant to provisions of 2.03(c) above.

925 CHARGES

5.01 Quarterly Fee. Each Water User shall pay to the Trustees a quarterly service charge of ~~\$6025.50~~ until such charge is adjusted for water used, or adjusted if there is a need for additional funds to maintain the system. Quarterly service charges shall be billed at the end of each calendar quarter ~~and prorated depending on the rate of water usage as determined by the Trustees.~~

5.02 Fee Use. Payments received by the Trustees (i.e., the Water Trust Maintenance Fund) shall be used for the repair, maintenance, replacement, taxes, insurance, auditing expense and any and all other expenses incidental to the operation and maintenance of the Water Supply System, including electrical and heating costs.

5.03 Special Assessment. The Trustees may propose a special assessment of all Water Users subject to this Water Trust. Any special assessment shall be effective only after approval by a majority vote of Water Users at an annual or special meeting of Water Users.

DEFAULT

6.01 Payment Default.

(a) ~~In the event that any Water User shall fail to pay the quarterly service charge when due, the unpaid amount shall bear interest at the maximum rate as may be permitted by law, until the charges are paid in full, which will constitute a lien on the lot and shall be collectible and enforceable by the Board of Trustees by suit against the Water User, by foreclosure of the lien, and/or in any other manner or method provided under this Declaration or laws of the State of Wisconsin. The lien granted hereunder shall also cover and include all interest accruing on delinquent assessments, plus costs, expenses and attorneys' fees for collection.~~ <sup>Each</sup>

(b) The Water Trust (through the Board of Trustees) shall have the exclusive right and power to collect or enforce collection of all water service charges and Special Assessments levied by the Board and shall further have the exclusive right to bring any and all actions and liens arising therefrom. The Water Trust may bring an action at law against any Water User personally to collect such assessments and/or to foreclose the lien for such assessments against the Water User's property. The Board shall have the right at any time to notify all Water Users of the delinquency of any Water User.

6.02 Disconnection and Reinstatement of Water Service. In addition to the remedies granted above, the Trustees may, at their option, upon five days' notice, disconnect from the Water Supply System the water service of any defaulting Water User. Water service shall be reinstated upon payment of all quarterly service charges in arrears, together with the interest as specified above and the cost of disconnection and reconnection of the water equipment and any costs of collection, including legal fees and disbursements.

## TERMINATION

7.01 Events Causing Termination. This Trust shall terminate on the earliest of any of the following events

(a) The Water Supply System is taken over by either a governmental authority or a public utility for maintenance and operation. In such event, the Trustee shall transfer all interests in and to this Declaration of Water Trust to such governmental authority or such public utility, together with all right, title and interest of the Trustees in and to the Water Supply System, together with all appurtenances thereto. In no event shall there be imposed upon the Water Trust or upon any Water User any special assessment or any charge for the connection of the Water Supply System to or its acquisition by any governmental authority or regulated public authority.

(b) The municipal water services are provided either by a governmental authority or by a public utility through means other than the Water Supply System.

(c) By unanimous vote of all Water Users and Trustees.

7.02 Disposition of Assets. In the event of termination, the Trustees shall transfer all interest in and to the mains and other components of the Water Supply System to such governmental authority or public entity or to such city water district or municipality if they are not required for continued operation of the Water Supply System. Any remaining assets may be sold and converted to cash.

7.03 Distribution of Costs and Proceeds from Disposition of Assets. Upon termination of this Trust, any net proceeds shall be divided proportionately among the Water Users.

MISCELLANEOUS

8.01 Amendments. The approval of this Declaration of Water Trust by the Town of Rudolph and the Wisconsin Department of Natural Resources will may be negotiated by the Trustees.

8.02 Effect. The foregoing shall be construed as covenants running with the land. This Trust shall inure to the benefit of the present Water Users and their respective heirs, personal representative, successors or assigns and to Inderbans and Kuljeet Brar and their successors and assigns.

8.03 Governing Law. The Circuit Court of Wood County, Wisconsin, shall have jurisdiction over the Trust in accord with the Statutes of the State of Wisconsin.

Dated: \_\_\_\_\_  
Lori Tiegs

Dated: \_\_\_\_\_  
Paul Tiegs

Dated: 3-31-05 \_\_\_\_\_  
Robert Noll

Dated: 3-31-05 \_\_\_\_\_  
Frances Noll

Dated: 3-31-05 \_\_\_\_\_  
David Linzmeier

Dated: 3-31-05 \_\_\_\_\_  
Bonnie Linzmeier

Dated: \_\_\_\_\_  
Gary Stimae

Dated: \_\_\_\_\_  
Janet Stimae

Dated: 3-31-05 \_\_\_\_\_  
James Pechinski

Dated: 3-31-05 \_\_\_\_\_  
James Pechinski



Lillian Pechinski

Dated: \_\_\_\_\_  
\_\_\_\_\_ Scholtman

Dated: 3-31-05  
Dawn Scholtman  
Dawn Scholtman

Dated: \_\_\_\_\_  
John Freeberg  
John Freeberg

Dated: \_\_\_\_\_  
Lori Lee Freeberg

Dated: 3-31-05  
Carol Kobza  
Carol Kobza

Dated: 03-31-05  
Inderbans Stry Brar  
Inderbans Brar, on behalf of  
The Food Tree

LAWTON & CATES, S.C.

Dated: 3-31-05  
James A. Olson  
James A. Olson, on behalf of  
Water Users 2, 3, 5 and 6 through 6 on page 1  
of this Declaration of Water Trust

ACCEPTANCE OF TRUST

The undersigned hereby consent to act as the Trustees designated in the foregoing Declaration of Water Trust in accordance with the terms and conditions hereof.

Inderbans S. Brar  
Inderbans S. Brar, Trustee 03-31-05  
Carol L Kobza  
Carol L Kobza, Trustee

\_\_\_\_\_, Trustee

State of Wisconsin )  
                                  : SS  
Pontiac County )

This instrument was acknowledged before me on Mar 31, 2005, by  
the above-listed Trustees..

[Seal]

James A. Olson )  
Notary Public, State of Wisconsin  
My commission is permanent

## Hvizdak, Thomas

---

**From:** Riewe, Thomas V.  
**Sent:** Monday, April 04, 2005 1:14 PM  
**To:** Hvizdak, Thomas  
**Subject:** RE: Food Tree area potable well sample results

Thanks Tom. I am happy there is no need to resample.

### Tom Riewe

Private Water Systems Section  
Bureau of Drinking Water & Groundwater  
Wisconsin Department of Natural Resources

(☎) phone: (608) 266-8697

(☎) fax: (608) 267-7650

(✉) e-mail [thomas.riewe@dnr.state.wi.us](mailto:thomas.riewe@dnr.state.wi.us)

-----Original Message-----

**From:** Hvizdak, Thomas  
**Sent:** Monday, April 04, 2005 12:13 PM  
**To:** Riewe, Thomas V.  
**Cc:** 'Pamela H. Schaefer'; Evans, William J.; Brach, Eric M; Scott, Michael D.  
**Subject:** Food Tree area potable well sample results

Tom,

The Stimac, Pechinski, and Schlottman wells were taken off-line back in 2001 because they had benzene concentration in excess of 100 ppb. Because these wells have been idle for so long it would be quite an involved process to collect a representative sample from them and it would also generate a considerable amount of contaminated water which need special handling and disposal.

The bedrock aquifer in this area has been routinely monitored since 2001. The bedrock piezometers on the Food Tree property, as well as some potable wells downgradient from the Stimac, Pechinski, and Schlottman wells, continue to have benzene concentrations above 5 ppb. Therefore, even though the sample data from the Stimac, Pechinski, and Schlottman wells is over 2 years old, it is reasonable to conclude that these wells are still above safe levels and continue to be at-risk.

Please call me if you want to discuss this further (715/421-7850).

Thanks  
Tom Hvizdak



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Scott Hassett, Secretary  
Scott Humrickhouse, Regional Director

Wisconsin Rapids Service Center  
473 Griffith Avenue  
Wisconsin Rapids, Wisconsin 54494  
Telephone 715-421-7800  
FAX 715-421-7830

PROJECT: Food Tree 2001 Release REFERENCE #: \_\_\_\_\_  
PERSON CONTACTED: Pam Schaefer COMPANY/AGENCY: \_\_\_\_\_  
PHONE #: Incoming DATE: 04/04/05 TIME: 10:10

Topic: \_\_\_\_\_

' Gratzek need to meet Eric Bruch TO finalize the plans for the New Potable Wells.

' Pam told me that DNR-DG felt that the Potable well results are too old for use with well-camp & will need something from me, in writing, stating that these wells are still at-risk. I told Pam I'd contact Tom-Reeve &/or Mike Scott.

~~There's a message~~

CC:

*Tom Hvizdak*

Tom Hvizdak  
Hydrogeologist



Fri, Apr 1, 2005

## Parties reach deal in contamination case

By ANDREW DOWD

For the Daily Tribune

STEVENS POINT - A legal battle over contaminated drinking water that lasted more than two years ended in a settlement Thursday.

Residents living on Greenfield Avenue in the town of Rudolph discovered gasoline additives in their residential wells in 2001, and a nearby gas station was believed to have caused the problems.

The residents started a class action lawsuit in 2002 against the current and former owners of the Food Tree, 1759 Greenfield Ave.

"This case has been around for a while," said Portage County Circuit Court Judge John Finn, who was assigned the case by Wood County courts. "This proposal appears to be a reasonable solution to what is a very difficult problem."

The agreement requires the station's owners to construct two wells and guarantee them for 10 years, to incorporate a water softener into the new water system and to pay \$8,300 for a private septic mound affected by the pollution.

With the new water system, connected homes have to pay a user fee of \$25 per quarter.

Department of Natural Resources hydrogeologist Tom Hvizdak suspected the current water problems were due to a spill that happened in the spring of 2001 at the gas station. The owners fixed the broken line, but months later, neighbors began experiencing water problems.

Janet Stimac noticed that her water smelled of gasoline in November 2001, and the DNR found days later that eight wells on Greenfield Avenue were contaminated, including the Linzmeier household's.

"It was our early Christmas present," Bonnie Linzmeier, 43, said with a hint of sarcasm.

The family's clothes began to smell of gasoline after they had been washed, but the water didn't have a noticeable taste. When DNR officials took a sample, they told the Linzmeiers to stop using their well water.



"If he hadn't come to our door, we'd still be drinking it," she said.

The family still uses their well water for showers and in their toilets, but for drinking, the Linzmeiers keep at least 10 five-gallon jugs of water on hand.

Jaime Linzmeier, 22, claimed to have had experienced increasing skin problems when the benzene levels were at their highest, though doctors couldn't confirm the pollutants were the cause, and David Linzmeier, 53, said he had experienced frequent headaches when the water gave off the smell of gasoline.

"It's just been horrendous," Bonnie Linzmeier said.

Other households get their water delivered to storage tanks by the DNR because the groundwater still contains high amounts of pollutants and is unsuitable for anything but toilet water.

Pamela Schaefer, attorney for current Food Tree owners Inderbans and Kuljeet Brar, drafted the settlement, and the neighbors helped adjust the terms during a court recess that lasted about an hour Thursday.

Since they purchased the station in 2000, Schaefer said her clients have made sure the gasoline storage tanks are tight and equipment is in good condition. She also contends that spills didn't happen under the Brars' ownership.

"We don't frankly think there was a spill on their watch," she said.

There had been a gasoline spill in 1991 under the previous ownership, which was cleaned up and monitored for the next nine years until the DNR found that

contaminant levels were at acceptable levels in August 2000.

Other possible resolutions to the lawsuit that were explored during the past years have included asking Wisconsin Rapids for annexation or extending utilities, which would have cost the city millions in either case.

Another option would be remediating the problem and getting the pollution out of the soil and wells. However, this would take more time, and residents wouldn't be guaranteed a future spill wouldn't again pollute their wells.

Though the water in the residential wells has been improving in the last couple years, Hvizdak said no one can predict when it will be free of benzene and other contaminants.

The option agreed upon by both parties creates two wells west of the contaminated area, which contains high levels of iron and manganese, but Hvizdak said neither chemical poses a health risk.

Until the wells can be built and the new water begins running, affected residents will still get their water delivered.

Though Bonnie Linzmeier believes the compromise is better than their current situation, she feels it still doesn't address one of the family's biggest concerns - selling their home with the stigma of the polluted water underneath it.

"Who's going to buy it if you can't drink the water?"

= BF

JAMES A. OLSON\*  
JAMES W. GARDNER\*  
KENT I. CARNELL\*  
VICTOR M. ARELLANO†  
KURT C. KOBELT  
THOMAS P. GERMAN  
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RICHARD THAL  
GINGER L. MURRAY  
JOHN C. CARLSON, JR.  
HEATHER L. CURNUTT

\*NATIONALLY CERTIFIED  
CIVIL TRIAL ADVOCATE  
†COURT COMMISSIONER

# LAWTON & CATES, S.C.

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MADISON, WISCONSIN 53701-2965

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OF COUNSEL  
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JOHN C. CARLSON  
BRUCE M. DAVEY  
MARSHA M. MANSFIELD  
THOMAS O. OLSON

JOHN A. LAWTON  
(1917-1990)  
ROBERT C. KELLY  
(1924-2001)

LICENSED IN WISCONSIN,  
ILLINOIS AND NEW YORK

March 11, 2005

Mr. P. Scott Hassett  
DNR Secretary  
101 South Webster Street  
P.O. Box 7921  
Madison, WI 53707-7921

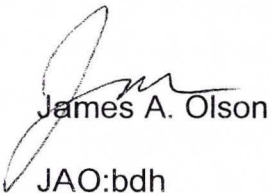
RE: Eric Brach and Tom Hvizdak

Dear Scott:

I am writing to thank you for the excellent work done by the above DNR employees. Mr. Brach and Mr. Hvizdak (both from the Wisconsin Rapids DNR Field Office) are working with our office regarding the matter of Tiegs, et al. v. Brar, et al., a ground water contamination case filed in Wood County. Throughout the case, these gentlemen have gone above and beyond the call of duty and worked with our office, our clients and the defendants in order to work towards an amicable settlement. Last night, we had a meeting scheduled with our clients and both gentlemen came after usually working hours in order to meet with our clients and help to address any questions and concerns that they may have had. Their services have been invaluable and I wanted you to be aware of that.

Yours very truly,

**LAWTON & CATES, S.C.**

  
James A. Olson  
JAO:bdh

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MAR 14 2005  
WI RAPIDS SERVICE CENTER  
WI RAPIDS, WI







State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Scott Hassett, Secretary  
Scott Humrickhouse, Regional Director

Wisconsin Rapids Service Center  
473 Griffith Avenue  
Wisconsin Rapids, Wisconsin 54494  
Telephone 715-421-7800  
FAX 715-421-7830

PROJECT: Jim Olson Food Tree 2001 Release REFERENCE #: 03-72-284956  
PERSON CONTACTED: Jim Olson COMPANY/AGENCY: Army For Residences  
PHONE #: Incarnig DATE: 03/09/05 TIME: 2:11:00

Topic: \_\_\_\_\_

Question - Has I ever had any experience with a similar situation? I told him "No"

- How will they operate the system? - I told him that Eric Brack is the person to talk to.

- Why couldn't the people just take the money the Brack?  
I told him that that's a good question, but unless all people were in agreement, it would be impossible to ~~even~~ ~~even~~ even consider this a remedy.

CC:

*J-H*

Tom Hvizdak  
Hydrogeologist



**FACSIMILE MESSAGE****IMPORTANT CONFIDENTIALITY NOTICE**

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PLEASE DELIVER THE FOLLOWING TO:

Memory Tag: 2# 710

Name:	David Grutzik, P.E.	Facsimile No.	715-355-4199
Company:	Central Wisc Engineers & Architects	Phone No.	800-261-5707

Name:	Thomas Hvizdak	Facsimile No.	715-421-7830
Company:	Wisconsin Dept. of Natural Resources	Phone No.	715-421-7850

FROM: Pamela H. Schaefer

DATE: March 1, 2005

REQUESTED BY Theresa Skrove  
EXTENSION 4567

ATTORNEY NO. 671  
CLIENT NO. 06947K  
MATTER NO. 00012

Total number of pages sent, including this page 3

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COMMENTS:



March 1, 2005

Pamela H. Schaefer, Esq.  
Direct Dial: 262-951-4598  
pschaefer@reinhardt.com

**SENT VIA FACSIMILE  
AND FIRST CLASS MAIL**

David Grutzik, P.E.  
Central Wisconsin Engineers & Architects  
P.O. Box 107  
Schofield, WI 54476-0107

Dear Mr. Grutzik:

Re: The Food Tree  
Water Replacement System

Enclosed is a check for \$14,664.99 made out to Central Wisconsin Engineers & Architects, Inc. This amount is being paid to you from Mr. Inderbans Brar's trust account at Reinhart Boerner Van Deuren. The funds, therefore, are Mr. Brar's funds - not the law firm's funds.

I understand that this payment should bring Mr. and Mrs. Brar up to date in terms of what is owed to you and your company.

I wanted to update you briefly on what is occurring with the lawsuit. As I have explained to you earlier, we cannot move forward with the project until all of the plaintiffs have signed off on the Settlement and Release Agreement ("Settlement") forms accepting the proposal that the Brars provide clean water to each of the six (6) homeowners impacted by the prior release from The Food Tree. As you know, the Brars propose to drill two wells adjacent to the highway and pipe the water back to a pump house at The Food Tree and thereafter to each of these six (6) homes. At the time I last spoke to Attorney Jim Olsen, who has taken over the matter for Christopher J. Blythe, none of the plaintiffs were willing to sign the Settlement Agreement. This has apparently happened because of the change in their legal counsel and also because several of them have questions about whether or not the water which the Brars will be providing will meet DNR's drinking water standards. They also question what the

P.O. Box 2765, Waukesha, WI 53187-2265 • W233 N2080 Ridgeview Parkway, Waukesha, WI 53188  
Telephone: 262-951-4500 • Facsimile: 262-951-4690 • Toll Free: 800-928-5529

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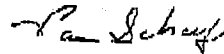
Mr. David Grutzik  
March 1, 2005  
Page 2

likely costs will be for electricity, etc., on a monthly basis. In order to answer these questions, and to alleviate their concerns, we have scheduled a meeting with all of the plaintiffs and their attorney, representatives of the DNR, Mr. Brar, myself and, hopefully, you. The meeting will take place at the Rudolph Town Hall (i.e., 6432 2<sup>nd</sup> Avenue, Town of Rudolph) and is currently scheduled for Thursday, March 10<sup>th</sup> at 7:00 p.m.

We would like you to attend this meeting to answer any technical questions which the plaintiffs have about the proposed water replacement system. We would appreciate it if you would bring along whatever design documents you have to date to utilize in explaining the project to them.

If you have any questions, please let me know

Sincerely,



Pamela H. Schaefer

Waukesh25912PHS:TMS

cc Mr. Inderbans Brar (w/o enclosure)  
Jeffrey G. LaViolette, P.E. (w/o enclosure)  
Mr. Tom Hvizdak (w/o enclosure) (sent via fax and first class mail)

## Hvizdak, Thomas

---

**From:** Evans, William J.  
**Sent:** Friday, April 01, 2005 8:48 AM  
**To:** Woletz, Thomas E.; Humrickhouse, Scott A.; Weitz, David A.  
**Cc:** Giesfeldt, Mark F.; Johnson, Deborah D - DNR Legal  
**Subject:** FW: Food Tree Replacement Well

Good news - The impacted residents from this gas station reached a settlement and will have a replacement water supply. Hopefully, now we can get them to sign the spill response agreement (consent order) Tom has been trying to negotiate with them to finish the site investigation and cleanup. We've already spent almost \$40,000 at this site from sampling and providing "temporary" water supplies, and a lot of effort/time on Tom's part. Tom has done an excellent job making sure the public was protected and doing whatever he could to make this difficult case move forward. See the newspaper article below...

-----Original Message-----

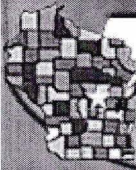
**From:** Hvizdak, Thomas  
**Sent:** Friday, April 01, 2005 7:23 AM  
**To:** Evans, William J.  
**Subject:** Food Tree Replacement Well

The residences settled their lawsuit yesterday. They had me take the stand to explain why the shared well system was the best alternative (other than buying the residences out).

Here's a new article from the local paper, and yes, I was interviewed again. It wasn't a long interview and the article pretty much covers what we talked about.

<http://www.wisinfo.com/dailytribune/wrtdlocal/282966836465148.shtml>

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Fri, Apr 1, 2005

## Parties reach deal in contamination case

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By ANDREW DOWD  
For the Daily Tribune  
STEVENS POINT - A legal battle over contaminated drinking water that lasted more than 10 years ended in a settlement Thursday.

- Sports**
- Local Sports
  - PackersNews.com
  - Outdoors

Residents living on Greenfield Avenue in the town of Rudolph discovered gasoline in their residential wells in 2001, and a nearby gas station was believed to have caused the problems.

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The residents started a class action lawsuit in 2002 against the current and former owners of the Food Tree, 1759 Greenfield Ave.

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"This case has been around for a while," said Portage County Circuit Court Judge John J. O'Connell, who was assigned the case by Wood County courts. "This proposal appears to be a reasonable solution to what is a very difficult problem."  
The agreement requires the station's owners to construct two wells and guarantee them for 10 years, to incorporate a water softener into the new water system and to pay \$8 million for a private septic mound affected by the pollution.

- Company Links**
- Gannett Co., Inc.
  - USAToday.com
  - USAWeekend.com
  - Gannett Foundation
  - Gannett Ethics Code

With the new water system, connected homes have to pay a user fee of \$25 per month.



Department of Natural Resources hydrogeologist Tom Hvizdak suspected the contamination problems were due to a spill that happened in the spring of 2001 at the gas station. The owners fixed the broken line, but months later, neighbors began experiencing water quality problems.

Janet Stimac noticed that her water smelled of gasoline in November 2001, and found out days later that eight wells on Greenfield Avenue were contaminated, including the Linzmeier household's.

"It was our early Christmas present," Bonnie Linzmeier, 43, said with a hint of sarcasm.

The family's clothes began to smell of gasoline after they had been washed, but they didn't have a noticeable taste. When DNR officials took a sample, they told the family to stop using their well water.

"If he hadn't come to our door, we'd still be drinking it," she said.



The family still uses their well water for showers and in their toilets, but for drinking water, Linzmeiers keep at least 10 five-gallon jugs of water on hand.

Jaime Linzmeier, 22, claimed to have had experienced increasing skin problems and benzene levels were at their highest, though doctors couldn't confirm the pollution cause, and David Linzmeier, 53, said he had experienced frequent headaches which gave off the smell of gasoline.

"It's just been horrendous," Bonnie Linzmeier said.

Other households get their water delivered to storage tanks by the DNR because groundwater still contains high amounts of pollutants and is unsuitable for any drinking water.

Pamela Schaefer, attorney for current Food Tree owners Inderbans and Kuljeet, reached the settlement, and the neighbors helped adjust the terms during a court recess for about an hour Thursday.

Since they purchased the station in 2000, Schaefer said her clients have made sure gasoline storage tanks are tight and equipment is in good condition. She also claimed no spills didn't happen under the Brars' ownership.

"We don't frankly think there was a spill on their watch," she said.

There had been a gasoline spill in 1991 under the previous ownership, which was detected and monitored for the next nine years until the DNR found that contaminant levels were at acceptable levels in August 2000.

Other possible resolutions to the lawsuit that were explored during the past year included asking Wisconsin Rapids for annexation or extending utilities, which would cost the city millions in either case.

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Though the water in the residential wells has been improving in the last couple of years, said no one can predict when it will be free of benzene and other contaminants.

The option agreed upon by both parties creates two wells west of the contaminated area which contains high levels of iron and manganese, but Hvizdak said neither chemical poses a health risk.

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Though Bonnie Linzmeier believes the compromise is better than their current situation, she feels it still doesn't address one of the family's biggest concerns - selling their home because of the stigma of the polluted water underneath it.

"Who's going to buy it if you can't drink the water?"

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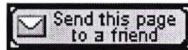
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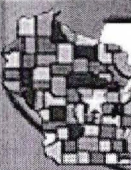
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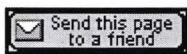
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Tom Loucks/Daily Tribune Andy Linzmeier of the town of Rudolph gets a new jug of water ready for the water cooler in the kitchen. The family has to use bottled water because water from the faucet isn't safe to drink.

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**Hvizdak, Thomas**

---

**From:** Hvizdak, Thomas  
**Sent:** Monday, March 14, 2005 1:01 PM  
**To:** 'Pamela H. Schaefer'  
**Subject:** RE: Food Tree

Yes. By planning ahead and installing some additional hookups at locations that may be developed in the future, you'll prevent water-related problems later on when they try to obtain safe water.

-----Original Message-----

**From:** Pamela H. Schaefer [mailto:pschaefer@reinhardtllaw.com]  
**Sent:** Monday, March 14, 2005 11:00 AM  
**To:** Hvizdak, Thomas  
**Subject:** Food Tree

I received a cal this AM from John Freeberg...(1680 Greenfield Ave)...he is apparently the new owner of the Stimac residence. He will cooperate and sign a release both on his own behalf and for the Stimac property only if an additional hook up is created for another piece of property at .1735 Greenfield ave. which he owns. He is not a party to the lawsuit , but is one of the people who must receive clean water. I need to know if this is acceptable to you.

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## Hvizdak, Thomas

---

**From:** Brach, Eric M  
**Sent:** Monday, March 14, 2005 11:08 AM  
**To:** Hvizdak, Thomas  
**Subject:** FW:



Doc2.doc

-----Original Message-----

**From:** Brach, Eric M  
**Sent:** Friday, March 11, 2005 3:46 PM  
**To:** Brach, Eric M  
**Subject:**

DATE: 3/11/05 – a.m.

FILE REF: 3320  
Wood Co.

TO: FILE

FROM: E. Brach - DG

SUBJECT: FOOD TREE AREA CONTAMINATION – NEW WELL/SYSTEM PROPOSAL

- 1) **Left a detailed Voice Mail today with Dave Grutzik of CWEA Consultants regarding our (DNR) concerns as follows:** we have to know very soon as to who the WD and PI will be for the two proposed water wells; Well Comp. Forms must be completed by WD/PI or Engineer, in order for me to send down completed forms/packet to DG Bureau for approval. DNR will not go much beyond 2 years past, regarding VOC water sample test results. Should this process take too long, a whole new round of VOC samples may have to be collected from impacted homeowner wells. If test results are not over ES/MCLs, then Well Compensation may not be available per Tom Riewe of DG BUREAU.
- 2) Spoke to Jim Olson/ Brian Hartung – Attorney at Lawton & Cates, S.C. for plaintiffs, regarding the above mentioned concerns. Jim stated he understood and would relay concerns to Pam Schaefer. – Attorney at Reinhart for defendant, and to plaintiffs. Jim Olson will meet with his clients (plaintiffs) again in a couple of weeks.
- 3). Spoke with Mrs. Junemann of Bertram-Junemann Well Drilling also this a.m. regarding the above. Jim stated he was contacted last year in order to drill wells, but has not heard anything from the engineer – Dave Grutzik since then. Jim Junemann was not sure he had the pump/piping portion of the contract.

Note: Dave Grutzik of CWEA is employed by Food Tree (defendant).

Cc: Tom Riewe – DG/2  
Tom Hvizdak – R&R, WI. Rapids  
File

Food Tree Meeting  
03/10/05 @ 7PM  
Rudolph Town Hall

CO

- John Freeburg bought Strimac House
- Spike due to gas being trapped in Granite BedRock??
  - Since the entire R<sub>x</sub> aquifer is submerged, how could higher than normal rainfall cause increases
  - how could gas get trapped??
- Hopefully Drilling in May
  - Wells in Granite R<sub>x</sub> w/ 100' casing & ≈ 500' deep & 6" dia.
  - Pressure Tanks in remediation bldg.
    - 30-40 psi
    - Addition of Homes
    - What is peak usage??
    - Maintenance
      - Anticipating elec. \$1000, + heat + ≈ Total 2K/year
    - Water line run along edge of Road.
    - Sample Taps to ensure that no residuals in pipes affecting quality.

Attendants: Pam Schaefer, Inderbani Brar, Eric Brach, Freeburgs, Knolls, Linzmeier (Dave)  
Kobra (Carol), Schlattman,  
James Olson, Hartung  
Engr. Pur Brars

J-7AM



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Scott Hassett, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2621  
FAX 608-267-3579  
TTY Access via relay - 711

March 8, 2004

REF: L679

Representative David Obey  
First Star Plaza  
401 5th Street, Suite 406  
Wausau, WI 54403-5473

Subject: Mr. and Mrs. Robert Noll Concerns

Dear Representative Obey:

Thank you for your February 12, 2004 which included correspondence from Mr. and Mrs. Robert Noll of Wisconsin Rapids regarding concerns they have with a groundwater contamination problem where they live in the Town of Rudolph .

The Wisconsin Department of Natural Resources (Department) is fully aware of the groundwater contamination in the Town of Rudolph which the Noll's referred to in their letter to you. We can understand the Noll's frustration with the situation but their statement that nothing has been done about checking them (the Food Tree) out is not correct. The Department has made significant efforts in attempting to resolve this very difficult contamination problem and resultant impacts to private wells, including the Noll's well. We have been working with the responsible party Mr. Brar, as well as the community in an attempt to find an alternate permanent water supply. Unfortunately, a public water supply would cost over a million dollars. It appears Mr. Brar has found out his insurance policy may not cover this type of claim and is involved in a legal action against his insurance company to require them to cover this claim. In addition, the local municipality has decided not to assist Mr. Brar in pursuing any financial assistance options for an alternate water supply that the town may be eligible for. Nonetheless, the Department continues our attempts to obtain compliance for a cleanup and water supply replacement with Mr. Brar. The Department immediately responded to the incident when contamination was discovered in a private well. In 2001 and 2002, the Department was able to finance and conduct sampling of private wells, has provided temporary bottled water to 7 homes exceeding drinking water standards (including the Noll's), and provided bulk water (and associated storage systems) to 3 homes. The Department also required testing of the underground gasoline tanks and associated piping at the Food Tree site, as well as an investigation to determine the source and extent of the contamination, after the contamination was discovered.

The Department has compelled Mr. Brar to assume responsibility for providing the temporary water supplies and sampling. In addition, Mr. Brar has initiated an effort to locate and design a shared water supply in a safe location to replace the contaminated wells.

Mr. Noll asked why the Department could not simply freeze all of Mr. Brar's assets and liquidate them to pay for a cleanup. The Department does not have the legal authority to do this.

If you or the Noll's have any further questions or concerns on this issue please feel free to contact our remediation and redevelopment project manager/hydrogeologist Mr. Tom Hvizdak at 715-421-7850. Mr. Hvizdak is located in our Wisconsin Rapids Service Center.

Sincerely,

Scott Hassett  
Secretary

c. Al Shea, AD/5

Scott Humrickhouse, WCR  
Mark Giesfeldt, RR/3  
Tom Woletz, WCR  
Bill Evans, WCR  
Tom Hvizdak, WI Rapids



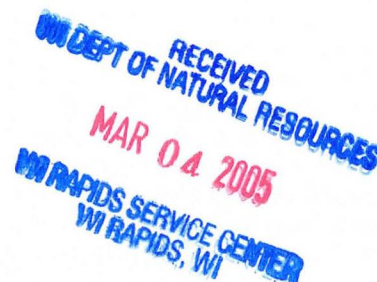


March 1, 2005

Pamela H. Schaefer, Esq.  
Direct Dial: 262-951-4598  
pschaefer@reinhartlaw.com

**SENT VIA FACSIMILE  
AND FIRST CLASS MAIL**

David Grutzik, P.E.  
Central Wisconsin Engineers & Architects  
P.O. Box 107  
Schofield, WI 54476-0107



Dear Mr. Grutzik:

Re: The Food Tree  
Water Replacement System

Enclosed is a check for \$14,664.99 made out to Central Wisconsin Engineers & Architects, Inc. This amount is being paid to you from Mr. Inderbans Brar's trust account at Reinhard Boerner Van Deuren. The funds, therefore, are Mr. Brar's funds – not the law firm's funds.

I understand that this payment should bring Mr. and Mrs. Brar up to date in terms of what is owed to you and your company.

I wanted to update you briefly on what is occurring with the lawsuit. As I have explained to you earlier, we cannot move forward with the project until all of the plaintiffs have signed off on the Settlement and Release Agreement ("Settlement") forms accepting the proposal that the Brars provide clean water to each of the six (6) homeowners impacted by the prior release from The Food Tree. As you know, the Brars propose to drill two wells adjacent to the highway and pipe the water back to a pump house at The Food Tree and thereafter to each of these six (6) homes. At the time I last spoke to Attorney Jim Olsen, who has taken over the matter for Christopher J. Blythe, none of the plaintiffs were willing to sign the Settlement Agreement. This has apparently happened because of the change in their legal counsel and also because several of them have questions about whether or not the water which the Brars will be providing will meet DNR's drinking water standards. They also question what the

COPY

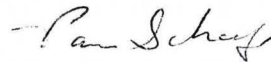
Mr. David Grutzik  
March 1, 2005  
Page 2

likely costs will be for electricity, etc., on a monthly basis. In order to answer these questions, and to alleviate their concerns, we have scheduled a meeting with all of the plaintiffs and their attorney, representatives of the DNR, Mr. Brar, myself and, hopefully, you. The meeting will take place at the Rudolph Town Hall (i.e., 6432 2<sup>nd</sup> Avenue, Town of Rudolph) and is currently scheduled for Thursday, March 10<sup>th</sup> at 7:00 p.m.

We would like you to attend this meeting to answer any technical questions which the plaintiffs have about the proposed water replacement system. We would appreciate it if you would bring along whatever design documents you have to date to utilize in explaining the project to them.

If you have any questions, please let me know.

Sincerely,



Pamela H. Schaefer

Waukesh\25912PHS:TMS

cc Mr. Inderbans Brar (w/o enclosure)  
Jeffrey G. LaViolette, P.E. (w/o enclosure)  
Mr. Tom Hvizdak (w/o enclosure) (sent via fax and first class mail) ✓





February 23, 2005

Pamela H. Schaefer, Esq.  
Direct Dial: 262-951-4598  
pschaefer@reinhardtlaw.com

**SENT BY E-MAIL  
AND FIRST CLASS MAIL**

Mr. Tom Hvizdak  
Wisconsin Department of Natural Resources  
473 Griffith Avenue  
Wisconsin Rapids, WI 54494-7859

Dear Mr. Hvizdak:

Re: Inderbans and Kuljeet Brar/The Food Tree  
1759 Greenfield Avenue  
Town of Rudolph, Wood County, Wisconsin

Enclosed is a redlined version of a Negotiated Spill Response and Settlement Agreement between Mr. and Mrs. Brar and the Department of Natural Resources. I have not yet had an opportunity to discuss the document with Mr. and Mrs. Brar; thus, any changes which they may specifically require are not contained in this version. Despite this fact, in order to move the matter along, the enclosed draft of the agreement contains the changes we discussed the morning of February 22. While we have agreed on many of the changes, including, for instance, the reference in Paragraph 2 that the area of concern is in the vicinity of and downgradient of the property, there are other changes which you and I agreed were appropriate, including the change of reference to the Enforcement Standard as the appropriate standard for the determination of what wells need to be replaced. I understand that this and other changes contained in our proposed document will need to be approved by others within the department.

I think it is very important that the criteria set forth in activity no. 1 be the Enforcement Standard. I have currently proposed language limiting the application of that standard to benzene and MTBE since, as we discussed, those are the driving contaminants of concern at this site. In addition, the reference to the word "safe" as


Mr. Tom Hvizdak  
February 23, 2005  
Page 2

found in Paragraph 1, must refer to the DNR's safe drinking water standard for E. coli and nitrates. I would appreciate it if you would insert that regulatory reference after the word "safe" so that we are clear on this point.

Also, in Paragraph 1 in activity no. 1, rather than using VOCs in excess of the Enforcement Standard, we believe the appropriate reference would be to PVOCs.

I understand that this is still very much a working document and we would like to continue to work with the Department to resolve issues regarding this site.

Yours very truly,

  
Pamela H. Schaefer

Waukesh\25702PHS:JEL

Enc.

cc Jeffrey G. LaViolette, P.E. (sent by e-mail and First Class Mail/with enclosure)  
Mr. and Mrs. Inderbans Brar (sent by First Class Mail/with enclosure)

DRAFT

NEGOTIATED SPILL RESPONSE AND  
SETTLEMENT AGREEMENT

WHEREAS, ~~N.B. Oil Company, doing business as the Food Tree (hereinafter referred to as "N.B. Oil")~~ Inderbans Brar and Kuljeet Brar ("the Brars"), ~~is~~ are the current~~s~~ owner of certain real property located at 1759 Greenfield Avenue, Town of Rudolph, Wood County, Wisconsin more particularly described as Lot 1 of Wood County Certified Survey Map No. 1333, as recorded in Volume 5 of Surveys, page 133, ~~in~~ being part of the Northeast ¼ of the Northeast ¼, ~~of~~ of Section 32, Township 23 North, Range 6 East, in the Town of Rudolph, Wood County, Wisconsin ("the Property").

WHEREAS, the Department of Natural Resources ("DNR" or "the Department") has determined, based on the results of investigations conducted on the Property to date, that the Property is a source of petroleum contaminants in the soil and groundwater on, and in the vicinity and downgradient of the Property, that originated on the Property prior to the date of this Agreement ("the Contamination").

WHEREAS, without admitting any fault, legal liability, or responsibility and without waiving any of its rights to contest ~~its~~ their legal liability or responsibility under applicable law for the contamination, ~~N.B. Oil has~~ the Brars have agreed to replace ~~all seven (7)~~ seven (7) potable wells that have been impacted (as of February 28, 2005) above the Wisconsin Administrative Code s. NR 140, ~~Preventative Action Enforcement Standard~~ Limit exceedances with a shared well located by ~~your~~ the Brars' consultant, complete a limited site investigation in accordance with Wisconsin Administrative Code s. NR- 700 through NR750, and pay to the Department applicable review fees regarding the site investigation workplan and report as provided in this Agreement.

NOW THEREFORE, in consideration of, and in exchange for the mutual promise and mutual covenants contained herein, the parties agree as follows:

PARTIES BOUND

This Agreement is entered into pursuant to §292.11 (7)(d), Wis. Stats., by the Department and ~~N.B. Oil~~ the Brars. This Agreement shall be enforceable under §292.11 (7)(e), Wis. Stats.

NO ADMISSION OF LIABILITY

~~N.B. Oil does~~ The Brars do not admit to any fact or to any liability under, or violation of, federal, state or local law and no part of this Agreement shall constitute or be interpreted as any such admission. This Agreement (and any action taken pursuant to this Agreement) may not be offered or received in evidence in any action or proceeding as an admission of fault, liability or responsibility by any party. This Agreement shall not constitute or be used as evidence of any admission of liability, responsibility or waiver of any right or defense by ~~N.B. Oil~~ the Brars except as expressly set forth herein.



WORK TO BE PERFORMED

The parties to this Agreement hereby agree that ~~N.B. Oil the Brars~~ shall conduct the activities listed in the following table, in compliance with statutes and administrative rules that are applicable to investigations and remedial actions, within the time limits specified in the compliance date column in the following table, except as otherwise provided in this Agreement:

Activity Number	Description of Activity	Compliance Date
1	Install replacement potable wells to supply water to the nearby homes <u>(see list, paragraph 2)</u> that have been impacted above Wisconsin Administrative Code s. NR 140, <del>Preventative Action Limit Enforcement Standard</del> , by the release from the <del>Food Tree Property</del> , and ensure that the replacement wells are fully operational and that the water quality from the replacement wells <u>meets the Enforcement Standard set forth in NR 140 for benzene and MTBE and is safe (see NR _____) and free of VOCs.</u>	6 months after the Effective Date of the Agreement
2	Continue to supply potable water at the following residences: <ul style="list-style-type: none"> <li>• 1680 Greenfield Avenue,</li> <li>• 1690 Greenfield Avenue,</li> <li>• 1691 Greenfield Avenue,</li> <li>• 1697 Greenfield Avenue,</li> </ul> and continue supply potable water and bulk water at the following residences: <ul style="list-style-type: none"> <li>• 1705 Greenfield Avenue,</li> <li>• 1739 Greenfield Avenue,</li> <li>• 1749 Greenfield Avenue,</li> </ul> until an alternative safe water source has been installed, <u>and meets the standard set forth above in Section 1. The water quality will be at least the same as existed at each of the impacted homes prior to the contaminate release from The Food Tree. tested safe and has been demonstrated to be adequate for routine daily use by these residences. Concurrence must be obtained from DNR before eliminating any of these residences from being supplied with potable or bulk water. In addition, DNR reserves the right to add additional residences to this list if conditions warrant it.</u>	On the Effective Date of the Agreement
3	Install a piezometer half way between the Food Tree property and the location of the replacement potable wells prior to, or in conjunction with, the installation of	<del>4030</del> business days after the Effective Date of the Agreement

	the replacement wells required in Activity Number 1, develop the piezometer and monitor it on a quarterly basis for PVOCs	
4	Continue to conduct <del>bi</del> -annual groundwater monitoring <u>for PVOC's according to the previously established schedule.</u> at monitoring well locations: MW-3, MW-4, MW-5, MW-6, MW-7, PZ-1, PZ-2, AND PZ-3, and annual groundwater monitoring <u>for PVOC's according to the previously-established schedule</u> at monitoring well locations: MW-1 and MW-2, unless concurrence is obtained from DNR to eliminate, or reduce the frequency at, any of these monitoring well locations.	10 business days after the Effective Date of the Agreement
5	Continue to conduct bi-annual monitoring ( <u>with the standard currently being utilized</u> ) for PVOCs at the following potable well locations: <ul style="list-style-type: none"> <li>• 1690 Greenfield Avenue,</li> <li>• 1697 Greenfield Avenue,</li> <li>• 1680 Greenfield Avenue,</li> </ul> and annual monitoring for PVOCs at the following potable well locations: <ul style="list-style-type: none"> <li>• 1717 CTH "P",</li> <li>• 5239 Fountain Avenue,</li> <li>• 5247 Fountain Avenue,</li> <li>• 1675 Greenfield Avenue.</li> </ul> <u>After Section 1 work is completed, monitoring will continue under the site investigation work plan for a period of time to be negotiated with the DNR. Concurrence must be obtained from DNR before eliminating, or reducing the frequency at, any of these potable well locations. In addition, DNR reserves the right to increase the frequency and add monitoring locations if conditions warrant it.</u>	10 business days after the Effective Date of the Agreement
6	Submit a Draft Site Investigation Work Plan to complete the site investigation in accordance with Wis. Admin. Stat. s. NR 716	12 weeks after the <u>report is received from completion of</u> the passive diffusion bag sampling program conducted by DNR at the idle potable wells.
7	Submit a Final Work Plan to DNR for approval	<del>1030</del> business days after receipt of DNR comments
8	Begin implementation of work outlined in Investigation	No later than <del>twentysixty</del>



	Work Plan	business days after DNR approval of the WorkPlan
9	Submit bi-annual site investigation and groundwater monitoring status reports to DNR.	<del>Within 45 days of completion of the biannual sampling events. No later than the twentieth day in the months of April and October.</del>
10	Submit short monthly report via e-mail to DNR Project Manager describing the progress regarding the planning, installation, <del>and testing and monitoring of</del> the replacement potable wells. <del>This requirement for testing of the replacement wells and monthly reports will end upon the completion of the work in Section 1.</del>	No later than the 5 <sup>th</sup> day of every month.
11	Submit a draft site investigation report to DNR for review and comments	60 days after completion of the work specified in the approved site investigation workplan.
12	Submit a final site investigation report to DNR for approval.	<del>40</del> 30 business days after receipt of DNR concurrence that the site investigation is complete.

#### PAYMENT OF REVIEW FEES

~~N.B. Oil agrees. The Brars agree~~ to pay to DNR the review fees that are listed in ch. NR 749 for each of the deliverables required for activities ~~listed in Sections 6 and 11~~ in the above table for which a review fee is specified. Payment shall be made in the form of a check made payable to the Department of Natural Resources, to be submitted to the Department's West Central Regional Headquarters in Eau Claire, Wisconsin, with one copy of each of the required deliverables. Another copy of each of the required deliverables shall be submitted to Tom Hvizdak ~~or his successor~~ at the Department's Service Center in Wisconsin Rapids, Wisconsin.

#### FORCE MAJEURE

A. ~~N.B. Oil~~The Brars shall cause all work to be performed within the time limits specified in the above table, unless the schedule is amended in writing by mutual agreement of the parties or unless performance is delayed by events that constitute a force majeure. For the purposes of this Agreement, a "force majeure" is an event arising from causes beyond the control of ~~N.B. Oil~~the Brars, and any consultant, contractor or other entity hired by ~~N.B. Oil~~the Brars to conduct any of the activities required under this Agreement, which delays or prevents

performance of any obligations under this Agreement. Force majeure events include, but are not limited to, denial or delay in obtaining access to adjacent or affected properties that is necessary to implement the work, or a permit or other authorization from a governmental agency or other party that is necessary to implement the work, provided, however, that ~~N.B. Oil has the Brars~~ have submitted a timely application for any access, permit or authorization. Increases in cost or changes in economic circumstances do not by themselves constitute a force majeure. However, an event that would otherwise constitute a force majeure shall be deemed a force majeure, even though such an event also results in increased costs or changed economic circumstances.

B. ~~N.B. Oil~~ The Brars shall notify the Department in writing no later than ten (10) business days after ~~N.B. Oil~~ the Brars becomes aware of any event that ~~N.B. Oil contends the Brars contend~~ is a force majeure. Such notification shall describe the anticipated length of the delay. The Department shall promptly provide ~~N.B. Oil~~ the Brars with a written decision as to whether the event constitutes a force majeure. If the Department agrees that a delay is attributable to a force majeure, the compliance date that has been established for the performance of any activity required under this Agreement that has been delayed by the force majeure shall be extended by adding to the compliance date the number of days attributable to the delay caused by the force majeure.

#### DISPUTE RESOLUTION

A. The parties shall use their best efforts to in good faith resolve all disputes or differences of opinion that may arise. If, however, any dispute arises concerning any matter under this agreement which the parties are unable to resolve informally, ~~N.B. Oil~~ the Brars shall present a written notice of such dispute to the Department, which shall set forth specific points of dispute, the position of ~~N.B. Oil~~ the Brars, and the technical basis therefor, and any actions which ~~N.B. Oil considers the Brars consider~~ necessary. All information submitted by ~~N.B. Oil~~ the Brars to the Department in the course of dispute resolution under this section shall become part of the administrative record for the Site. The procedures set forth in the Dispute Resolution section of this Agreement shall not apply to actions taken by the Department to enforce this Agreement if ~~N.B. Oil has the Brars have~~ not previously submitted written notice of a dispute concerning the provision that the Department seeks to enforce.

B. Within ten (10) business days of receipt of such written notice, the Department shall provide a written response to ~~N.B. Oil~~ the Brars setting forth its position and the basis therefor. ~~N.B. Oil~~ The Brars may respond to the Department's written response within ~~five (5)~~ ten (10) business days of its receipt. During the ~~five (5)~~ ten (10) business days following receipt of ~~N.B. Oil's~~ the Brars' response to the Department's stated position, the Department shall attempt to negotiate in good faith a resolution of the differences.

C. Following the expiration of the time periods described in paragraph (B.) of this Section, if the Department concurs with the position of ~~N.B. Oil~~ the Brars, ~~N.B. Oil~~ the Brars shall be so notified in writing and this Agreement shall be modified to include any necessary extensions of time, variances of work or reversal of the Department's determinations.



D. If the Department does not concur with the position of ~~N.B. Oil~~the Brars, the Department shall resolve the dispute in good faith, taking due account of the position of ~~N.B. Oil~~the Brars and, based upon and consistent with the terms of this Agreement and applicable law, and shall provide written notification and justification of such resolution to ~~N.B. Oil~~the Brars (“Department Resolved Matters”).

E. The pendency of dispute resolution under this Section and any available remedies under applicable law shall affect the time period for completion of work or other obligations to be performed under this Agreement that are directly related to the dispute. However, in such event, if ~~N.B. Oil~~has the Brars have demonstrated a good faith basis for the dispute, applicable time periods shall be extended only to the actual time that it takes to resolve the dispute. Elements of work and obligations not affected by the dispute shall be completed in accordance with the schedule contained in this Agreement.

F. Upon resolution of any dispute, whether informally or using the procedures in this section, any additions or modifications required as a result of such dispute resolution shall immediately be incorporated, if necessary, into the appropriate plans or procedures and to this Agreement. ~~N.B. Oil~~The Brars shall proceed with all remaining work according to the modified plan or procedure.

G. In any proceeding to enforce the terms of this Agreement, ~~N.B. Oil~~the Brars may defend on the basis that the Department Resolved Matters of any properly invoked dispute was arbitrary and capricious, in addition to any other defenses that are available under this Agreement or applicable law. If the court finds that the Department’s resolution of any dispute was arbitrary and capricious or otherwise contrary to law, the court may exercise such legal and equitable powers as it deems appropriate.

#### EFFECTIVE DATE

This Agreement shall be executed by ~~N.B. Oil~~the Brars before being executed by the Department. When the Department executes this Agreement, the Department shall enter an effective date immediately below the Department’s signature which shall be 510 business days after the date of mailing (by first class postage prepaid) by the Department to ~~N.B. Oil~~the Brars of a fully executed copy of the Agreement (the “Effective Date”).

#### SUBSEQUENT AMENDMENT

This Agreement may be amended by mutual agreement of the Department and ~~N.B. Oil~~the Brars. Any amendment of this Agreement shall be in writing, signed by the Department and ~~N.B. Oil~~the Brars and shall have as the effective date that date on which the last party signed such amendment.

#### TERMINATION AND SATISFACTION

The provisions of this Agreement shall be deemed satisfied and this Agreement shall terminate upon receipt by ~~N.B. Oil~~the Brars of written notice from the Department that ~~N.B. Oil~~has the Brars have performed all work as described in the Work to be Performed Section,

including any modified or additional work or amendments, in accordance with applicable law, and has made the payments required under this Agreement. Upon such demonstration by ~~N.B. Oil the Brars~~, said written notice shall not be unreasonably withheld or delayed by the Department.

#### COVENANT NOT TO SUE

Except as otherwise provided in the Reservation of Rights paragraph of this Agreement, from the effective date of this Agreement, for as long as the terms herein are complied with, and upon or after termination of this Agreement pursuant to the provisions of the Termination and Satisfaction Section, the Department covenants not to sue ~~N.B. Oil the Brars~~ for any claims or liability arising from the Contamination, including past costs incurred by the Department and costs that the Department may incur in the future to address the Contamination. However, nothing within this Agreement should be deemed to release any claim by the Department, the State of Wisconsin or ~~N.B. Oil the Brars~~ against any other person or entity.

#### WAIVER

~~N.B. Oil The Brars~~ hereby waives notice and its statutory right to demand a hearing before the Department of Natural Resources regarding the requirements of this Agreement under §227.42, Wis. Stats., or under any other provision of law, and waives its right to challenge this Agreement in circuit court under §§227.52 and 227.53, Wis. Stats., or any other provision of law, except that, in any proceeding initiated by the Department to enforce the terms of this Agreement, ~~N.B. Oil the Brars~~ may defend on the basis that the Department's resolution of Department Resolved Matters was arbitrary and capricious, in addition to any other defenses that are available under this Agreement or applicable law.

#### RESERVATION OF RIGHTS

The parties to this Agreement reserve all rights, claims and defenses that they may have in connection with or arising out of any matters not covered by this Agreement.

The parties, whose signatures appear below, or on separate signature pages, hereby agree to the terms of this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized by the Department or ~~N.B. Oil the Brars~~, as the case may be, to execute and legally bind the respective parties to the terms of this Agreement.

~~N.B. Oil Company~~

By: \_\_\_\_\_  
Printed Name: Inderbans Brar

Title:

Kuljeet Brar

Date signed: \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES  
For the Secretary

By: \_\_\_\_\_

Name: Robert E. Strous, Jr.

Title: Chief of Fiscal & Program Evaluation Section  
Bureau for Remediation and Redevelopment

Effective Date: \_\_\_\_\_

## Hvizdak, Thomas

---

**From:** Joan Lalor [jlalor@reinhardtllaw.com]  
**Sent:** Wednesday, February 23, 2005 9:41 AM  
**To:** Hvizdak, Thomas  
**Cc:** NRPConsultants@AOL.com  
**Subject:** From Pam Schaefer

<<corr to Tom Hvizdak enc. Negotiated Spill Response and Settlement Agreement.DOC>> <<Negotiated Spill Response and Settlement Agreement (our changes).DOC>>

Attached are correspondence from Pam Schaefer and a draft Negotiated Spill Response Agreement.

Joan Lalor  
Legal Secretary  
Reinhart Boerner Van Deuren s.c.  
Telephone: 262-951-4581

This e-mail and any attachments may contain privileged or confidential information. This e-mail is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this e-mail, you are hereby notified that any copying, distribution, dissemination or action taken in relation to the contents of this e-mail and any of its attachments is strictly prohibited and may be unlawful. If you have received this e-mail in error, please notify the sender immediately and permanently delete the original e-mail and destroy any copies or printouts of this e-mail as well as any attachments. To the extent representations are made herein concerning matters of a client of the firm, be advised that such representations are not those of the client and do not purport to bind them.



February 23, 2005

Pamela H. Schaefer, Esq.  
Direct Dial: 262-951-4598  
pschaefer@reinhartlaw.com

**SENT BY E-MAIL  
AND FIRST CLASS MAIL**

Mr. Tom Hvizdak  
Wisconsin Department of Natural Resources  
473 Griffith Avenue  
Wisconsin Rapids, WI 54494-7859

Dear Mr. Hvizdak:

Re: Inderbans and Kuljeet Brar/The Food Tree  
1759 Greenfield Avenue  
Town of Rudolph, Wood County, Wisconsin

Enclosed is a redlined version of a Negotiated Spill Response and Settlement Agreement between Mr. and Mrs. Brar and the Department of Natural Resources. I have not yet had an opportunity to discuss the document with Mr. and Mrs. Brar; thus, any changes which they may specifically require are not contained in this version. Despite this fact, in order to move the matter along, the enclosed draft of the agreement contains the changes we discussed the morning of February 22. While we have agreed on many of the changes, including, for instance, the reference in Paragraph 2 that the area of concern is in the vicinity of and downgradient of the property, there are other changes which you and I agreed were appropriate, including the change of reference to the Enforcement Standard as the appropriate standard for the determination of what wells need to be replaced. I understand that this and other changes contained in our proposed document will need to be approved by others within the department.

I think it is very important that the criteria set forth in activity no. 1 be the Enforcement Standard. I have currently proposed language limiting the application of that standard to benzene and MTBE since, as we discussed, those are the driving

P.O. Box 2265, Waukesha, WI 53187-2265 • W233 N2080 Ridgeview Parkway, Waukesha, WI 53188  
Telephone: 262-951-4500 • Facsimile: 262-951-4690 • Toll Free: 800-928-5529

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Milwaukee, WI • Telephone: 414-298-1000 • Toll Free: 800-553-6215  
Madison, WI • Telephone: 608-229-2200 • Toll Free: 800-728-6239



Mr. Tom Hvizdak  
February 23, 2005  
Page 2

contaminants of concern at this site. In addition, the reference to the word "safe" as found in Paragraph 1, must refer to the DNR's safe drinking water standard for E. coli and nitrates. I would appreciate it if you would insert that regulatory reference after the word "safe" so that we are clear on this point.

Also, in Paragraph 1 in activity no. 1, rather than using VOCs in excess of the Enforcement Standard, we believe the appropriate reference would be to PVOCs.

I understand that this is still very much a working document and we would like to continue to work with the Department to resolve issues regarding this site.

Yours very truly,

Pamela H. Schaefer

Waukesh\25702PHS:JEL

Enc.

cc Jeffrey G. LaViolette, P.E. (sent by e-mail and First Class Mail/with enclosure)  
Mr. and Mrs. Inderbans Brar (sent by First Class Mail/with enclosure)



DRAFT

NEGOTIATED SPILL RESPONSE AND  
SETTLEMENT AGREEMENT

WHEREAS, ~~N.B. Oil Company, doing business as the Food Tree (hereinafter referred to as "N.B. Oil")~~ Inderbans Brar and Kuljeet Brar ("the Brars"), ~~is~~ are the ~~currents~~ current owner of certain real property located at 1759 Greenfield Avenue, Town of Rudolph, Wood County, Wisconsin more particularly described as Lot 1 of Wood County Certified Survey Map No. 1333, as recorded in Volume 5 of Surveys, page 133, ~~in~~ being part of the Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 32, Township 23 North, Range 6 East, in the Town of Rudolph, Wood County, Wisconsin ("the Property").

WHEREAS, the Department of Natural Resources ("DNR" or "the Department") has determined, based on the results of investigations conducted on the Property to date, that the Property is a source of petroleum contaminants in the soil and groundwater on, and in the vicinity and downgradient of the Property, that originated on the Property prior to the date of this Agreement ("the Contamination").

WHEREAS, without admitting any fault, legal liability, or responsibility and without waiving any of its rights to contest ~~its~~ their legal liability or responsibility under applicable law for the contamination, ~~N.B. Oil has~~ the Brars have agreed to replace ~~all seven (7)~~ seven (7) potable wells that have been impacted (as of February 28, 2005) above the Wisconsin Administrative Code s. NR 140, Preventative Action Enforcement Standard Limit exceedances with a shared well located by ~~you~~ the Brars' consultant, complete a limited site investigation in accordance with Wisconsin Administrative Code s. NR-700 through NR750, and pay to the Department applicable review fees regarding the site investigation workplan and report as provided in this Agreement.

NOW THEREFORE, in consideration of, and in exchange for the mutual promise and mutual covenants contained herein, the parties agree as follows:

PARTIES BOUND

This Agreement is entered into pursuant to §292.11 (7)(d), Wis. Stats., by the Department and ~~N.B. Oil~~ the Brars. This Agreement shall be enforceable under §292.11 (7)(e), Wis. Stats.

NO ADMISSION OF LIABILITY

~~N.B. Oil does~~ The Brars do not admit to any fact or to any liability under, or violation of, federal, state or local law and no part of this Agreement shall constitute or be interpreted as any such admission. This Agreement (and any action taken pursuant to this Agreement) may not be offered or received in evidence in any action or proceeding as an admission of fault, liability or responsibility by any party. This Agreement shall not constitute or be used as evidence of any admission of liability, responsibility or waiver of any right or defense by ~~N.B. Oil~~ the Brars except as expressly set forth herein.

WORK TO BE PERFORMED

The parties to this Agreement hereby agree that N.B. Oil the Brars shall conduct the activities listed in the following table, in compliance with statutes and administrative rules that are applicable to investigations and remedial actions, within the time limits specified in the compliance date column in the following table, except as otherwise provided in this Agreement:

Activity Number	Description of Activity	Compliance Date
1	<p>Install replacement potable wells to supply water to the nearby homes (see list, paragraph 2) that have been impacted above Wisconsin Administrative Code s. NR 140, <del>Preventative Action Limit</del> <u>Enforcement Standard</u>, by the release from the <del>Food Tree</del> <u>Property</u>, and ensure that the replacement wells are fully operational and that the water quality from the replacement wells <u>meets the Enforcement Standard set forth in NR 140 for benzene and MTBE and is safe (see NR _____) and free of VOCs.</u></p>	<p>6 months after the Effective Date of the Agreement</p> <p><i>← Problem</i></p>
2	<p>Continue to supply potable water at the following residences:</p> <ul style="list-style-type: none"> <li>• 1680 Greenfield Avenue,</li> <li>• 1690 Greenfield Avenue,</li> <li>• 1691 Greenfield Avenue,</li> <li>• 1697 Greenfield Avenue,</li> </ul> <p>and continue supply potable water and bulk water at the following residences:</p> <ul style="list-style-type: none"> <li>• 1705 Greenfield Avenue,</li> <li>• 1739 Greenfield Avenue,</li> <li>• 1749 Greenfield Avenue,</li> </ul> <p>until an alternative safe water source has been installed, and meets the standard set forth above in Section 1. <u>The water quality will be at least the same as existed at each of the impacted homes prior to the contaminate release from The Food Tree. tested safe and has been demonstrated to be adequate for routine daily use by these residences. Concurrence must be obtained from DNR before eliminating any of these residences from being supplied with potable or bulk water. In addition, DNR reserves the right to add additional residences to this list if conditions warrant it.</u></p>	<p>On the Effective Date of the Agreement</p>
3	<p>Install a piezometer half way between the Food Tree property and the location of the replacement potable wells prior to, or in conjunction with, the installation of</p>	<p><del>10</del>30 business days after the Effective Date of the Agreement</p>

	the replacement wells required in Activity Number 1, develop the piezometer and monitor it on a quarterly basis for PVOCs	
4	Continue to conduct <u>bi-annual groundwater monitoring for PVOCs according to the previously established schedule</u> , at monitoring well locations: MW-3, MW-4, MW-5, MW-6, MW-7, PZ-1, PZ-2, AND PZ-3, and annual groundwater monitoring <u>for PVOCs according to the previously-established schedule</u> at monitoring well locations: MW-1 and MW-2, unless concurrence is obtained from DNR to eliminate, or reduce the frequency at, any of these monitoring well locations.	10 business days after the Effective Date of the Agreement
5	Continue to conduct <u>bi-annual monitoring (with the standard currently being utilized)</u> for PVOCs at the following potable well locations: <ul style="list-style-type: none"> <li>• 1690 Greenfield Avenue,</li> <li>• 1697 Greenfield Avenue,</li> <li>• 1680 Greenfield Avenue,</li> </ul> and annual monitoring for PVOCs at the following potable well locations: <ul style="list-style-type: none"> <li>• 1717 CTH "P",</li> <li>• 5239 Fountain Avenue,</li> <li>• 5247 Fountain Avenue,</li> <li>• 1675 Greenfield Avenue.</li> </ul> <u>After Section 1 work is completed, monitoring will continue under the site investigation work plan for a period of time to be negotiated with the DNR.</u> <del>Concurrence must be obtained from DNR before eliminating, or reducing the frequency at, any of these potable well locations. In addition, DNR reserves the right to increase the frequency and add monitoring locations if conditions warrant it.</del>	10 business days after the Effective Date of the Agreement
6	Submit a Draft Site Investigation Work Plan to complete the site investigation in accordance with Wis. Admin. Stat. s. NR 716	12 weeks after the <u>report is received from completion of the passive diffusion bag sampling program conducted by DNR at the idle potable wells.</u>
7	Submit a Final Work Plan to DNR for approval	<del>1030</del> business days after receipt of DNR comments
8	Begin implementation of work outlined in Investigation	No later than <del>twentysixty</del>

	Work Plan	business days after DNR approval of the WorkPlan
9	Submit bi-annual site investigation and groundwater monitoring status reports to DNR.	<u>Within 45 days of completion of the biannual sampling events. No later than the twentieth day in the months of April and October.</u>
10	Submit short monthly report via e-mail to DNR Project Manager describing the progress regarding the planning, installation, and testing and monitoring of the replacement potable wells. <u>This requirement for testing of the replacement wells and monthly reports will end upon the completion of the work in Section 1.</u>	No later than the 5 <sup>th</sup> day of every month.
11	Submit a draft site investigation report to DNR for review and comments	60 days after completion of the work specified in the approved site investigation workplan.
12	Submit a final site investigation report to DNR for approval.	<del>1030</del> business days after receipt of DNR concurrence that the site investigation is complete.

#### PAYMENT OF REVIEW FEES

~~N.B. Oil agrees~~ The Brars agree to pay to DNR the review fees that are listed in ch. NR 749 for each of the deliverables required for activities ~~listed in Sections 6 and 11~~ in the above table for which a review fee is specified. Payment shall be made in the form of a check made payable to the Department of Natural Resources, to be submitted to the Department's West Central Regional Headquarters in Eau Claire, Wisconsin, with one copy of each of the required deliverables. Another copy of each of the required deliverables shall be submitted to Tom Hvizdak or his successor at the Department's Service Center in Wisconsin Rapids, Wisconsin.

#### FORCE MAJEURE

A. ~~N.B. Oil~~ The Brars shall cause all work to be performed within the time limits specified in the above table, unless the schedule is amended in writing by mutual agreement of the parties or unless performance is delayed by events that constitute a force majeure. For the purposes of this Agreement, a "force majeure" is an event arising from causes beyond the control of ~~N.B. Oil~~ the Brars, and any consultant, contractor or other entity hired by ~~N.B. Oil~~ the Brars to conduct any of the activities required under this Agreement, which delays or prevents

performance of any obligations under this Agreement. Force majeure events include, but are not limited to, denial or delay in obtaining access to adjacent or affected properties that is necessary to implement the work, or a permit or other authorization from a governmental agency or other party that is necessary to implement the work, provided, however, that ~~N.B. Oil~~ the Brars ~~has~~ have submitted a timely application for any access, permit or authorization. Increases in cost or changes in economic circumstances do not by themselves constitute a force majeure. However, an event that would otherwise constitute a force majeure shall be deemed a force majeure, even though such an event also results in increased costs or changed economic circumstances.

B. ~~N.B. Oil~~ The Brars shall notify the Department in writing no later than ten (10) business days after ~~N.B. Oil~~ the Brars becomes aware of any event that ~~N.B. Oil contends~~ the Brars contend is a force majeure. Such notification shall describe the anticipated length of the delay. The Department shall promptly provide ~~N.B. Oil~~ the Brars with a written decision as to whether the event constitutes a force majeure. If the Department agrees that a delay is attributable to a force majeure, the compliance date that has been established for the performance of any activity required under this Agreement that has been delayed by the force majeure shall be extended by adding to the compliance date the number of days attributable to the delay caused by the force majeure.

#### DISPUTE RESOLUTION

A. The parties shall use their best efforts to in good faith resolve all disputes or differences of opinion that may arise. If, however, any dispute arises concerning any matter under this agreement which the parties are unable to resolve informally, ~~N.B. Oil~~ the Brars shall present a written notice of such dispute to the Department, which shall set forth specific points of dispute, the position of ~~N.B. Oil~~ the Brars, and the technical basis therefor, and any actions which ~~N.B. Oil considers~~ the Brars consider necessary. All information submitted by ~~N.B. Oil~~ the Brars to the Department in the course of dispute resolution under this section shall become part of the administrative record for the Site. The procedures set forth in the Dispute Resolution section of this Agreement shall not apply to actions taken by the Department to enforce this Agreement if ~~N.B. Oil~~ the Brars ~~has~~ have not previously submitted written notice of a dispute concerning the provision that the Department seeks to enforce.

B. Within ten (10) business days of receipt of such written notice, the Department shall provide a written response to ~~N.B. Oil~~ the Brars setting forth its position and the basis therefor. ~~N.B. Oil~~ The Brars may respond to the Department's written response within ~~five (5)~~ ten (10) business days of its receipt. During the ~~five (5)~~ ten (10) business days following receipt of ~~N.B. Oil's~~ the Brars' response to the Department's stated position, the Department shall attempt to negotiate in good faith a resolution of the differences.

C. Following the expiration of the time periods described in paragraph (B.) of this Section, if the Department concurs with the position of ~~N.B. Oil~~ the Brars, ~~N.B. Oil~~ the Brars shall be so notified in writing and this Agreement shall be modified to include any necessary extensions of time, variances of work or reversal of the Department's determinations.

D. If the Department does not concur with the position of ~~N.B. Oil~~ the Brars, the Department shall resolve the dispute in good faith, taking due account of the position of ~~N.B. Oil~~ the Brars and, based upon and consistent with the terms of this Agreement and applicable law, and shall provide written notification and justification of such resolution to ~~N.B. Oil~~ the Brars (“Department Resolved Matters”).

E. The pendency of dispute resolution under this Section and any available remedies under applicable law shall affect the time period for completion of work or other obligations to be performed under this Agreement that are directly related to the dispute. However, in such event, if ~~N.B. Oil~~ the Brars have demonstrated a good faith basis for the dispute, applicable time periods shall be extended only to the actual time that it takes to resolve the dispute. Elements of work and obligations not affected by the dispute shall be completed in accordance with the schedule contained in this Agreement.

F. Upon resolution of any dispute, whether informally or using the procedures in this section, any additions or modifications required as a result of such dispute resolution shall immediately be incorporated, if necessary, into the appropriate plans or procedures and to this Agreement. ~~N.B. Oil~~ The Brars shall proceed with all remaining work according to the modified plan or procedure.

G. In any proceeding to enforce the terms of this Agreement, ~~N.B. Oil~~ the Brars may defend on the basis that the Department Resolved Matters of any properly invoked dispute was arbitrary and capricious, in addition to any other defenses that are available under this Agreement or applicable law. If the court finds that the Department’s resolution of any dispute was arbitrary and capricious or otherwise contrary to law, the court may exercise such legal and equitable powers as it deems appropriate.

#### EFFECTIVE DATE

This Agreement shall be executed by ~~N.B. Oil~~ the Brars before being executed by the Department. When the Department executes this Agreement, the Department shall enter an effective date immediately below the Department’s signature which shall be 510 business days after the date of mailing (by first class postage prepaid) by the Department to ~~N.B. Oil~~ the Brars of a fully executed copy of the Agreement (the “Effective Date”).

#### SUBSEQUENT AMENDMENT

This Agreement may be amended by mutual agreement of the Department and ~~N.B. Oil~~ the Brars. Any amendment of this Agreement shall be in writing, signed by the Department and ~~N.B. Oil~~ the Brars and shall have as the effective date that date on which the last party signed such amendment.

#### TERMINATION AND SATISFACTION

The provisions of this Agreement shall be deemed satisfied and this Agreement shall terminate upon receipt by ~~N.B. Oil~~ the Brars of written notice from the Department that ~~N.B. Oil~~ the Brars have performed all work as described in the Work to be Performed Section,



including any modified or additional work or amendments, in accordance with applicable law, and has made the payments required under this Agreement. Upon such demonstration by ~~N.B. Oil the Brars~~, said written notice shall not be unreasonably withheld or delayed by the Department.

### COVENANT NOT TO SUE

Except as otherwise provided in the Reservation of Rights paragraph of this Agreement, from the effective date of this Agreement, for as long as the terms herein are complied with, and upon or after termination of this Agreement pursuant to the provisions of the Termination and Satisfaction Section, the Department covenants not to sue ~~N.B. Oil the Brars~~ for any claims or liability arising from the Contamination, including past costs incurred by the Department and costs that the Department may incur in the future to address the Contamination. However, nothing within this Agreement should be deemed to release any claim by the Department, the State of Wisconsin or ~~N.B. Oil the Brars~~ against any other person or entity.

### WAIVER

~~N.B. Oil The Brars~~ hereby waives notice and its statutory right to demand a hearing before the Department of Natural Resources regarding the requirements of this Agreement under §227.42, Wis. Stats., or under any other provision of law, and waives its right to challenge this Agreement in circuit court under §§227.52 and 227.53, Wis. Stats., or any other provision of law, except that, in any proceeding initiated by the Department to enforce the terms of this Agreement, ~~N.B. Oil the Brars~~ may defend on the basis that the Department's resolution of Department Resolved Matters was arbitrary and capricious, in addition to any other defenses that are available under this Agreement or applicable law.

### RESERVATION OF RIGHTS

The parties to this Agreement reserve all rights, claims and defenses that they may have in connection with or arising out of any matters not covered by this Agreement.

The parties, whose signatures appear below, or on separate signature pages, hereby agree to the terms of this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized by the Department or ~~N.B. Oil the Brars~~, as the case may be, to execute and legally bind the respective parties to the terms of this Agreement.

~~N.B. Oil Company~~

By: \_\_\_\_\_  
Printed Name: Inderbans Brar

Title: \_\_\_\_\_

Kuljeet Brar

Date signed: \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES  
For the Secretary

By: \_\_\_\_\_

Name: Robert E. Strous, Jr.

Title: Chief of Fiscal & Program Evaluation Section  
Bureau for Remediation and Redevelopment

Effective Date: \_\_\_\_\_

**Hvizdak, Thomas**

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**From:** Hvizdak, Thomas  
**Sent:** Monday, February 14, 2005 4:36 PM  
**To:** 'Pamela H. Schaefer'  
**Cc:** Evans, William J.  
**Subject:** RE: Draft Negotiated Spill Response & Settlement Agreement  
**Importance:** High

Pam,

Please contact me regarding this issue. We need to get this done by the end of the month. Also, I have to apologize regarding the draft I sent last month. I noticed that I did not include any language regarding supplying potable water until the new well is up and running so I've attached a new draft with that language included in it.

Please understand that if we don't establish a negotiated agreement, I'll have no choice but to take the draft off the table and issue an Administrative Order. Please note that the Administrative Order will not include any language regarding past costs, nor will the Brars be able to negotiate any of the tasks and timelines.

Tom

-----Original Message-----

**From:** Pamela H. Schaefer [mailto:pschaefer@reinhardt.com]  
**Sent:** Thursday, January 27, 2005 3:40 PM  
**To:** Hvizdak, Thomas  
**Subject:** RE: Draft Negotiated Spill Response & Settlement Agreement

Tom, I have not had a chance to review this with the Brars. I have been embroiled in other matters the past few weeks. I hope to have time to deal with this next week PHS

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**From:** Hvizdak, Thomas [mailto:Tom.Hvizdak@dnr.state.wi.us]  
**Sent:** Thursday, January 27, 2005 3:05 PM  
**To:** Pamela H. Schaefer  
**Cc:** Evans, William J.  
**Subject:** FW: Draft Negotiated Spill Response & Settlement Agreement  
**Importance:** High

Pam

Please contact me ASAP regarding the following e-mail I sent on the 14th.

Tom

-----Original Message-----

**From:** Hvizdak, Thomas  
**Sent:** Friday, January 14, 2005 3:06 PM  
**To:** 'Pamela H. Schaefer'  
**Cc:** Evans, William J.  
**Subject:** Draft Negotiated Spill Response & Settlement Agreement

Pam,

02/14/2005

Attached is my draft of the Spill Response Agreement I mentioned during our last meeting. Please discuss this with the Brars and get back to me by January 24, 2005, with their comments and any of their proposed changes to the draft.

Tom

<<Food Tree - Spill Response Agreement 01-14-05.doc>>

This e-mail and any attachments may contain privileged or confidential information. This e-mail is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this e-mail, you are hereby notified that any copying, distribution, dissemination or action taken in relation to the contents of this e-mail and any of its attachments is strictly prohibited and may be unlawful. If you have received this e-mail in error, please notify the sender immediately and permanently delete the original e-mail and destroy any copies or printouts of this e-mail as well as any attachments.

To the extent representations are made herein concerning matters of a client of the firm, be advised that such representations are not those of the client and do not purport to bind them.

## NEGOTIATED SPILL RESPONSE AND SETTLEMENT AGREEMENT

WHEREAS, N.B. Oil Company, doing business as the Food Tree (hereinafter referred to as "N.B. Oil"), is the current owner of certain real property located at 1759 Greenfield Avenue, Town of Rudolph, Wood County, Wisconsin more particularly described as Lot 1 of Wood County Certified Survey Map No. 1333, as recorded in Volume 5 of Surveys, page 133, in part of the Northeast ¼ of the Northeast ¼, Section 32, Township 23 North, Range 6 East, in the Town of Rudolph, Wood County, Wisconsin ("the Property").

WHEREAS, the Department of Natural Resources ("DNR" or "the Department") has determined, based on the results of investigations conducted on the Property to date, that the Property is a source of petroleum contaminants in the soil and groundwater on, and in the vicinity of the Property, that originated on the Property prior to the date of this Agreement ("the Contamination").

WHEREAS, without admitting any fault, legal liability, or responsibility and without waiving any of its rights to contest its legal liability or responsibility under applicable law for the contamination, N.B. Oil has agreed to replace all potable wells that have been impacted above the Wisconsin Administrative Code s. NR 140, Preventative Action Limit exceedances with a shared well located by your consultant, complete a site investigation in accordance with Wisconsin Administrative Code s. NR 700 through NR750, and pay to the Department applicable review fees regarding the site investigation workplan and report as provided in this Agreement.

NOW THEREFORE, in consideration of, and in exchange for the mutual promise and mutual covenants contained herein, the parties agree as follows:

### PARTIES BOUND

This Agreement is entered into pursuant to §292.11 (7)(d), Wis. Stats., by the Department and N.B. Oil. This Agreement shall be enforceable under §292.11 (7)(e), Wis. Stats.

### NO ADMISSION OF LIABILITY

N.B. Oil does not admit to any fact or to any liability under, or violation of, federal, state or local law and no part of this Agreement shall constitute or be interpreted as any such admission. This Agreement (and any action taken pursuant to this Agreement) may not be offered or received in evidence in any action or proceeding as an admission of fault, liability or responsibility by any party. This Agreement shall not constitute or be used as evidence of any admission of liability, responsibility or waiver of any right or defense by N.B. Oil except as expressly set forth herein.

### WORK TO BE PERFORMED

The parties to this Agreement hereby agree that N.B. Oil shall conduct the activities listed in the following table, in compliance with statutes and administrative rules that are applicable to investigations and remedial actions, within the time limits specified in the compliance date column in the following table, except as otherwise provided in this Agreement:

Activity Number	Description of Activity	Compliance Date
1	Install replacement potable wells to supply water to the nearby homes that have been impacted above Wisconsin Administrative Code s. NR 140, Preventative Action Limit, by the release from the Food Tree, and ensure that the replacement wells are fully operational and that the water quality from the replacement wells is safe and free of VOCs.	6 months after the Effective Date of the Agreement
2	Continue to supply potable water at the following residences: <ul style="list-style-type: none"> <li>• 1680 Greenfield Avenue,</li> <li>• 1690 Greenfield Avenue,</li> <li>• 1691 Greenfield Avenue,</li> <li>• 1697 Greenfield Avenue,</li> </ul> and continue supply potable water and bulk water at the following residences: <ul style="list-style-type: none"> <li>• 1705 Greenfield Avenue,</li> <li>• 1739 Greenfield Avenue,</li> <li>• 1749 Greenfield Avenue,</li> </ul> until an alternative safe water source has been installed, tested safe and has been demonstrated to be adequate for routine daily use by these residences. Concurrence must be obtained from DNR before eliminating any of these residences from being supplied with potable or bulk water. In addition, DNR reserves the right to add	On the Effective Date of the Agreement



	additional residences to this list if conditions warrant it.	
3	Install a piezometer half way between the Food Tree property and the location of the replacement potable wells prior to, or in conjunction with, the installation of the replacement wells required in Activity Number 1, develop the piezometer and monitor it on a quarterly basis for PVOCs	10 business days after the Effective Date of the Agreement
4	Continue to conduct bi-annual groundwater monitoring at monitoring well locations: MW-3, MW-4, MW-5, MW-6, MW-7, PZ-1, PZ-2, AND PZ-3, and annual groundwater monitoring at monitoring well locations: MW-1 and MW-2, unless concurrence is obtained from DNR to eliminate, or reduce the frequency at, any of these monitoring well locations.	10 business days after the Effective Date of the Agreement
5	Continue to conduct bi-annual monitoring for PVOCs at the following potable well locations: <ul style="list-style-type: none"> <li>• 1690 Greenfield Avenue,</li> <li>• 1697 Greenfield Avenue,</li> <li>• 1680 Greenfield Avenue,</li> </ul> and annual monitoring for PVOCs at the following potable well locations: <ul style="list-style-type: none"> <li>• 1717 CTH "P",</li> <li>• 5239 Fountain Avenue,</li> <li>• 5247 Fountain Avenue,</li> <li>• 1675 Greenfield Avenue.</li> </ul> Concurrence must be obtained from DNR before eliminating, or reducing the frequency at,	10 business days after the Effective Date of the Agreement

	any of these potable well locations. In addition, DNR reserves the right to increase the frequency and add monitoring locations if conditions warrant it.	
6	Submit a Draft Site Investigation Work Plan to complete the site investigation in accordance with Wis. Admin. Stat. s. NR 716	12 weeks after the completion of the passive diffusion bag sampling program conducted by DNR at the idle potable wells.
7	Submit a Final Work Plan to DNR for approval	10 business days after receipt of DNR comments
8	Begin implementation of work outlined in Investigation Work Plan	No later than twenty business days after DNR approval of the WorkPlan
9	Submit bi-annual site investigation and groundwater monitoring status reports to DNR.	No later than the twentieth day in the months of April and October.
10	Submit short monthly report via e-mail to DNR Project Manager describing the progress regarding the planning, installation, testing and monitoring of the replacement potable wells.	No later than the 5 <sup>th</sup> day of every month.
11	Submit a draft site investigation report to DNR for review and comments	60 days after completion of the work specified in the approved site investigation workplan.
12	Submit a final site investigation report to DNR for approval.	10 business days after receipt of DNR concurrence that the site investigation is complete.

PAYMENT OF REVIEW FEES

N.B. Oil agrees to pay to DNR the review fees that are listed in ch. NR 749 for each of the deliverables required for activities 5 in the above table for which a review fee is specified. Payment shall be made in the form of a check made payable to the Department of Natural Resources, to be submitted to the Department's West Central Regional Headquarters in Eau Claire, Wisconsin, with one copy of each of the required deliverables. Another copy of each of the required deliverables shall be submitted to Tom Hvizdak at the Department's Service Center in Wisconsin Rapids, Wisconsin.

## FORCE MAJEURE

A. N.B. Oil shall cause all work to be performed within the time limits specified in the above table, unless the schedule is amended in writing by mutual agreement of the parties or unless performance is delayed by events that constitute a force majeure. For the purposes of this Agreement, a "force majeure" is an event arising from causes beyond the control of N.B. Oil, and any consultant, contractor or other entity hired by N.B. Oil to conduct any of the activities required under this Agreement, which delays or prevents performance of any obligations under this Agreement. Force majeure events include, but are not limited to, denial or delay in obtaining access to adjacent properties that is necessary to implement the work, or a permit or other authorization from a governmental agency or other party that is necessary to implement the work, provided, however, that N.B. Oil has submitted a timely application for any access, permit or authorization. Increases in cost or changes in economic circumstances do not by themselves constitute a force majeure. However, an event that would otherwise constitute a force majeure shall be deemed a force majeure, even though such an event also results in increased costs or changed economic circumstances.

B. N.B. Oil shall notify the Department in writing no later than ten (10) business days after N.B. Oil becomes aware of any event that N.B. Oil contends is a force majeure. Such notification shall describe the anticipated length of the delay. The Department shall promptly provide N.B. Oil with a written decision as to whether the event constitutes a force majeure. If the Department agrees that a delay is attributable to a force majeure, the compliance date that has been established for the performance of any activity required under this Agreement that has been delayed by the force majeure shall be extended by adding to the compliance date the number of days attributable to the delay caused by the force majeure.

## DISPUTE RESOLUTION

A. The parties shall use their best efforts to in good faith resolve all disputes or differences of opinion that may arise. If, however, any dispute arises concerning any matter under this agreement which the parties are unable to resolve informally, N.B. Oil shall present a written notice of such dispute to the Department, which shall set forth specific points of dispute, the position of N.B. Oil, and the technical basis therefor, and any actions which N.B. Oil considers necessary. All information submitted by N.B. Oil to the Department in the course of dispute resolution under this section shall become part of the administrative record for the Site. The procedures set forth in the Dispute Resolution section of this Agreement shall not apply to actions taken by the Department to enforce this Agreement if N.B. Oil has not previously submitted written notice of a dispute concerning the provision that the Department seeks to enforce.

B. Within ten (10) business days of receipt of such written notice, the Department shall provide a written response to N.B. Oil setting forth its position and the basis therefor. N.B.

Oil may respond to the Department's written response within five (5) business days of its receipt. During the five (5) business days following receipt of N.B. Oil's response to the Department's stated position, the Department shall attempt to negotiate in good faith a resolution of the differences.

C. Following the expiration of the time periods described in paragraph (B.) of this Section, if the Department concurs with the position of N.B. Oil, N.B. Oil shall be so notified in writing and this Agreement shall be modified to include any necessary extensions of time, variances of work or reversal of the Department's determinations.

D. If the Department does not concur with the position of N.B. Oil, the Department shall resolve the dispute in good faith, taking due account of the position of N.B. Oil and, based upon and consistent with the terms of this Agreement and applicable law, and shall provide written notification and justification of such resolution to N.B. Oil ("Department Resolved Matters").

E. The pendency of dispute resolution under this Section and any available remedies under applicable law shall affect the time period for completion of work or other obligations to be performed under this Agreement that are directly related to the dispute. However, in such event, if N.B. Oil has demonstrated a good faith basis for the dispute, applicable time periods shall be extended only to the actual time that it takes to resolve the dispute. Elements of work and obligations not affected by the dispute shall be completed in accordance with the schedule contained in this Agreement.

F. Upon resolution of any dispute, whether informally or using the procedures in this section, any additions or modifications required as a result of such dispute resolution shall immediately be incorporated, if necessary, into the appropriate plans or procedures and to this Agreement. N.B. Oil shall proceed with all remaining work according to the modified plan or procedure.

G. In any proceeding to enforce the terms of this Agreement, N.B. Oil may defend on the basis that the Department Resolved Matters of any properly invoked dispute was arbitrary and capricious, in addition to any other defenses that are available under this Agreement or applicable law. If the court finds that the Department's resolution of any dispute was arbitrary and capricious or otherwise contrary to law, the court may exercise such legal and equitable powers as it deems appropriate.

#### EFFECTIVE DATE

This Agreement shall be executed by N.B. Oil before being executed by the Department. When the Department executes this Agreement, the Department shall enter an effective date immediately below the Department's signature which shall be 5 business days after the date of mailing (by first class postage prepaid) by the Department to N.B. Oil of a fully executed copy of the Agreement (the "Effective Date").

#### SUBSEQUENT AMENDMENT

This Agreement may be amended by mutual agreement of the Department and N.B. Oil. Any amendment of this Agreement shall be in writing, signed by the Department and N.B. Oil and shall have as the effective date that date on which the last party signed such amendment.

#### TERMINATION AND SATISFACTION

The provisions of this Agreement shall be deemed satisfied and this Agreement shall terminate upon receipt by N.B. Oil of written notice from the Department that N.B. Oil has performed all work as described in the Work to be Performed Section, including any modified or additional work or amendments, in accordance with applicable law, and has made the payments required under this Agreement. Upon such demonstration by N.B. Oil, said written notice shall not be unreasonably withheld or delayed by the Department.

#### COVENANT NOT TO SUE

Except as otherwise provided in the Reservation of Rights paragraph of this Agreement, from the effective date of this Agreement, for as long as the terms herein are complied with, and upon or after termination of this Agreement pursuant to the provisions of the Termination and Satisfaction Section, the Department covenants not to sue N.B. Oil for any claims or liability arising from the Contamination, including past costs incurred by the Department and costs that the Department may incur in the future to address the Contamination. However, nothing within this Agreement should be deemed to release any claim by the Department, the State of Wisconsin or N.B. Oil against any other person or entity.

#### WAIVER

N.B. Oil hereby waives notice and its statutory right to demand a hearing before the Department of Natural Resources regarding the requirements of this Agreement under §227.42, Wis. Stats., or under any other provision of law, and waives its right to challenge this Agreement in circuit court under §§227.52 and 227.53, Wis. Stats., or any other provision of law, except that, in any proceeding initiated by the Department to enforce the terms of this Agreement, N.B. Oil may defend on the basis that the Department's resolution of Department Resolved Matters was arbitrary and capricious, in addition to any other defenses that are available under this Agreement or applicable law.

#### RESERVATION OF RIGHTS

The parties to this Agreement reserve all rights, claims and defenses that they may have in connection with or arising out of any matters not covered by this Agreement.

The parties, whose signatures appear below, or on separate signature pages, hereby agree to the terms of this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized by the Department or N.B. Oil, as the case may be, to execute and legally bind the respective parties to the terms of this Agreement.

N.B. Oil Company

By: \_\_\_\_\_

Printed Name:

Title:

Date signed: \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES  
For the Secretary

By: \_\_\_\_\_

Name: Robert E. Strous, Jr.

Title: Chief of Fiscal & Program Evaluation Section  
Bureau for Remediation and Redevelopment

Effective Date: \_\_\_\_\_



**Hvizdak, Thomas**

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**From:** Hvizdak, Thomas  
**Sent:** Thursday, January 27, 2005 3:42 PM  
**To:** 'Pamela H. Schaefer'  
**Subject:** RE: Draft Negotiated Spill Response & Settlement Agreement

Thanks and please keep me posted.

-----Original Message-----

**From:** Pamela H. Schaefer [mailto:pschaefer@reinhardt.com]  
**Sent:** Thursday, January 27, 2005 3:40 PM  
**To:** Hvizdak, Thomas  
**Subject:** RE: Draft Negotiated Spill Response & Settlement Agreement

Tom, I have not had a chance to review this with the Brars. I have been embroiled in other matters the past few weeks. I hope to have time to deal with this next week PHS

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**From:** Hvizdak, Thomas [mailto:Tom.Hvizdak@dnr.state.wi.us]  
**Sent:** Thursday, January 27, 2005 3:05 PM  
**To:** Pamela H. Schaefer  
**Cc:** Evans, William J.  
**Subject:** FW: Draft Negotiated Spill Response & Settlement Agreement  
**Importance:** High

Pam

Please contact me ASAP regarding the following e-mail I sent on the 14th.

Tom

-----Original Message-----

**From:** Hvizdak, Thomas  
**Sent:** Friday, January 14, 2005 3:06 PM  
**To:** 'Pamela H. Schaefer'  
**Cc:** Evans, William J.  
**Subject:** Draft Negotiated Spill Response & Settlement Agreement

Pam,

Attached is my draft of the Spill Response Agreement I mentioned during our last meeting. Please discuss this with the Brars and get back to me by January 24, 2005, with their comments and any of their proposed changes to the draft.

Tom

<<Food Tree - Spill Response Agreement 01-14-05.doc>>

This e-mail and any attachments may contain privileged or confidential information. This e-mail is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this e-mail, you are hereby notified that any copying, distribution, dissemination or action taken in relation to the contents of this e-mail and any of its attachments is strictly prohibited and may be unlawful. If you have received this e-mail in error, please notify the sender immediately and permanently delete the original e-mail and destroy any copies or printouts of this e-mail as well as any attachments. To the extent representations are made herein concerning matters of a client of the firm, be advised that such representations are not those of the client and do not purport to bind them.

## Hvizdak, Thomas

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**From:** Pamela H. Schaefer [pschaefe@reinhartlaw.com]  
**To:** Hvizdak, Thomas  
**Sent:** Thursday, January 27, 2005 3:38 PM  
**Subject:** Read: FW: Draft Negotiated Spill Response & Settlement Agreement

Your message

**To:** pschaefe@reinhartlaw.com  
**Subject:**

was read on 01/27/2005 3:38 PM.

NEGOTIATED SPILL RESPONSE AND  
SETTLEMENT AGREEMENT

WHEREAS, N.B. Oil Company, doing business as the Food Tree (hereinafter referred to as "N.B. Oil"), is the current owner of certain real property located at 1759 Greenfield Avenue, Town of Rudolph, Wood County, Wisconsin more particularly described as Lot 1 of Wood County Certified Survey Map No. 1333, as recorded in Volume 5 of Surveys, page 133, in part of the Northeast ¼ of the Northeast ¼, Section 32, Township 23 North, Range 6 East, in the Town of Rudolph, Wood County, Wisconsin ("the Property").

WHEREAS, the Department of Natural Resources ("DNR" or "the Department") has determined, based on the results of investigations conducted on the Property to date, that the Property is a source of petroleum contaminants in the soil and groundwater on, and in the vicinity of the Property, that originated on the Property prior to the date of this Agreement ("the Contamination").

WHEREAS, without admitting any fault, legal liability, or responsibility and without waiving any of its rights to contest its legal liability or responsibility under applicable law for the contamination, N.B. Oil has agreed to replace all potable wells that have been impacted above the Wisconsin Administrative Code s. NR 140, Preventative Action Limit exceedances with a shared well located by your consultant, complete a site investigation in accordance with Wisconsin Administrative Code s. NR 700 through NR750, and pay to the Department applicable review fees regarding the site investigation workplan and report as provided in this Agreement.

NOW THEREFORE, in consideration of, and in exchange for the mutual promise and mutual covenants contained herein, the parties agree as follows:

PARTIES BOUND

This Agreement is entered into pursuant to §292.11 (7)(d), Wis. Stats., by the Department and N.B. Oil. This Agreement shall be enforceable under §292.11 (7)(e), Wis. Stats.

NO ADMISSION OF LIABILITY

N.B. Oil does not admit to any fact or to any liability under, or violation of, federal, state or local law and no part of this Agreement shall constitute or be interpreted as any such admission. This Agreement (and any action taken pursuant to this Agreement) may not be offered or received in evidence in any action or proceeding as an admission of fault, liability or responsibility by any party. This Agreement shall not constitute or be used as evidence of any admission of liability, responsibility or waiver of any right or defense by N.B. Oil except as expressly set forth herein.

WORK TO BE PERFORMED

The parties to this Agreement hereby agree that N.B. Oil shall conduct the activities listed in the following table, in compliance with statutes and administrative rules that are applicable to investigations and remedial actions, within the time limits specified in the compliance date column in the following table, except as otherwise provided in this Agreement:

Activity Number	Description of Activity	Compliance Date
1	Install replacement potable wells to supply water to the nearby homes that have been impacted above Wisconsin Administrative Code s. NR 140, Preventative Action Limit, by the release from the Food Tree, and ensure that the replacement wells are fully operational and that the water quality from the replacement wells is safe and free of VOCs.	6 months after the Effective Date of the Agreement
2	Install a piezometer at a mutually agreed upon location between the Food Tree property and the location of the replacement potable wells prior to, or in conjunction with, the installation of the replacement wells required in Activity Number 1, develop the piezometer and monitor it on a quarterly basis for PVOCs	60 business days after the Effective Date of the Agreement
3	Continue to conduct bi-annual groundwater monitoring at monitoring well locations: MW-3, MW-4, MW-5, MW-6, MW-7, PZ-1, PZ-2, AND PZ-3, and annual groundwater monitoring at monitoring well locations: MW-1 and MW-2, unless concurrence is obtained from DNR to eliminate, or	Continue on the established regular schedule.

	reduce the frequency at, any of these monitoring well locations.	
4	<p>Continue to conduct bi-annual monitoring for PVOCs at the following potable well locations:</p> <ul style="list-style-type: none"> <li>• 1690 Greenfield Avenue,</li> <li>• 1697 Greenfield Avenue,</li> <li>• 1680 Greenfield Avenue,</li> </ul> <p>and annual monitoring for PVOCs at the following potable well locations:</p> <ul style="list-style-type: none"> <li>• 1717 CTH "P",</li> <li>• 5239 Fountain Avenue,</li> <li>• 5247 Fountain Avenue,</li> <li>• 1675 Greenfield Avenue.</li> </ul> <p>Concurrence must be obtained from DNR before eliminating, or reducing the frequency at, any of these potable well locations. In addition, DNR reserves the right to increase the frequency and add monitoring locations if conditions warrant it.</p>	10 business days after the Effective Date of the Agreement
5	<p>Submit a Draft Site Investigation Work Plan to complete the site investigation in accordance with Wis. Admin. Stat. s. NR 716. This will include the installation of off-site bedrock piezometers on both the north and south sides of County Highway "P", and where possible, the existing idle potable wells will be converted into NR 141 compliant piezometers and utilized for compliance purposes.</p>	12 weeks after the completion of the passive diffusion bag sampling program conducted by DNR at the idle potable wells.
6	Submit a Final Work Plan to DNR for approval	10 business days after receipt of DNR comments
7	Begin implementation of work outlined in Investigation Work	No later than 20 business days after DNR approval of the



	Plan	WorkPlan
8	Submit bi-annual site investigation and groundwater monitoring status reports to DNR.	No later than the 20 <sup>th</sup> day in the months of April and October.
9	Submit short monthly report via e-mail to DNR Project Manager describing the progress regarding the planning, installation, testing and monitoring of the replacement potable wells.	No later than the 5 <sup>th</sup> day of every month, and continue until the replacement potable water service to the impacted homes is installed, and demonstrated that the water is safe for human consumption and of adequate quantity to the homes it supplies.
10	Submit a draft site investigation report to DNR for review and comments	60 days after completion of the work specified in the approved site investigation workplan.
11	Submit a final site investigation report to DNR for approval.	10 business days after receipt of DNR concurrence that the site investigation is complete.

#### PAYMENT OF REVIEW FEES

N.B. Oil agrees to pay to DNR the review fees that are listed in ch. NR 749 for activities 5 and 10 in the above table for which a review fee is specified. Payment shall be made in the form of a check made payable to the Department of Natural Resources, to be submitted to the Department's West Central Regional Headquarters in Eau Claire, Wisconsin, with one copy of each of the required deliverables. Another copy of each of the required deliverables shall be submitted to Tom Hvizdak at the Department's Service Center in Wisconsin Rapids, Wisconsin.

#### FORCE MAJEURE

A. N.B. Oil shall cause all work to be performed within the time limits specified in the above table, unless the schedule is amended in writing by mutual agreement of the parties or unless performance is delayed by events that constitute a force majeure. For the purposes of this Agreement, a "force majeure" is an event arising from causes beyond the control of N.B. Oil, and any consultant, contractor or other entity hired by N.B. Oil to conduct any of the activities required under this Agreement, which delays or prevents performance of any obligations under this Agreement. Force majeure events include, but are not limited to, denial or delay in obtaining access to adjacent properties that is necessary to implement the work, or a permit or

other authorization from a governmental agency or other party that is necessary to implement the work, provided, however, that N.B. Oil has submitted a timely application for any access, permit or authorization. Increases in cost or changes in economic circumstances do not by themselves constitute a force majeure. However, an event that would otherwise constitute a force majeure shall be deemed a force majeure, even though such an event also results in increased costs or changed economic circumstances.

B. N.B. Oil shall notify the Department in writing no later than ten (10) business days after N.B. Oil becomes aware of any event that N.B. Oil contends is a force majeure. Such notification shall describe the anticipated length of the delay. The Department shall promptly provide N.B. Oil with a written decision as to whether the event constitutes a force majeure. If the Department agrees that a delay is attributable to a force majeure, the compliance date that has been established for the performance of any activity required under this Agreement that has been delayed by the force majeure shall be extended by adding to the compliance date the number of days attributable to the delay caused by the force majeure.

#### DISPUTE RESOLUTION

A. The parties shall use their best efforts to in good faith resolve all disputes or differences of opinion that may arise. If, however, any dispute arises concerning any matter under this agreement which the parties are unable to resolve informally, N.B. Oil shall present a written notice of such dispute to the Department, which shall set forth specific points of dispute, the position of N.B. Oil, and the technical basis therefor, and any actions which N.B. Oil considers necessary. All information submitted by N.B. Oil to the Department in the course of dispute resolution under this section shall become part of the administrative record for the Site. The procedures set forth in the Dispute Resolution section of this Agreement shall not apply to actions to taken by the Department to enforce this Agreement if N.B. Oil has not previously submitted written notice of a dispute concerning the provision that the Department seeks to enforce.

B. Within ten (10) business days of receipt of such written notice, the Department shall provide a written response to N.B. Oil setting forth its position and the basis therefor. N.B. Oil may respond to the Department's written response within five (5) business days of its receipt. During the five (5) business days following receipt of N.B. Oil's response to the Department's stated position, the Department shall attempt to negotiate in good faith a resolution of the differences.

C. Following the expiration of the time periods described in paragraph (B.) of this Section, if the Department concurs with the position of N.B. Oil, N.B. Oil shall be so notified in writing and this Agreement shall be modified to include any necessary extensions of time, variances of work or reversal of the Department's determinations.

D. If the Department does not concur with the position of N.B. Oil, the Department shall resolve the dispute in good faith, taking due account of the position of N.B. Oil and, based upon and consistent with the terms of this Agreement and applicable law, and shall provide

written notification and justification of such resolution to N.B. Oil ("Department Resolved Matters").

E. The pendency of dispute resolution under this Section and any available remedies under applicable law shall affect the time period for completion of work or other obligations to be performed under this Agreement that are directly related to the dispute. However, in such event, if N.B. Oil has demonstrated a good faith basis for the dispute, applicable time periods shall be extended only to the actual time that it takes to resolve the dispute. Elements of work and obligations not affected by the dispute shall be completed in accordance with the schedule contained in this Agreement.

F. Upon resolution of any dispute, whether informally or using the procedures in this section, any additions or modifications required as a result of such dispute resolution shall immediately be incorporated, if necessary, into the appropriate plans or procedures and to this Agreement. N.B. Oil shall proceed with all remaining work according to the modified plan or procedure.

G. In any proceeding to enforce the terms of this Agreement, N.B. Oil may defend on the basis that the Department Resolved Matters of any properly invoked dispute was arbitrary and capricious, in addition to any other defenses that are available under this Agreement or applicable law. If the court finds that the Department's resolution of any dispute was arbitrary and capricious or otherwise contrary to law, the court may exercise such legal and equitable powers as it deems appropriate.

#### EFFECTIVE DATE

This Agreement shall be executed by N.B. Oil before being executed by the Department. When the Department executes this Agreement, the Department shall enter an effective date immediately below the Department's signature which shall be 5 business days after the date of mailing (by first class postage prepaid) by the Department to N.B. Oil of a fully executed copy of the Agreement (the "Effective Date").

#### SUBSEQUENT AMENDMENT

This Agreement may be amended by mutual agreement of the Department and N.B. Oil. Any amendment of this Agreement shall be in writing, signed by the Department and N.B. Oil and shall have as the effective date that date on which the last party signed such amendment.

#### TERMINATION AND SATISFACTION

The provisions of this Agreement shall be deemed satisfied and this Agreement shall terminate upon receipt by N.B. Oil of written notice from the Department that N.B. Oil has performed all work as described in the Work to be Performed Section, including any modified or additional work or amendments, in accordance with applicable law, and has made the payments required under this Agreement. Upon such demonstration by N.B. Oil, said written notice shall not be unreasonably withheld or delayed by the Department.

COVENANT NOT TO SUE

Except as otherwise provided in the Reservation of Rights paragraph of this Agreement, from the effective date of this Agreement, for as long as the terms herein are complied with, and upon or after termination of this Agreement pursuant to the provisions of the Termination and Satisfaction Section, the Department covenants not to sue N.B. Oil for any claims or liability arising from the Contamination, including past costs incurred by the Department. However, nothing within this Agreement should be deemed to release any claim by the Department, the State of Wisconsin or N.B. Oil against any other person or entity.

WAIVER

N.B. Oil hereby waives notice and its statutory right to demand a hearing before the Department of Natural Resources regarding the requirements of this Agreement under §227.42, Wis. Stats., or under any other provision of law, and waives its right to challenge this Agreement in circuit court under §§227.52 and 227.53, Wis. Stats., or any other provision of law, except that, in any proceeding initiated by the Department to enforce the terms of this Agreement, N.B. Oil may defend on the basis that the Department's resolution of Department Resolved Matters was arbitrary and capricious, in addition to any other defenses that are available under this Agreement or applicable law.

RESERVATION OF RIGHTS

The parties to this Agreement reserve all rights, claims and defenses that they may have in connection with or arising out of any matters not covered by this Agreement.

The parties, whose signatures appear below, or on separate signature pages, hereby agree to the terms of this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized by the Department or N.B. Oil, as the case may be, to execute and legally bind the respective parties to the terms of this Agreement.

N.B. Oil Company

By: \_\_\_\_\_

Printed Name:

Title:

Date signed: \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES  
For the Secretary

By: \_\_\_\_\_  
Name: Robert E. Strous, Jr.  
Title: Chief of Fiscal & Program Evaluation Section  
Bureau for Remediation and Redevelopment

Effective Date: \_\_\_\_\_

## Hvizdak, Thomas

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**From:** Pataska, Lindy - Stevens Point, WI [Lindy.Pataska@wi.usda.gov]  
**Sent:** Thursday, January 27, 2005 3:36 PM  
**To:** Hvizdak, Thomas  
**Subject:** RE: Greenfield Avenue

Thanks again for the information. The reason I'm asking is because someone is trying to sell their home to a relative and they are being told that there are no problems any more with the water.

-----Original Message-----

**From:** Hvizdak, Thomas [mailto:Tom.Hvizdak@dnr.state.wi.us]  
**Sent:** Thursday, January 27, 2005 3:30 PM  
**To:** Pataska, Lindy - Stevens Point, WI  
**Subject:** RE: Greenfield Avenue

I'm not sure what you mean by "Has the problem been resolved", but the responsible party is in the process of designing a shared water system for the residences who's well were impacted above State Standards for petroleum-related compounds. In the mean time the responsible party has been providing bottled water, and in some cases, bulk water, to those residences.

Regarding the question about whether the water is safe; the petroleum-related concentrations in the groundwater monitoring wells and those potable wells that are being monitored appear to be receding, but a number of the wells remain above State Standards.

Please call if you need further clarification or if you have addition questions

Tom

-----Original Message-----

**From:** Pataska, Lindy - Stevens Point, WI  
[mailto:Lindy.Pataska@wi.usda.gov]  
**Sent:** Thursday, January 27, 2005 3:20 PM  
**To:** Hvizdak, Thomas  
**Subject:** Greenfield Avenue

Hi Tom. Would you be able to tell me the status of the water situation on Greenfield Avenue in Wis. Rapids? Has the problem been resolved and is the water safe? Thank you for the information? Lindy

**Hvizdak, Thomas**

---

**From:** bobh@nrpconsultants.com  
**Sent:** Thursday, January 27, 2005 1:51 PM  
**To:** Hvizdak, Thomas  
**Subject:** Food Tree

Tom:

I would like to discuss the design of the piezometer that will be installed by the F&M bank. Could you call or email for a time.

Thanks Bob Herubin

01/27/05 @ 14:25

Bob and I discussed the design. Bob asked what I thought about using a 10' screen. I told Bob that would work as long as the Bedrock doesn't have a lot of fractures. We agreed this would be best determined in the field.

J-7/A  
01/27/05





1-19-05 A.M.

Tom,

Please give

608-282-6200

Brian Hartung of  
Lawton + Gates, S.C.  
concerning Food Tree  
near well location; also  
Jim Pechinski concerns.  
By noon today if possible.

Thanks,

Eric B.



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Scott Hassett, Secretary  
Scott Humrickhouse, Regional Director

Wisconsin Rapids Service Center  
473 Griffith Avenue  
Wisconsin Rapids, Wisconsin 54494  
Telephone 715-421-7800  
FAX 715-421-7830

PROJECT: Food Tree 2001 Release REFERENCE #: 03-72-282  
PERSON CONTACTED: Brin Hartung Jim<sup>OLB</sup> COMPANY/AGENCY: Lawton & Gates  
PHONE #: 608/282-6200 DATE: 01/19/05 TIME: 11:30

Topic: \_\_\_\_\_

jolson@lawtoncates.com

Some of the residences want a guarantee from DNR that the replacement well will provide good water. I told Jim that it is the Brar's responsibility to provide safe water; and that if the ~~the~~ well they install proves not to be safe, they'll be required to correct the problem (ie. install a different well). Jim asked me to e-mail him a response.

CC:

Tom Hvizdak

Tom Hvizdak  
Hydrogeologist

## Hvizdak, Thomas

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**From:** Hvizdak, Thomas  
**Sent:** Wednesday, January 19, 2005 12:44 PM  
**To:** 'jolson@lawtoncates.com'  
**Subject:** FW: Replacement well for Food Tree neighborhood

I was wrong about the exception. It is the Brar's responsibility to provide safe water. If the location they choose is not safe, then regardless of the source, it is still their responsibility to find safe water. The only exception would be for naturally occurring problems, such as iron, which was an existing issue in the neighborhood wells prior to the gasoline contamination.

-----Original Message-----

**From:** Hvizdak, Thomas  
**Sent:** Wednesday, January 19, 2005 11:46 AM  
**To:** 'jolson@lawtoncates.com'  
**Cc:** Brach, Eric M  
**Subject:** Replacement well for Food Tree neighborhood

Jim,

To answer your question regarding water quality from the replacement well; it is the Brar's responsibility to locate and install a safe potable water system to supply the impacted properties. If sampling shows that the location of the well is not safe from VOCs, then they will be required to abandon that well and install a new one at a different location, and repeat this process until they succeed in providing safe water to the impacted properties. The only exception to this would be if they can demonstrate that they are not one of the sources for the contaminant(s) found in the replacement well.

## Hvizdak, Thomas

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**From:** Hvizdak, Thomas  
**Sent:** Friday, January 14, 2005 3:06 PM  
**To:** 'Pamela H. Schaefer'  
**Cc:** Evans, William J.  
**Subject:** Draft Negotiated Spill Response & Settlement Agreement

Pam,

Attached is my draft of the Spill Response Agreement I mentioned during our last meeting. Please discuss this with the Brars and get back to me by January 24, 2005, with their comments and any of their proposed changes to the draft.

Tom



Food Tree - Spill  
Response Agr...

## NEGOTIATED SPILL RESPONSE AND SETTLEMENT AGREEMENT

WHEREAS, N.B. Oil Company, doing business as the Food Tree (hereinafter referred to as "N.B. Oil"), is the current owner of certain real property located at 1759 Greenfield Avenue, Town of Rudolph, Wood County, Wisconsin more particularly described as Lot 1 of Wood County Certified Survey Map No. 1333, as recorded in Volume 5 of Surveys, page 133, in part of the Northeast ¼ of the Northeast ¼, Section 32, Township 23 North, Range 6 East, in the Town of Rudolph, Wood County, Wisconsin ("the Property").

WHEREAS, the Department of Natural Resources ("DNR" or "the Department") has determined, based on the results of investigations conducted on the Property to date, that the Property is a source of petroleum contaminants in the soil and groundwater on, and in the vicinity of the Property, that originated on the Property prior to the date of this Agreement ("the Contamination").

WHEREAS, without admitting any fault, legal liability, or responsibility and without waiving any of its rights to contest its legal liability or responsibility under applicable law for the contamination, N.B. Oil has agreed to replace all potable wells that have been impacted above the Wisconsin Administrative Code s. NR 140, Preventative Action Limit exceedances with a shared well located by your consultant, complete a site investigation in accordance with Wisconsin Administrative Code s. NR 700 through NR750, and pay to the Department applicable review fees regarding the site investigation workplan and report as provided in this Agreement.

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WORK TO BE PERFORMED

The parties to this Agreement hereby agree that N.B. Oil shall conduct the activities listed in the following table, in compliance with statutes and administrative rules that are applicable to investigations and remedial actions, within the time limits specified in the compliance date column in the following table, except as otherwise provided in this Agreement:

Activity Number	Description of Activity	Compliance Date
1	Install replacement potable wells to supply water to the nearby homes that have been impacted above Wisconsin Administrative Code s. NR 140, Preventative Action Limit, by the release from the Food Tree, and ensure that the replacement wells are fully operational and that the water quality from the replacement wells is safe and free of VOCs.	6 months after the Effective Date of the Agreement
2	Install a piezometer at a mutually agreed upon location between the Food Tree property and the location of the replacement potable wells prior to, or in conjunction with, the installation of the replacement wells required in Activity Number 1, develop the piezometer and monitor it on a quarterly basis for PVOCs	60 business days after the Effective Date of the Agreement
3	Continue to conduct bi-annual groundwater monitoring at monitoring well locations: MW-3, MW-4, MW-5, MW-6, MW-7, PZ-1, PZ-2, AND PZ-3, and annual groundwater monitoring at monitoring well locations: MW-1 and MW-2, unless concurrence is obtained from DNR to eliminate, or	Continue on the established regular schedule.

	reduce the frequency at, any of these monitoring well locations.	
4	<p>Continue to conduct bi-annual monitoring for PVOCs at the following potable well locations:</p> <ul style="list-style-type: none"> <li>• 1690 Greenfield Avenue,</li> <li>• 1697 Greenfield Avenue,</li> <li>• 1680 Greenfield Avenue,</li> </ul> <p>and annual monitoring for PVOCs at the following potable well locations:</p> <ul style="list-style-type: none"> <li>• 1717 CTH "P",</li> <li>• 5239 Fountain Avenue,</li> <li>• 5247 Fountain Avenue,</li> <li>• 1675 Greenfield Avenue.</li> </ul> <p>Concurrence must be obtained from DNR before eliminating, or reducing the frequency at, any of these potable well locations. In addition, DNR reserves the right to increase the frequency and add monitoring locations if conditions warrant it.</p>	10 business days after the Effective Date of the Agreement
5	<p>Submit a Draft Site Investigation Work Plan to complete the site investigation in accordance with Wis. Admin. Stat. s. NR 716. This will include the installation of off-site bedrock piezometers on both the north and south sides of County Highway "P", and where possible, the existing idle potable wells will be converted into NR 141 compliant piezometers and utilized for compliance purposes.</p>	12 weeks after the completion of the passive diffusion bag sampling program conducted by DNR at the idle potable wells.
6	Submit a Final Work Plan to DNR for approval	10 business days after receipt of DNR comments
7	Begin implementation of work outlined in Investigation Work	No later than 20 business days after DNR approval of the



	Plan	WorkPlan
8	Submit bi-annual site investigation and groundwater monitoring status reports to DNR.	No later than the 20 <sup>th</sup> day in the months of April and October.
9	Submit short monthly report via e-mail to DNR Project Manager describing the progress regarding the planning, installation, testing and monitoring of the replacement potable wells.	No later than the 5 <sup>th</sup> day of every month, and continue until the replacement potable water service to the impacted homes is installed, and demonstrated that the water is safe for human consumption and of adequate quantity to the homes it supplies.
10	Submit a draft site investigation report to DNR for review and comments	60 days after completion of the work specified in the approved site investigation workplan.
11	Submit a final site investigation report to DNR for approval.	10 business days after receipt of DNR concurrence that the site investigation is complete.

#### PAYMENT OF REVIEW FEES

N.B. Oil agrees to pay to DNR the review fees that are listed in ch. NR 749 for activities 5 and 10 in the above table for which a review fee is specified. Payment shall be made in the form of a check made payable to the Department of Natural Resources, to be submitted to the Department's West Central Regional Headquarters in Eau Claire, Wisconsin, with one copy of each of the required deliverables. Another copy of each of the required deliverables shall be submitted to Tom Hvizdak at the Department's Service Center in Wisconsin Rapids, Wisconsin.

#### FORCE MAJEURE

A. N.B. Oil shall cause all work to be performed within the time limits specified in the above table, unless the schedule is amended in writing by mutual agreement of the parties or unless performance is delayed by events that constitute a force majeure. For the purposes of this Agreement, a "force majeure" is an event arising from causes beyond the control of N.B. Oil, and any consultant, contractor or other entity hired by N.B. Oil to conduct any of the activities required under this Agreement, which delays or prevents performance of any obligations under this Agreement. Force majeure events include, but are not limited to, denial or delay in obtaining access to adjacent properties that is necessary to implement the work, or a permit or

other authorization from a governmental agency or other party that is necessary to implement the work, provided, however, that N.B. Oil has submitted a timely application for any access, permit or authorization. Increases in cost or changes in economic circumstances do not by themselves constitute a force majeure. However, an event that would otherwise constitute a force majeure shall be deemed a force majeure, even though such an event also results in increased costs or changed economic circumstances.

B. N.B. Oil shall notify the Department in writing no later than ten (10) business days after N.B. Oil becomes aware of any event that N.B. Oil contends is a force majeure. Such notification shall describe the anticipated length of the delay. The Department shall promptly provide N.B. Oil with a written decision as to whether the event constitutes a force majeure. If the Department agrees that a delay is attributable to a force majeure, the compliance date that has been established for the performance of any activity required under this Agreement that has been delayed by the force majeure shall be extended by adding to the compliance date the number of days attributable to the delay caused by the force majeure.

#### DISPUTE RESOLUTION

A. The parties shall use their best efforts to in good faith resolve all disputes or differences of opinion that may arise. If, however, any dispute arises concerning any matter under this agreement which the parties are unable to resolve informally, N.B. Oil shall present a written notice of such dispute to the Department, which shall set forth specific points of dispute, the position of N.B. Oil, and the technical basis therefor, and any actions which N.B. Oil considers necessary. All information submitted by N.B. Oil to the Department in the course of dispute resolution under this section shall become part of the administrative record for the Site. The procedures set forth in the Dispute Resolution section of this Agreement shall not apply to actions to taken by the Department to enforce this Agreement if N.B. Oil has not previously submitted written notice of a dispute concerning the provision that the Department seeks to enforce.

B. Within ten (10) business days of receipt of such written notice, the Department shall provide a written response to N.B. Oil setting forth its position and the basis therefor. N.B. Oil may respond to the Department's written response within five (5) business days of its receipt. During the five (5) business days following receipt of N.B. Oil's response to the Department's stated position, the Department shall attempt to negotiate in good faith a resolution of the differences.

C. Following the expiration of the time periods described in paragraph (B.) of this Section, if the Department concurs with the position of N.B. Oil, N.B. Oil shall be so notified in writing and this Agreement shall be modified to include any necessary extensions of time, variances of work or reversal of the Department's determinations.

D. If the Department does not concur with the position of N.B. Oil, the Department shall resolve the dispute in good faith, taking due account of the position of N.B. Oil and, based upon and consistent with the terms of this Agreement and applicable law, and shall provide

written notification and justification of such resolution to N.B. Oil ("Department Resolved Matters").

E. The pendency of dispute resolution under this Section and any available remedies under applicable law shall affect the time period for completion of work or other obligations to be performed under this Agreement that are directly related to the dispute. However, in such event, if N.B. Oil has demonstrated a good faith basis for the dispute, applicable time periods shall be extended only to the actual time that it takes to resolve the dispute. Elements of work and obligations not affected by the dispute shall be completed in accordance with the schedule contained in this Agreement.

F. Upon resolution of any dispute, whether informally or using the procedures in this section, any additions or modifications required as a result of such dispute resolution shall immediately be incorporated, if necessary, into the appropriate plans or procedures and to this Agreement. N.B. Oil shall proceed with all remaining work according to the modified plan or procedure.

G. In any proceeding to enforce the terms of this Agreement, N.B. Oil may defend on the basis that the Department Resolved Matters of any properly invoked dispute was arbitrary and capricious, in addition to any other defenses that are available under this Agreement or applicable law. If the court finds that the Department's resolution of any dispute was arbitrary and capricious or otherwise contrary to law, the court may exercise such legal and equitable powers as it deems appropriate.

#### EFFECTIVE DATE

This Agreement shall be executed by N.B. Oil before being executed by the Department. When the Department executes this Agreement, the Department shall enter an effective date immediately below the Department's signature which shall be 5 business days after the date of mailing (by first class postage prepaid) by the Department to N.B. Oil of a fully executed copy of the Agreement (the "Effective Date").

#### SUBSEQUENT AMENDMENT

This Agreement may be amended by mutual agreement of the Department and N.B. Oil. Any amendment of this Agreement shall be in writing, signed by the Department and N.B. Oil and shall have as the effective date that date on which the last party signed such amendment.

#### TERMINATION AND SATISFACTION

The provisions of this Agreement shall be deemed satisfied and this Agreement shall terminate upon receipt by N.B. Oil of written notice from the Department that N.B. Oil has performed all work as described in the Work to be Performed Section, including any modified or additional work or amendments, in accordance with applicable law, and has made the payments required under this Agreement. Upon such demonstration by N.B. Oil, said written notice shall not be unreasonably withheld or delayed by the Department.

COVENANT NOT TO SUE

Except as otherwise provided in the Reservation of Rights paragraph of this Agreement, from the effective date of this Agreement, for as long as the terms herein are complied with, and upon or after termination of this Agreement pursuant to the provisions of the Termination and Satisfaction Section, the Department covenants not to sue N.B. Oil for any claims or liability arising from the Contamination, including past costs incurred by the Department. However, nothing within this Agreement should be deemed to release any claim by the Department, the State of Wisconsin or N.B. Oil against any other person or entity.

WAIVER

N.B. Oil hereby waives notice and its statutory right to demand a hearing before the Department of Natural Resources regarding the requirements of this Agreement under §227.42, Wis. Stats., or under any other provision of law, and waives its right to challenge this Agreement in circuit court under §§227.52 and 227.53, Wis. Stats., or any other provision of law, except that, in any proceeding initiated by the Department to enforce the terms of this Agreement, N.B. Oil may defend on the basis that the Department's resolution of Department Resolved Matters was arbitrary and capricious, in addition to any other defenses that are available under this Agreement or applicable law.

RESERVATION OF RIGHTS

The parties to this Agreement reserve all rights, claims and defenses that they may have in connection with or arising out of any matters not covered by this Agreement.

The parties, whose signatures appear below, or on separate signature pages, hereby agree to the terms of this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized by the Department or N.B. Oil, as the case may be, to execute and legally bind the respective parties to the terms of this Agreement.

N.B. Oil Company

By: \_\_\_\_\_

Printed Name:

Title:

Date signed: \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES  
For the Secretary

By: \_\_\_\_\_

Name: Robert E. Strous, Jr.

Title: Chief of Fiscal & Program Evaluation Section  
Bureau for Remediation and Redevelopment

Effective Date: \_\_\_\_\_