



## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Scott Hassett, Secretary

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October 13, 2006

267004430

Rick J. Zimbelman  
T & R Properties of West Bend, LLC  
133 Oak Street  
West Bend, WI 53095

Subject: Lease Liability Clarification Letter as to Environmental Liability for T & R Properties of West Bend, LLC, when leasing property from SPAHIS, INC.

Dear Mr. Zimbelman:

### Purpose

The purpose of this letter is to provide T & R Properties of West Bend, LLC ("T & R") with clarifications as to the environmental liabilities associated with leasing property from SPAHIS, INC. ("SPAHIS"). The Wisconsin Department of Natural Resources ("Department") has completed its review of the request for a lease liability clarification letter submitted by Gregory S. Walsh, Assured Environmental Associates, Inc., on behalf of T & R. The property is located at 133 Oak St., West Bend, and is referred to hereafter as "the Property." A legal description of the Leased Premises located on the Property is attached to this letter as "Exhibit A." T & R Wood Products, Inc., will occupy the northern portion of the northern building on the Property as identified in the figure attached to this letter as "Exhibit B." The Leased Premises at the Property will be used for the assembly of fixtures from wood materials and storage of those products until scheduled shipments. Adhesives and lacquers will be applied to wood or wood products as part of the manufacturing operations. A spray booth is to be installed for that purpose and no chlorinated compounds will be used.

You have requested that the Department determine whether T & R would be held responsible under the Hazardous Substance Spills Law, s. 292.11, Wis. Stats., for a hazardous substance that was discharged on the Property prior to T & R lease agreement with SPAHIS.

### Determination

As you are aware, s. 292.55(1)(d)1., Wis. Stats., authorizes the Department to issue a letter to a person seeking assistance concerning the liability of a person owning or leasing a property for environmental pollution of the property. The Department has reviewed the following documents in order to make this determination:

1. Lease letter request application—January 17, 2006.
2. Building Lease between SPAHIS (Landlord) and T & R (Tenant), dated Oct. 28, 2005.
3. Information in the Department files regarding contamination at the Property, in BRRTS file numbers 02-67-152445 (EIS Brake Parts), 06-67-199921 (Praefke Brake & Supply Corp.) and 09-67-000749 (EIS Brake Parts).

4. Legal description for the Property, received by the Department on October 4, 2006.

Section 7 of the Lease indicates that SPAHIS will be responsible for all existing environmental liabilities at the property (defined as those environmental liabilities existing as of the commencement date of the lease). SPAHIS indemnifies T & R from any liability relating to the existing environmental liability, even if the existing liabilities are exacerbated by the activities of T & R. This obligation would terminate, according to the lease, if T & R or any of its affiliates purchased the leased premises. T & R agrees to indemnify SPAHIS for any liability relating to the release or presence of asbestos or any other hazardous substances at the Property, arising from the action or inaction of T & R.

While the Lease will bind the parties to these agreements, please be advised that it does not limit the Department's ability to pursue either the Landlord or Tenant as a party responsible to clean up contamination at the Property. Under s. 292.11(3), the Department can require a person who possesses or controls a hazardous substance discharge or a person who causes a hazardous substance discharge to restore the environment to the extent practicable and minimize the harmful effects from the discharge. Both the Landlord and Tenant could be interpreted to be "in possession or control" of a hazardous substance discharge at the Property. However, the terms of the Lease are generally consistent with the Department's enforcement policy. This policy is to first pursue the party who caused the discharge. If that person is unable or unwilling to conduct the cleanup, the Department would reserve its ability to pursue other responsible parties, such as those in possession or control of the hazardous substance discharge. Of course, that party could then bring a lawsuit against the other party to enforce the indemnification language in the Lease. In addition, be advised that the Department would be likely to pursue both the Landlord and Tenant for liability if the existing environmental liabilities are exacerbated by the activities of T & R, even though the lease states that SPAHIS indemnifies T & R from that liability.

Based on its review, the Department determines that T & R as a Tenant under the lease agreement, does not "possess or control", as those terms are used in s. 292.11(3), Wis. Stats., any hazardous substance discharges that were present on the Property prior to the lease agreement, conditioned on compliance with the following standards of performance:

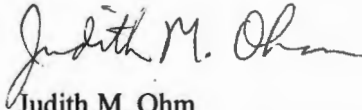
- T & R agrees to provide any responsible party, their consultants and Department personnel with reasonable access to the Property for the purposes of conducting any necessary environmental assessment or remediation activities.
- T & R agrees to comply with all applicable state and federal laws that apply to the excavation and disposal of contaminated soils or other materials.
- T & R agrees to minimize, as applicable and to the extent practicable, the placement of any structures in areas of the property impacted by environmental contamination or construct buildings in such a manner as to allow remedial work to be conducted.
- T & R agrees to comply with the requirements of s. 292.11, Wis. Stats., and the NR 700 rule series, Wisconsin Administrative Code, for the discharge of any hazardous substances that may be caused (or exacerbated) by T & R as the lessee.

Under these conditions, the Department agrees not to hold T & R in its capacity as a Tenant under the lease, responsible for investigating or remediating any hazardous substances on the Property that were existing or occurred, or migrated from or onto the Property, prior to the date of the lease agreement, unless one of the aforementioned conditions is not satisfied. The Department believes that a

memorandum of understanding entered into by the State of Wisconsin and the Federal Environmental Protection Agency ("EPA") provides clarification to companies like yours that EPA is not interested in pursuing cleanup of properties where person(s) are working cooperatively with the Department.

If you have any questions concerning this letter or other related matters, please contact me at 608-266-9972.

Sincerely,



Judith M. Ohm  
Attorney  
Legal Services

Attachments

cc: Mark Drews--SER ✓

Gregory S. Walsh  
Assured Environmental Associates, Inc.  
14120 W. Glendale Ave.  
Brookfield, WI 53005

Percy Mather – RR/3

Robert F. Sullivan  
Schober, Schober & Mitchell, SC  
16845 W. Cleveland Ave.  
New Berlin, WI 53151

AUG. -10' 99 (TUE) 09:42 ABSTRACT &amp; TITLE CO.

TEL: 414 334 6207

COMMITMENT NO. WB 59123

## Exhibit "A"

## PARCEL A

That part of the West Half of the SOUTHWEST Quarter (W 1/2 SW 1/4) of Section Thirteen (13), Township Eleven (11) North of Range Nineteen (19) East, City of West Bend, Washington County, Wisconsin, being more particularly described as follows:

Commencing at a concrete monument with a brass cap in a manhole that marks the SW 1/4 of said Section 13; thence North 88 degrees 52 minutes 39 seconds East (bearing based on State Plane Co-ordinate System, South Zone), along the south line of the SW 1/4 of said Section 13, a distance of 1106.29 feet to the intersection of the westerly right of way line of the Wisconsin Central Limited Railroad Company (a 100.00 foot wide right of way) with the south line of the SW 1/4 of said Section 13; thence North 18 degrees 50 minutes 21 seconds West, along the said westerly right of way line, a distance of 545.98 feet to a 1" x 24" iron pipe (1" I.P.), set from which a found 2" I.P. bears North 20 degrees 28 minutes West, 0.92 feet and also being the point of beginning; thence South 71 degrees 09 minutes 39 seconds West, along the north line of that parcel as described in Volume 319, Page 215, a distance of 110.00 feet to a 1" I.P. set; thence North 18 degrees 50 minutes 21 seconds West, a distance of 133.15 feet to a 1" I.P. found; thence South 79 degrees 22 minutes 09 seconds West, a distance of 120.12 feet to a 1" I.P. set at the southeast corner of Lot 3 of Highland Circle, a recorded subdivision; thence North 33 degrees 24 minutes 31 seconds West along the easterly line of said Lot 3 and the easterly line of Lot 2 of said Highland Circle, a distance of 190.80 feet to a 1" I.P. set at the northeast corner of said Lot 2 from which a found 1" I.P. bears North 22 degrees 20 minutes East, 0.73 feet; thence North 07 degrees 18 minutes 19 seconds West along the easterly lines of that parcel described in Volume 1011, Page 648 and that parcel described in Volume 335, Page 541, a distance of 100.45 feet to a 1" I.P. set; thence North 01 degree 35 minutes 31 seconds West along the easterly line of that parcel of land described in Volume 192, page 141, a distance of 136.75 feet to a 1" I.P. set; thence North 30 degrees 58 minutes 21 seconds West along the easterly line of that parcel described in Volume 194, Page 173, a distance of 129.55 feet to a railroad spike, set on the apparent south right of way line of Locust Street (a 50' wide right of way), from which a found 1" I.P. bears North 88 degrees 05 minutes 29 seconds East, a distance of 0.41 feet; thence North 88 degrees 05 minutes 29 seconds East along the apparent south line of Locust Street, a distance of 56.86 feet to a 1" I.P. set from which a found 1" I.P. bears North 80 degrees

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Abstract &amp; Title Company 410 Hawthorn Drive P.O. Box 184 West Bend, WI 53095

AUG 10 1999 Received Time Oct. 25. 2:22PM

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## Exhibit "A" Continued

07 minutes East, 2.18 feet; thence North 33 degrees 10 minutes 21 seconds West, a distance of 58.49 feet to a 1" I.P. set on the apparent north right of way of said Locust Street; thence South 88 degrees 05 minutes 29 seconds West along the apparent north line of said Locust Street and the southerly line of that parcel as described in Volume 200, Page 509, a distance of 82.67 feet to a found 1" I.P. at the southeast corner of Parcel "A" of Lots 47 thru 107 of The Highlands, a recorded subdivision; thence North 01 degree 35 minutes 31 seconds West along the easterly line of said Parcel "A" and the easterly line of those parcels of land as described in Volume 365, Page 301, Volume 1005, Page 471 and Volume 1055, Page 98, a distance of 134.93 feet to a 1" I.P. set from which a found 3/4" I.P. bears North 15 degrees East, 1.57 feet; thence North 33 degrees 10 minutes 21 seconds West along the easterly line of those parcels of land as described in Volume 1055, Page 98 and Volume 754, Page 682, a distance of 105.38 feet to a 1" I.P. set; thence South 88 degrees 05 minutes 29 seconds West along the northerly line of that parcel as described in said Volume 754, Page 682, a distance of 64.82 feet to a 1" I.P. set on the easterly right of way of Second Avenue (a 60 foot wide right of way); thence North 01 degree 35 minutes 31 seconds West along the easterly right of way line of said Second Avenue a distance of 63.98 feet to a 1" I.P. set at an angle point in said right of way from which a found 3/4" I.P. bears North 58 degrees West, 0.62 feet; thence North 16 degrees 14 minutes 21 seconds West along said easterly right of way line a distance of 217.79 feet to a railroad spike, set on the intersection of said easterly right of way with the southerly right of way of Oak Street (an 80 foot wide right of way) from which a found 1" I.P. bears South 17 degrees 29 minutes West, 2.81 feet; thence North 88 degrees 05 minutes 29 seconds East along the southerly right of way of said Oak Street a distance of 134.23 feet to a chiseled "x" in concrete set at the southwest corner of that parcel as described in Volume 591, Page 426; thence North 01 degree 37 minutes 41 seconds West along the westerly line of that parcel as described in said Volume 591, Page 426, a distance of 38.00 feet to a PK nail set; thence North 88 degrees 05 minutes 29 seconds East along the south line of a 20 foot wide exception for watermain as described in said Volume 591, Page 426, a distance 169.59 feet to a 1" I.P. set on the westerly right of way line of the aforementioned Wisconsin Central Limited Railroad Company; thence South 18 degrees 50 minutes 21 seconds East along the westerly line of said railroad right of way a distance of 1231.16 feet to the point of beginning.

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## Exhibit "A" Continued

## PARCEL B

That part of the Northwest Quarter of the SOUTHWEST Quarter (NW 1/4 SW 1/4) of Section Thirteen (13), Township Eleven (11) North of Range Nineteen (19) East, City of West Bend, Washington County, Wisconsin and that part of Lots Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16) and Seventeen (17) of Block Thirty-three (33) in the ORIGINAL PLAT of the Village (now City) of West Bend, Washington County, Wisconsin, and being more particularly described as follows:

Commencing at a concrete monument with a brass cap in a manhole that marks the SW 1/4 of said Section 13; thence North 88 degrees 52 minutes 39 seconds East (bearing based on State Plane Co-ordinate System, South Zone) along the south line of the SW 1/4 of said Section 13, a distance of 1106.29 feet to the intersection of the westerly right of way line of the Wisconsin Central Limited Railroad Company (a 100.00 foot wide right of way) with the south line of the SW 1/4 of said Section 13; thence North 18 degrees 50 minutes 21 seconds West along the said westerly right of way line, a distance of 1798.05 feet to a 1" x 24" iron pipe (1" I.P.) set and also being the point of beginning; thence South 88 degrees 05 minutes 29 seconds West along the north line of a 20 foot wide exception for watermain as described in said Volume 591, Page 426, a distance of 163.41 feet to a 1" I.P. set on the easterly right of way line of Second Avenue (an 80.00 foot wide right of way); thence North 01 degree 37 minutes 41 seconds West along the easterly right of way line of said Second Avenue, a distance of 262.00 feet to a 1" I.P. set at the northwest corner of Lot 12, Block 33 of the Original Plat to the Village of West Bend; thence North 88 degrees 05 minutes 29 seconds East along the north line of said Lot 12 and the south line of that parcel of lands as described in Volume 635, Page 75, a distance of 82.37 feet to a 1" I.P. set on the westerly right of way line of the aforementioned railroad right of way; thence South 18 degrees 50 minutes 21 seconds East, a distance of 273.87 feet to the point of beginning.

TOGETHER WITH a 30 foot wide easement for ingress - egress to Parcel "A" over the Westerly 30 feet of the following deeds: Volume 319 Page 215 and Volume 463 Page 300 and all of Volume 463 Page 302, and being more particularly described as follows:

Commencing at the southwest corner of Parcel "A"; thence South 18 degrees 50 minutes 21 seconds East, a distance of 208.00 feet;

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## Exhibit "A" Continued

thence North 71 degrees 09 minutes 39 seconds East, a distance of 10.00 feet; thence South 18 degrees 50 minutes 21 seconds East, a distance of 306.03 feet; thence North 88 degrees 52 minutes 39 seconds East, a distance of 31.49 feet; thence North 18 degrees 50 minutes 21 seconds West, a distance of 315.62 feet; thence South 71 degrees 09 minutes 39 seconds West, a distance of 10.00 feet; thence North 18 degrees 50 minutes 21 seconds West, a distance of 208.00 feet; thence South 71 degrees 09 minutes 39 seconds West, a distance of 30.00 feet to the point of beginning.

Tax Key No. 416-B (C13-00416-000B-0000).

Tax Key No. 416-C (C13-00416-000C-0000).

Tax Key No. 1503 (C13-01503-0000-0000).

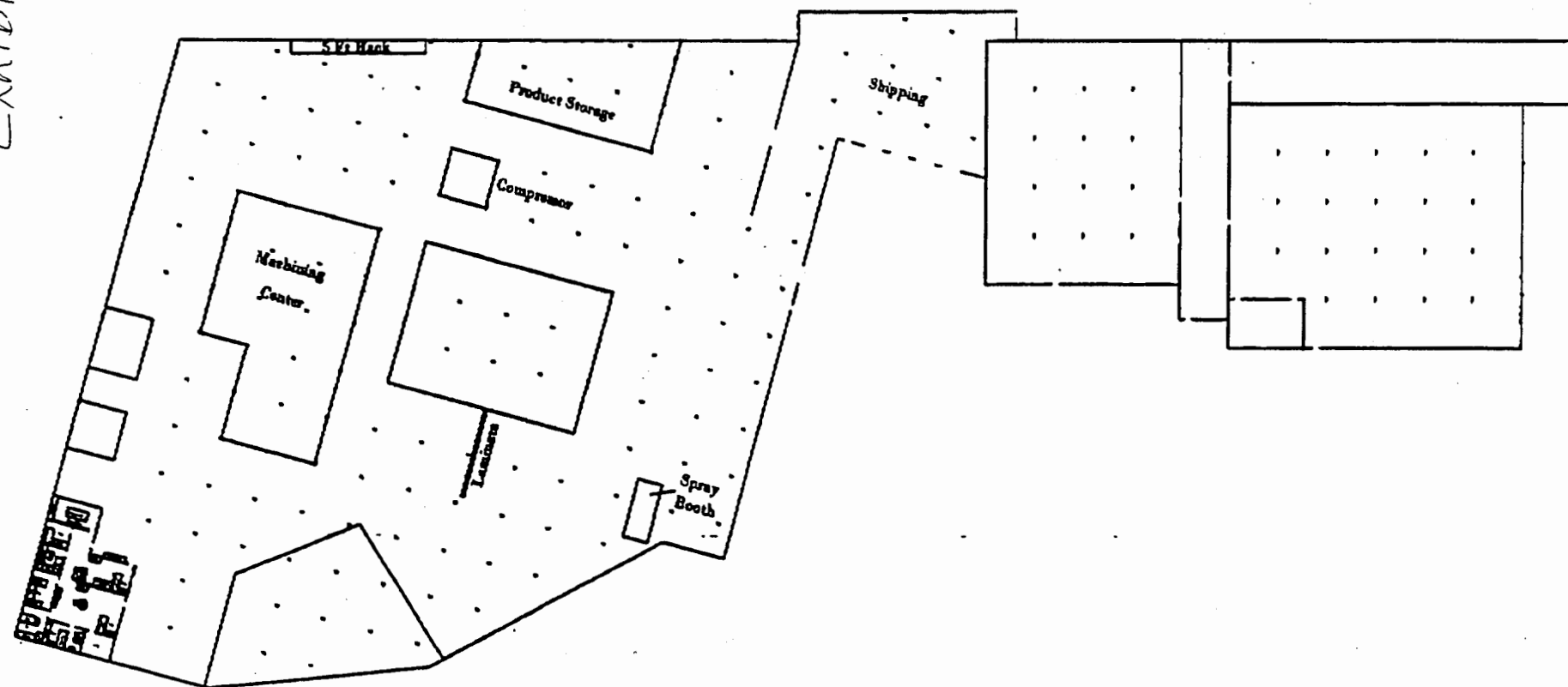
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Exhibit "B"



SCALE: NTS	REF. #:	SHEET: 1 OF	DRAWN BY: P.Zyduck	DATE: 12/9/05	CHK'D BY:	DATE:
CUSTOMER: <b>T &amp; R Wood</b>			TITLE: <b>Oak Street Footprint</b>			

