

## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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October 23, 2006

BRRTS#: 07-44-548067

Mr. Thomas Tait, Conservator  
Peter Zmek's Estate  
8-AW Davenport Street STE 220  
Rhinelander WI 54501

Subject: Liability Clarification for Persons involved with the Dissolution of Zmek and Sons Wrecking, Inc., at 8861 County Highway H, Eagle River, WI

Dear Mr. Tait:

### Purpose

The purpose of this letter is to provide you with clarification as to your potential environmental liability as the court appointed conservator of the only director of Zmek and Sons Wrecking, Inc., ("Zmek and Sons") Mr. Peter Zmek, as you conduct activities necessary to close the business. Mr. Zmek is the major shareholder and sole Director of Zmek and Sons, located at 8861 County Highway H, Eagle River, Wisconsin. It is our understanding that you were appointed as "conservator" to handle Mr. Zmek's business matters in September, 2006. The business location is expected to be closed by July 31, 2007 and the corporation dissolved by December 31, 2007.

The business operates on two separate tax parcels ("the Parcels") that are currently under the ownership of Peter Zmek. The south parcel consists of 39 acres and contains the office, principal recycling buildings and recycling areas. The second parcel has roughly 23 acres and is located directly north of the other parcel.

### Request

On September 28, 2006, the Wisconsin Department of Natural Resources ("Department") received a request from you, on behalf of Peter Zmek, for a liability clarification letter. A memo included with the request provided background information and also requested an environmental liability clarification for other persons who may be involved in the closure of the business. Those persons are:

- a) Court-appointed Guardians or Conservators of Officers, Directors and Owners of Zmek and Sons.
- b) Future Officers of Zmek and Sons, until the company is dissolved.
- c) Consultants employed by Zmek and Sons.

d) Companies such as Schulz's Recycling, Inc. and their consultants, that Zmek and Sons contracts with to process and remove recyclable material and vehicles from the location.

e) Management employees of Zmek and Sons who are processing vehicles, scrap material or are cleaning up the site per the recycling plans or clean up plans of Zmek and Sons.

This general liability clarification letter explains how the Department would apply section 292.11, Wisconsin Statutes, the hazardous substance spill law ("Spill Law"), if historic hazardous substance discharges are discovered, or if new discharges occur during the removal of existing scrap metal and vehicles from the Parcels. This letter also provides information concerning liability protection available to representatives, including conservators, and the Voluntary Party Liability Exemption process. The Department received the appropriate fee for review of the specific information provided with the request and for writing the general liability clarification letter, pursuant to s. NR 749.04 (1), Wis. Adm. Code.

### **Background Information and Summary of Activities**

In order for the Department to make a determination as to responsibility for historic and future hazardous substance releases on the Parcels the Department has considered the following information contained in the Technical Assistance and Environmental Liability Clarification Request, Form 4400-237, submitted by you on behalf of Peter Zmek and Zmek and Sons.

### **Past and Current Ownership**

- Zmek & Sons Wrecking was a sole proprietorship owned by Charles beginning in the 1970's until February 19, 1996.
- On 2/19/1996 the business was incorporated as Zmek and Sons Wrecking, Inc. with the company owned by three individuals; Charles Zmek, Arthur Zmek and Peter Zmek.
- Charles Zmek died on 2/22/1996. His ownership interest in Zmek and Sons was inherited by Shirley Zmek. Shirley transferred her ownership to Peter Zmek in 2005 and today does not own any stock of Zmek & Sons.
- Arthur Zmek died on 3/17/2004. In a hearing on 2/22/2006, Judge Robert Kinney settled the estate of Arthur Zmek and ordered that his 3,000 shares of Zmek & Sons stock be split with 226 shares going to Peter Zmek and 2,774 to Kelli Zmek. Kelli Zmek is the 14-year-old daughter of Arthur Zmek. Because Kelli is a minor, she has a guardian appointed to manage her financial affairs.
- In August of 2006, Peter Zmek petitioned the court for a conservator to be appointed to handle his affairs. This was completed in September of 2006, with Thomas Tait of Rhinelander being appointed as Peter's conservator.

### **Clean-up Plan for the Parcels**

- Zmek and Sons will continue to operate on the Parcels until July 31, 2007 and then dissolve later in 2007.
- Zmek and Sons will remove scrap metal, waste and scrap vehicles ("material") from the 62 acres and will consolidate operations to as small an area as possible prior to dissolving the corporation.
- Schulz's Recycling, Inc. may consult with Zmek and Sons on proper recycling practice, hazardous material handling, removing material and marketing of material until July 31, 2007.

Schulz's Recycling, Inc. may also provide equipment and services consisting of training related to the use of such equipment, loading trucks, hauling and crushing of scrap materials to Zmek and Sons to assist Zmek and Sons with its efforts to remove material from the site prior to July 31, 2007.

- Zmek and Sons will employ RMD Consultants, Inc. to identify, investigate and clean up hazardous substances and hazardous substance releases identified on the Parcels.
- Schulz's Recycling, Inc. may purchase certain assets of Zmek and Sons and may locate a recycling business on the Parcels or may locate a recycling business at another site in Eagle River, Wisconsin area..
- A complete Phase 1 and Phase 2 environmental site assessment will be conducted on the Parcels prior to dissolving Zmek and Sons.

### **Liability Determinations**

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." Although the Department has no record of hazardous substance discharges on these Parcels, it is possible that hazardous substances were released to the Parcels during operation of Zmek and Sons. This letter is provided pursuant to s. 292.55, Wis. Stats., which authorizes the Department to issue clarification letters concerning liability for environmental pollution.

#### **a) Liability exemption for representatives and guardians**

Under s. 292.21, Wis. Stats., persons acting in a representative capacity are not legally responsible for hazardous substances releases in very specific situations. In s. 292.01(16), Wis. Stats., a representative is defined as "... any person acting in the capacity of a conservator, guardian, court-appointed receiver, personal representative, testamentary trustee of a deceased person, trustee of a living trust, or fiduciary of real or personal property." According to s. 292.21(2), Wis. Stats., a "representative who acquires title to, or possession or control of, real or personal property is not personally liable under this chapter for a discharge of a hazardous substance" if the conditions in s. 292.21(2)(a), (b) and (c), Wis. Stats., are met. A copy of this statute and a fact sheet on liability exemptions for lenders and representatives has been enclosed for your information.

#### **b) Future officers of Zmek & Sons Wrecking, Inc., until the company is dissolved**

The vehicles, scrap, solid waste, hazardous substances on the Parcels, and hazardous substance discharges that have occurred prior to the date of this letter and those present or future hazardous substance discharges caused by Zmek and Sons or any of its employees are the responsibility of Zmek and Sons and any other person which was in possession of the Parcels, currently owns the Parcels or controlled the Parcels. Officers or Representative as defined under s. 269.21, Wis. Stats., or management employees of Zmek and Sons will be responsible for any hazardous substance discharges they were responsible for causing.

c) Environmental consultants

The language in s. 292.19(1) and (2), Wis. Stats., contains specific language limiting the liability for persons conducting environmental investigations on a property. This language would apply to RMD Consulting while working on the Parcels.

d) Contractors employed by Zmek and Sons, and management employees of Zmek and Sons

Hazardous substance discharges caused by persons conducting the salvage or environmental activities on the Parcels, including but not limited to contractors or consultants, will be considered the responsibility of the causer of the hazardous substance discharge.

Additional Comments

Be aware that the above statements are based on the information provided to the Department about the Parcels, ownership, and activities conducted on the site. The Department makes no determination concerning the presence or absence of hazardous substances on the Parcels. If the Department becomes aware of additional information concerning the activities on the Parcels or relationship of parties involved in business operations concerning this situation the Department will need to reevaluate responsibility and potential responsibility of the parties involved.

Whenever possible, the Department requires the person who caused the discharge to take the appropriate response actions. However, the Department may also request that the person(s) who is in possession or control of the hazardous substance discharges to take appropriate response actions.

Also, please be aware that when contamination is discovered on any Parcel, the person who possesses (e.g., owns) or controls the Parcel must report contamination to the Department in accordance with s. 292.11 (2) Wis. Stats.; and ch. NR706, Wis. Adm. Code. RMD Consulting, Inc., should be aware of the reporting procedures. If a person causes a discharge of a hazardous substance, even if they do not possess or control the hazardous substance, that person must report the discharge to the Department as outlined above.

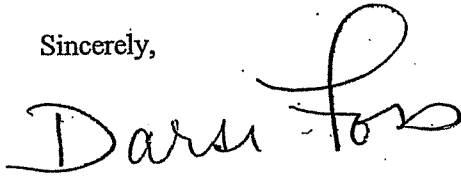
Voluntary Party Liability Exemption Program

Please be aware that persons cleaning up an entire property may be eligible for a liability exemption that protects them from liability once the clean up is complete and approved by the Department. The Department may grant a liability exemption to a person who possesses, controls or causes a hazardous substance discharge, if the contamination is discovered, reported, investigated and cleaned up under the Voluntary Party Liability Exemption process (VPLE) in section 292.15, Wis. Stats., and a "Certificate of Completion" is granted. This exemption from liability runs with that property and provides liability protection to current and future owners of a property from historic hazardous substance releases and from future changes in environmental regulations. The required work to obtain this liability exemption includes conducting a Phase 1 and 2 environmental site assessment, a site investigation and clean up to appropriate standards. I have attached a fact sheet with information about the VPLE process for your information.

Mr. Thomas Tate  
October 23, 2006  
Page 5 of 5

The Department recognizes the importance of this project and the potential value to the surrounding area and the environment. If you have any questions or concerns regarding this letter please contact John Sager at (715) 623-4190 extension 3125.

Sincerely,



Darsi Foss, Chief  
Brownfields and Outreach Section  
Bureau for Remediation and Redevelopment

To → c: Peter Zmek, P.O. Box 1388, Eagle River, Wisconsin 54521  
Ken Buelt – The Buelt Corp., P.O. Box 1743, Wausau WI 54402-1743  
John Sager – DNR Northern Region, Antigo  
Deb Johnson – LS/5  
Percy Mather – RR/3

Attachments (VPLE Fact Sheet and Lender Fact Sheet and part of Chapter 292 Stats.)