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

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September 15, 2005

File Ref BRRTS: 07-59-543867

Terry Anderson  
Fairview Plaza of Shawano LLC  
1444 E. Green Bay Street  
Shawano WI 54166

Subject: Liability Clarification and Current Environmental Conditions  
Fairview Mall, 700-750 E. Green Bay Street, Shawano, Wisconsin

Dear Mr. Anderson:

**Purpose**

The purpose of this letter is to provide you with clarifications as to environmental liabilities and current environmental conditions at Fairview Mall (BRRTS # 02-59-522557) at 700-750 E. Green Bay Street, Shawano, Wisconsin ("the Property"). The Property consists of a strip mall and associated parking lot, in the City of Shawano, Shawano County. There is an accepted offer to purchase the Property, which is currently owned by Douglas Burris.

**Request**

On August 25, 2005, you requested that the Department of Natural Resources ("the Department"), issue a liability clarification letter in which you asked what the "most likely resolution" would be and estimated costs. You had also asked what the bank's liability as a lender is and your liability as the purchaser versus the current owner prior to closing the case. This letter contains answers to those questions and a discussion of options based on the release or presence of one or more hazardous substances at the Property. The Department received the fee for providing assistance, in accordance with s. NR 749.04(1), Wis. Adm. Code.

In order for the Department to make this determination, we have reviewed the following documents:

- Phase 1 and 2 Environmental Assessment Reports prepared by Northern Environmental Inc., dated February 12, 2004.
- Results of groundwater samples, dated June 16, 2004, taken by Omni Associated and received by the Department on August 25, 2005.
- Off site groundwater sample results obtained as part of the petroleum contamination investigations at former John's One Stop (BRRT's # 03-59-001418) and former Grosskopf Bus Company (BRRT's # 03-59-001935) north of the Property, across Green Bay St. and submitted by Northern Environmental Inc. Dates of the samples were 12/9/94, 2/15/95, 7/595, 10/16/96 and 11/9/00.

The Department has examined the reports listed above and provides the following summary of the facts of the case and opinions concerning environmental conditions at the Property.

## Background and Summary of Environmental Conditions

According to the former owner, a small, coin-operated dry cleaner operated on the northwest portion of the Property for about ten years in conjunction with a coin operated laundromat doing business as Hawkeye Cleaning Center & Appliances (Hawkeye Cleaning) until the 1980's. In addition, on the eastern part of the Property, "Farmers Implement" operated from at least 1950 to the 1980's. Current occupants of the existing strip mall do not appear to pose any environmental concerns.

A Phase 2 assessment was conducted on the Property in January 2004, to determine if contamination was present as a result of these past land uses. Six hand auger borings were advanced to a maximum depth of 8 feet. One of the borings was constructed as a temporary monitoring well to obtain a groundwater sample. Samples were analyzed for Volatile Organic Compounds (VOCs). Soils at the site are generally sand and gravel fill underlain by fine to medium grained sand. Saturated soil conditions were encountered at approximately 6 feet below grade.

Soil contamination was not detected above the respective laboratory detection limits for the given compounds. The compound tetrachloroethane (PCE) was detected at 160 micrograms per liter (ug/L) in the groundwater sample from the temporary monitoring well (well # TW100) located north of the approximate location of the former Hawkeye Cleaning (see Figure 1). The Enforcement Standard (ES) for PCE, as listed in Wisconsin Administrative Code NR140, is 5 ug/L, as specified in ch. NR 140, Wis Admin.Code.

In response, the Department issued a letter on February 23, 2004, to Mr. Douglas Burris the Property owner at the time. The letter described to Mr. Burris the legal responsibilities to address this contamination.

On August 25, 2005, the Department was hand delivered the results of three groundwater samples taken at the Property from monitoring wells MW1, MW2, and MW3 on June 3, 2004. PCE was detected above the ES in all three samples. Other compounds that may be breakdown products of PCE were also detected but were below the ES concentration. A map showing sample locations was also submitted at that time (see Figure 1).

Information from contaminant investigations to the north of the Property across E. Green Bay Street (former John's One Stop, and former Grosskopf Bus Co.) also indicated exceedances of the ES for PCE and detections of possible breakdown products. These investigations indicated groundwater flow to be to the North-Northwest, suggesting that the contamination from the Property has migrated off site into these areas.

## Liability Determination

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 data summarized above indicates that one or more hazardous substance discharges have occurred on the Property from the former Hawkeye Cleaning and/or the former Farmer Implement. PCE and its breakdown products have been detected in groundwater on the Property; the concentrations of PCE exceed the level of the Environmental Standard.

The following paragraphs will address the questions asked in your August 25, 2005, letter to the Department:

*Question 1. Based on the existing reports, tests done to date and your knowledge of this general area, what is the most likely resolution of this problem? What are the estimated costs?*

Based on the information presented in the Phase II ESA and other file information, additional actions will be required at the Property to address soil and groundwater contamination.

At a minimum, the following information is required to fully evaluate environmental site conditions:

- Installation of a Piezometer in the vicinity of MW-3 (see Figure 1) to determine if the contamination has moved downward (because tetrachloroethane is heavier than water). Well logs from nearby properties indicate a clay layer below the sand at approximately 12 feet.

- Installation of an additional monitoring well near the eastern Property line to determine if contamination is present in this area from the former Farmer's Implement
- An additional monitoring well may also be needed to the north of existing monitoring well MW-1100 on Oak Street (see Figure 2) to determine the northern edge of the contaminant plume. This can be determined after the results of an initial round of groundwater samples are reviewed.
- Sampling and analysis of at least four quarters of groundwater monitoring on and off-site for VOC's to determine contaminant concentration trends.
- An analysis of vertical and horizontal groundwater flow characteristics on and off site.
- An assessment of potential contaminant migration along underground utility corridors.
- A Site investigation/Remedial Action Options Report prepared in general accordance with chs. NR 716 and 722, Wis. Adm. Code, and appropriate for the site, including a professional interpretation of site conditions and a remedial action plan.

A consultant will be able to provide you a cost estimate based on the results of the completed investigation. Based on the Department's past experience with similar sites, the \$50,000 you indicated in your meeting with Mr. Sturm that will be set aside for this purpose, should cover these costs.

You have verbally agreed to take over responsibility of some of the existing wells installed for the John's One Stop/ Grosskopf Bus investigation. The Department encourages you to finalize this agreement in writing so that the wells are not abandoned, and thus continue to be available to assist in investigating and cleaning up the site. However, you will be responsible for properly abandoning these wells once you get approval from the DNR to do so.

### **Closure Process**

A closure request can be submitted to the Department when the degree and extent of the contamination has been defined and a remedial option has been implemented that meets state environmental standards. Based on the information submitted to date and experience with sites under similar conditions, the Department anticipates that closure can be achieved through the implementation of a an option that uses performance standard and deed restriction – in this situation, this would involve acknowledging that the current impervious surface on the Property (i.e., buildings and pavement) is effective in preventing additional migration of contamination from the source area to the groundwater. This type of closure will require that a restriction be filed on the Property deed requiring that the integrity of the current cap be maintained to prevent additional groundwater contamination from occurring.

The site would also be listed on the DNR GIS Registry of Closed Remediation Sites which is a Registry available to the public that notes contamination remaining at closed sites. Such a closure will require a \$750 review fee, \$250 and \$200 for listing on the GIS Registry for groundwater and soil contamination respectively.

Under s. NR 726.05(7), Wis. Adm. Code, the Department issues what is commonly referred to as a closure letter, once site investigation and cleanup are completed. The letter states that the Department has determined that no further environmental response action is necessary at the site, based upon the information available to the Department at that time. The Department can only require further action to address a previously closed case "if information regarding the site or facility conditions indicates that contamination on or from the site or facility poses a threat to public health, safety, welfare or the environment." (s. NR 726.09(1), Wis. Adm. Code.)

Thus, before the Department can require further action to address residual contamination in existence at the time that the site (i.e., the area of contamination at the Property that was the subject of the closure letter) was closed, the Department must make a determination that residual contamination poses a threat to public health, safety, or welfare or the environment and requires further action. Approximately 14,000 clean-up cases have been closed by the Department, but fewer than 25 have been reopened in the past 15 years.

### Lender Liability

*Question 2. What is the Liability of the Bank financing the purchase?*

A bank acting as a normal lender for property that is contaminated or potentially contaminated is not considered to possess, control or cause the hazardous substance. Lenders have an exemption from the Spill Law in s. 292.21(1)(a)2. a. and b., Wis. Stats., unless (a) the lender physically causes a discharge of hazardous substances, or (b) the lender "through tortious conduct with respect to lending activities causes a discharge of a hazardous substance or exacerbates an existing discharge". The state law provides four other situations for lenders and representatives in which an exemption is available if the conditions in the statutes are met. I have enclosed a Fact Sheet that provides additional information on Lender Liability. Upon request, the Department can provide lender liability clarification letters involving specific situations for a fee.

### Purchaser versus Current Owners Liability

*Question 3. What is our liability as a purchaser versus the current owner till the case is closed?*

The Spill Law holds the person who possesses or controls a hazardous substance which is discharged or who causes the discharge as liable for the cleanup actions. Thus the current owner's liability would become the liability of the new owner upon taking ownership. The Department is aware that escrow agreements are commonly made between the purchaser and the seller for properties where contamination is known or suspected or cleanup actions are taking place. Whenever possible, the Department requires the person who caused the discharge to take the appropriate response actions.

This response letter relates only to those conditions described above, and makes no determination concerning the presence or absence of hazardous substances, other than those identified in the reports listed above. 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".

If you have any questions, please contact Tom Sturm at 715-526-4230, or by email to [Thomas.Sturm@dnr.state.wi.us](mailto:Thomas.Sturm@dnr.state.wi.us).

Sincerely,



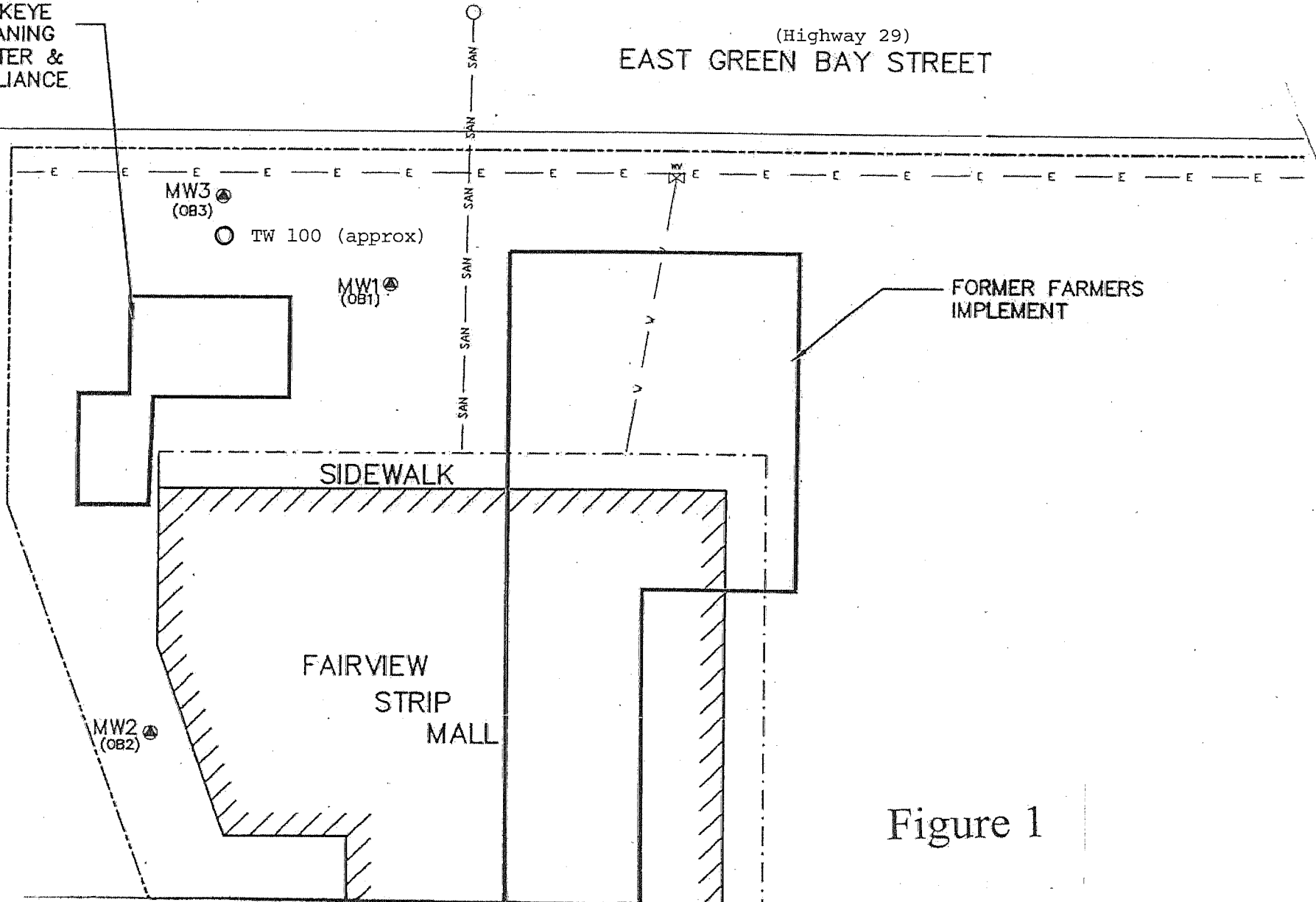
Bruce G. Urben  
Team Supervisor  
Northeast Region, Remediation and Redevelopment

Attach: Figure 1 – map of part of Fairview Strip Mall Property, and former Hawkeye Cleaning Center and Former Farmers Implement  
Figure 2 – map of former Grosskopf Bus Company and Former John's One Stop  
Lender Liability fact sheet

cc: Tom Sturm – NER Shawano  
Annette Weissbach – NER Green Bay  
Percy Mather – DNR RR/3

FORMER  
HAWKEYE  
CLEANING  
CENTER &  
APPLIANCE

(Highway 29)  
EAST GREEN BAY STREET



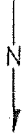
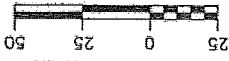
FORMER FARMERS  
IMPLEMENT

SIDEWALK

FAIRVIEW  
STRIP  
MALL

Figure 1

Figure 2



- LEGEND
- ⊕ MW200 MONITORING WELL LOCATION
  - ⊕ MW200 JOHN'S ONE STOP WELL
  - ⊕ MW200 REMOVED DURING REMEDIAL EXCAVATION
  - ⊕ PZ800 PIEZOMETER WELL LOCATION
  - ⊕ JOHN'S ONE STOP WELL
  - .. ABANDONED WELL
  - ⊕ SUMP2 RECOVERY SUMP LOCATION
  - BOUNDARY BETWEEN DIFFERING SURFACE MATERIALS
  - PROPERTY LINE
  - FENCE LINE

Fairview Mall

