

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary
Ronald W. Kaczmierczak, Regional Director

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August 2, 2004

James Peters
Peters Concrete Company
1516 Atkinson Drive
Green Bay, WI 54303

SUBJECT: Liability Clarification and Current Environmental Conditions for Property
Located at W1604 Cleveland Avenue, Town of Peshtigo, WI (former
Heimbuch Property)
WDNR ERP Case #: 02-38-000082
WDNR General Property Case #: 07-38-378951

Dear Mr. Peters:

On July 21, 2004, the Wisconsin Department of Natural Resources (hereafter referred to as "the Department") received a written request for clarification on several questions concerning your environmental liability for a property you intend to purchase located at W1604 Cleveland Avenue in the Town of Peshtigo, Wisconsin ("the Property"). The \$500 fee required under ch. NR 749, Wis. Adm. Code was also submitted. Please find listed below a brief summary of the Property's environmental condition and a list of answers to the questions posed in your inquiry.

Background:

The Property was formerly owned by George Heimbuch, Sr. until his death on August 25, 1988. Mr. Heimbuch operated the Property as a salvage yard. At the time of Mr. Heimbuch's death, his widow, Ms. LaVerne Heimbuch inherited the Property. Thereafter Marinette County acquired the Property involuntarily through a tax deed. Marinette County applied for and received a *Site Assessment Grant* (SAG) from the Department for \$30,000 effective on April 16, 2002.

Through the SAG process, Northern Environmental performed a site investigation from July through December 2002 and identified the following contamination and environmental issues at the Property:

- Soil located immediately south and east of the former building contained lead at concentrations characterized as hazardous waste;
- Lead and arsenic soil contamination has been identified across the property at concentrations that exceed the s. NR 720.11 Wis. Adm. Code industrial residual contaminant levels (RCLs) of 500 mg/kg and 1.6mg/kg respectively.
- The polychlorinated biphenyl (PCB), arochlor 1254, was identified at a concentration of 3.6 parts per million (ppm) in soil sample, B300 (see Figure 8 attached), which is above the EPA soil cleanup standard for PCBs of 1 ppm for unrestricted use.

- Polynuclear aromatic hydrocarbons (PAHs) were detected in soil sample, B300 (see Figure 8 attached) at concentrations that exceed the industrial suggested RCLs for PAHs outlined in the *Soil Cleanup Levels for Polycyclic Aromatic Hydrocarbons (PAHs) Interim Guidance* (Publication RR-519-97).
- Groundwater contamination was identified at concentrations above the enforcement standard (ES) for PCBs and above the preventive action limit for cadmium at MW-2000 (MW-2000 is located at soil boring B2000 on Figure 8, attached);
- Glass, metal and other salvage yard debris present in the top several feet of soil throughout the Property.

After review of the *Site Investigation Report* dated April 8, 2003 and submitted by Northern Environmental, the Department determined that additional investigation and remediation is necessary to bring the site to closure under ch. NR 726, Wis. Adm. Code. Specifically, lead and arsenic soil contamination must be defined off-site to the east, west and south; PCBs and cadmium in groundwater must be delineated to the southeast of MW-2000 in the down-gradient direction; the soils in excess of the industrial RCLs must be addressed via removal or installation of an appropriate cap to prevent direct contact. It is the Department's understanding that the six monitoring wells, MW-1900 through MW-2400, installed by Marinette County are still present on the Property and that no additional investigation or remediation has occurred since December 2002. (The locations of the monitoring wells are at corresponding soil boring locations, B1900 through B2400, on the attached Figure 8.)

Issues:

In your letter, you identified three issues of concern to you and your company concerning the Property, which were: (1) buyer's environmental liability under Wisconsin law for the Property; (2) clarification on the type of cap appropriate to remediate the site; (3) additional work required to obtain closure under ch. NR 726, Wis. Adm. Code. These issues are addressed in the remainder of this letter.

1. What is the environmental liability of Peters Concrete Company, as the prospective purchaser of the Property recognizing that they did not cause the contamination?

The Wisconsin Hazardous Substance Discharge Law, s. 292.11, Wis. Stats., commonly called the Spill Law, requires those who cause, possess or control a hazardous substance discharge to "take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state." Section 292.55, Wis. Stats., authorizes the Department to issue clarification letters concerning liability for environmental pollution.

The state's hazardous substance discharge law does impose potential liability on the owner of a contaminated property where a hazardous substance has been discharged to the environment, even if the contamination was caused by another person. Whenever possible, the Department requires the person who caused the discharge to take the appropriate response actions. In this case however, since it is the Department's understanding that there are no legally responsible parties who are financially able to conduct the cleanup, we would look to the property owner to comply with the legal requirements under the hazardous substance discharge law to investigate and cleanup the property and meet the conditions for case closure. Therefore, upon purchasing the Property, you would become responsible to complete the investigation and remediation of the hazardous substances present at the Property. However, a significant amount of investigation has been performed and the

remedial options that would be appropriate to bring this site to closure are readily defined and addressed further in this letter.

2. What type of cap would be appropriate to address the direct contact concerns throughout the Property?

Lead and arsenic are present in surficial soil above the industrial RCLs (s. NR 720.11 Wis. Adm. Code) throughout the Property. PAHs and PCBs are present at B300. A cap protective of human health risk from direct contact is necessary to meet the requirements of ch. NR 720.19, Wis. Adm. Code. Since soil contamination does not appear to be *continuing* to contribute contamination to groundwater based on the investigation performed by Northern Environmental, a permeable or impermeable barrier should be acceptable. This could include clay, topsoil, gravel, concrete, asphalt, a structure, etc. The required thickness of the barrier depends on the cap selected. Please work with your consultant and submit a proposed plan for a cap design to the Department and we will determine if that is acceptable given the site characteristics. Areas where rooting vegetation, such as trees, are planned may require additional topsoil to prevent direct contact.

3. What additional investigation and remediation is required to request closure under ch. NR 726, Wis. Adm. Code?

As described above, additional investigation and remediation is needed prior to requesting closure under ch. NR 726, Wis. Adm. Code.

- (A) Lead and arsenic must be defined in soil off-site to the east, west and south. A minimum of two soil samples in each direction is appropriate.
- (B) PCBs and cadmium in groundwater must be delineated to the southeast of MW-2000 in the down-gradient direction. Prior to installing an additional monitoring well, MW-2000 should be re-sampled to verify the concentrations found in 2002. The down-gradient monitoring well necessary to properly delineate groundwater contamination could be installed after development of the Property where an appropriate location could be best selected for long-term monitoring by which to establish a trend, if necessary. If it is determined that there is still groundwater contamination above groundwater enforcement standards, you would need to monitor the groundwater quality over a period of time in order to demonstrate natural attenuation will bring the groundwater into compliance with ch. NR 140 groundwater quality standards within a reasonable period of time and that the conditions in s. NR 726.05(2)(b), Wis. Adm. Code have been met. This would also allow development and installation of a cap to be performed in a timely manner after purchase of the Property.
- (C) The soils in excess of the industrial RCLs must be addressed via removal or installation of an appropriate cap to prevent direct contact. Information about the appropriate type of cap is addressed in issue #2 above. If a direct contact cap is installed, an inspection and maintenance plan must be approved by the Department and a restriction filed to the deed to maintain the cap in accordance with the plan.
- (D) Once the investigation and remediation is complete, a request for closure can be submitted in accordance with ch. NR 726, Wis. Adm. Code. A fee of \$750 is required with the request for closure.
- (E) Closure with entry on the Department's GIS Registry of Closed Remediation Sites may be appropriate if soil or groundwater contamination remain above the RCL or ES. A fee of \$250 is required for the groundwater GIS Registry and \$200 for the soil GIS Registry.

(F) If any soils are excavated during redevelopment or at any time in the future, they must be characterized and properly disposed. Northern Environmental has characterized a majority of the soils at the Property.

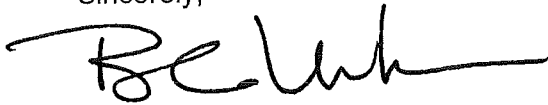
Please note that the minimum additional investigation and remediation described above is based on review of the *Site Investigation Report* submitted by Northern Environmental on April 8, 2003. If further investigation identifies additional environmental issues, they must also be properly addressed.

In the future, if the Department becomes aware of new information concerning the contaminants referenced above, or the presence of other contaminants on the Property not previously identified, the Department will need to evaluate that data to determine if response actions may be required.

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for this activity is shown at the top of this letter. The Department tracks information on all determinations such as this in a Department database that is available on the Internet at <http://dnr.wi.gov/org/aw/rr/>. See "BRRTS on the web" under "Contaminated Land Databases".

I hope that this letter serves to answer your issues outlined in the letter received on July 21, 2004. Please call Jennifer Borski at (920) 424-7887 with any questions.

Sincerely,



Bruce Urben
Bureau for Remediation & Redevelopment

Encl: Figure 8, *Soil Sample Locations With Estimated Extent of Lead Contamination* (copy of Figure 8 sent under separate cover by Jennifer Borski)

Ecc: John Lefebvre, Marinette County
Lynelle Caine, Northern Environmental
Kathy Erdmann – Green Bay
Percy Mather – Madison, RR/3



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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July 29, 2004

James Peters
Peters Concrete Company
1516 Atkinson Drive
Green Bay, WI 54303

SUBJECT: Attachment – Figure 8 for
Clarification of Environmental Liability for Property Located at
W1604 Cleveland Avenue, Town of Peshtigo, WI (former Heimbuch Property)
WDNR ERP Case #: 02-38-000082
WDNR Gen Prop Case #: 07-38-378951

Dear Mr. Peters:

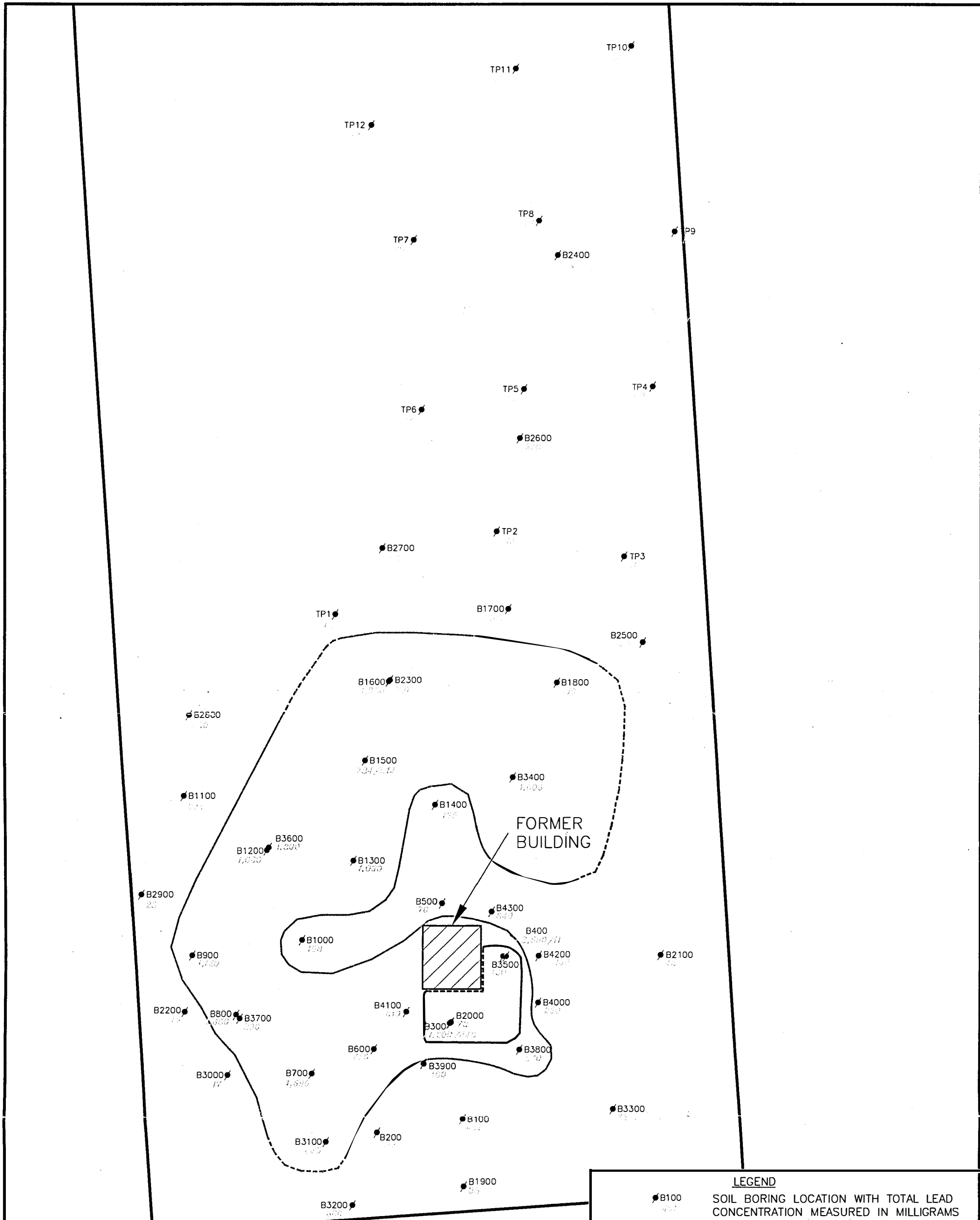
Enclosed is a copy of the attachment, Figure 8, referenced in the General Liability Clarification (GLC) letter issued by Bruce Urben, mailed under separate cover. Please call me at the number below if you have any questions in regard to the GLC or development at the property.

Sincerely,

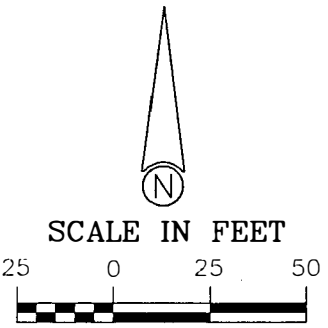
Jennifer Borski
Hydrogeologist
Bureau for Remediation & Redevelopment
(920) 424-7887

Encl.

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LEGEND	
	SOIL BORING LOCATION WITH TOTAL LEAD CONCENTRATION MEASURED IN MILLIGRAMS PER KILOGRAM (mg/kg) AND TCLP LEAD CONCENTRATION, WHERE NOTED, IN MILLIGRAMS PER LITER (mg/L)
	NA = NOT ANALYZED
	TEST PIT LOCATION
	ESTIMATED EXTENT OF HAZARDOUS WASTE BASED ON TCLP LEAD RESULTS
	ESTIMATED EXTENT OF LEAD IMPACTED SOIL IN EXCESS OF INDUSTRIAL RESIDUAL CONAMINANT LEVELS (RCLs)



DRAWN BY: KRE	PROJECT: MCY-1407	DATE: 3/26/03
REV. DATE: 3/27/03	THIS DRAWING AND ALL INFORMATION CONTAINED THEREON IS THE PROPERTY OF NORTHERN ENVIRONMENTAL INCORPORATED AND SHALL NOT BE COPIED OR USED EXCEPT FOR THE PURPOSE FOR WHICH IT IS EXPRESSLY FURNISHED.	
 Northern Environmental SM Hydrologists • Engineers • Geologists		

FORMER HEIMBACH SALVAGE YARD
TOWN OF PESHTIGO, WISCONSIN

SOIL SAMPLE LOCATIONS WITH
ESTIMATED EXTENT OF
LEAD CONTAMINATION

FIGURE 8