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

Jim Doyle, Governor  
Matthew J. Frank, Secretary  
Ronald W. Kazmierczak, Regional Director

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May 17, 2010

BRRTS #: 07-36-555269

USDA Rural Development  
Attn.: Jeff Hudson  
Business and Community Programs Specialist  
4949 Kirschling Court  
Stevens Point, WI 54481

Subject: Status of Environmental Conditions at the Skana Aluminum Company  
2009 Mirro Drive, Manitowoc, Wisconsin  
Parcel # 809-401-010

Dear Mr. Hudson:

**Purpose**

On May 12, 2010, the Wisconsin Department of Natural Resources ("the Department") received a request from Mr. Tom Testwuide, Chairman and CEO of Skana Aluminum Company ("Skana") along with the required \$500 fee, to write you a letter describing the Department's current knowledge of environmental conditions at the Skana Aluminum Company. The purpose of this letter is to provide you and the USDA sufficient information and assurances to be able to back a loan to Skana so it may begin operations at their recent acquisition of the former Koenig & Vits facility located at 2009 Mirro Drive, City of Manitowoc, Manitowoc County, Wisconsin, herein after referred to as "the Property"(see Attachment 1 for a site map).

**Issue**

It is the Department's understanding that the USDA primarily has concerns regarding any potential unknowns associated with an area on the Property described as "the mound" where approximately 20-30 drums of potential waste oil, rags, or possibly PCB oils may have been buried during the mid 1970s. The Department became aware of the presence of the mound during a meeting with Skana in January 2010.

**Background and Summary of Environmental Conditions**

**Mound area**

As reported in the Phase I Environmental Assessment Report dated December 10, 2009, Skana's consultant AECOM, observed an area outdoors near the northeast corner of Plant 2 where drums of PCB containing material were supposedly buried in the late 1970s according to Ronn Moore, the plant maintenance engineer. AECOM observed a slightly elevated grass-covered mound of approximately 60 feet by 40 feet in this area.

In January 2010, AECOM conducted a magnetometer survey that identified a metallic anomaly of about 40 to 60 feet. Two monitoring wells were constructed approximately 20 feet to the east and south of the mound. As indicated in AECOM's May 13, 2010 letter, no detections of volatile organics and PCBs were found. Only low levels of diesel range organics and chrysene were detected.

On May 12, 2010, five test pits were dug in the mound using a small track mounted backhoe. The pits were dug to a depth of about six feet from the current ground surface and about four to five feet from original grade. Perched groundwater from a saturated gravel layer rapidly entered four of the test pits. None of the pits encountered any drums. The pit water and excavated soil had a petroleum odor, and a pit water sample and a soil sample were collected by AECOM. A quick turnaround was requested for the laboratory analyses and preliminary results were received late in the afternoon of May 14, 2010. A very low detect of toluene (well below any groundwater standards) was present in the pit water. Several detections of polynuclear aromatic hydrocarbons (associated with oil products) were found in soil.

The detection limit for the PCB analysis of the test pit soil was extremely high (2,800 mg/kg) and according to the laboratory, is due to interferences. Generally the Department uses a concentration of 50 mg/kg as a trigger for a PCB response action, therefore a determination regarding PCB cannot be made by the Department at this time.

The metals analytical results for soil and water, and the PCB results for groundwater are still pending.

The Department will assign BRRTS case number 02-36-552268 for the "Mound" release and Skana is aware of its statutory requirements to take the necessary actions to restore the environment to the extent practicable.

#### Other environmental cases at the Property

The property has undergone several environmental investigations and cleanups over the last decade. There have been hundreds of soil and groundwater samples collected and there is a very good understanding of the environmental conditions at the site. In addition, with each change of ownership and a lease of a portion of the Property, several Phase I and Phase II investigations have been completed. Following is a brief summary of environmental cases at the Property. There were also several spills that were reported to the Department and handled by the property owner at the time of the spill.

- Case #02-36-000497, 1990-1999 (closed)  
Chlorinated solvents from a leaking tank: Closed with Deed Restriction (Vol 1369 pp 576-578) with groundwater use restriction and GIS Registry (database public notice)
- Case #03-36-170638: 1997-2003 (closed)  
Underground storage tank, diesel range organics  
Commerce Department closed with Dec 2002 Deed affidavit (Vol 176 pp 329-340)
- #03-36-280532: 2001-2002 (closed)  
Fuel oil tank, petroleum soil thin spread on site
- #03-36-220607: 1999-2003 (closed)  
Oil and PCBs from oil & water separator tank and waste oil tank overflow
- #02-36-544601: (started 2005)\*  
Solvents, south side of facility  
The case encompasses 7 permanent wells, 2 temp wells, and 5 proposed new monitoring wells (3 piezometers, 2 water table wells).
- #02-36-550138: (started 2005)\*  
Low levels metals property-wide  
This case encompasses the entire Property and consists of 17 existing monitoring wells (8 permanent monitoring wells and 9 temporary Geoprobe™ wells).

*\*Copies of the work plan and Department approval on these two cases was provided to USDA Rural Development on May 6, 2010.*

The existing and new monitoring wells of the last two cases listed are intended to be monitored for at least another year or two to determine if the contaminant levels are stable or decreasing and the cases can be closed with or without continuing obligations or restrictions on the Property.

## **Determinations**

### **Owner Responsibility**

Under Wisconsin's Hazardous Substance Spill Law (the "Spill Law"), s. 292.11, Wis. Stats., a person who "possesses, controls or causes" a hazardous substance discharge, is liable for the cleanup. The Department has determined that Skana Aluminum as a new purchaser of the Property did not cause the contamination however, under Wisconsin Statutes, Skana possesses the contamination and is therefore considered the "Responsible Party" under s.292.11 and is required to take the necessary actions to restore the environment to the extent practicable and to minimize the harmful effects to human health and the environment.

The Department has met with Skana and discussed the necessary steps it needs to take to meet the requirements of s. 292.11 Wis. Stats. We understand that an escrow account has been established as part of the purchase of the Property and these funds are available for the environmental investigation and cleanup of the Property.

As described above, there have been numerous contaminant cases opened and closed on this Property. There is a substantial amount of environmental information known about this Property and none of these cases are out of the ordinary for large industrial facilities. The Department manages thousands of similar, what we call Leaking Underground Storage Tank Cases (LUST) and Environmental Repair (ERP) cases in Wisconsin as well as several dozen Superfund cases.

Based on our experience, our review of the investigation results and technical reports for the environmental activities described above, and cleanup cost estimates for the mound area as prepared by AECOM (reference May 13, 2010 letter to you from AECOM), the Department understands that the total cost to complete the necessary additional investigation and remedial action (including actions necessary regarding "the Mound") at the Property will not significantly exceed the amount of funding sets aside in the escrow account.

Also, from my experiences with environmental cases in Wisconsin, the current environmental knowledge of the identified environmental cases at the Property and the "mound", does not lead me to believe that the Department would seek a nomination of this case nor would the site rank high enough based on the severity of the contamination and public health risks to qualify for the National Priorities List (aka Superfund).

PCB investigation and cleanup is managed under the federal Toxic Substance Control Act (TSCA). The Department has a "One Cleanup Program" Memorandum of Understanding (MOU) between Wisconsin Department of Natural Resources and the US EPA Region V. This MOU allows a responsible party to manage certain types of PCB contamination under a coordinated approval process led by the Department. However, in cases of high concentrations of the PCB contamination in soil and groundwater, the agency oversight of the "mound" area may shift to the EPA. The Department has explained this to Skana and Skana is aware that the concentrations of PCBs in soil and groundwater will dictate which agency has oversight of the "Mound" environmental work.

## CERCLA Liability

On May 13, 2010, Department has received the information supplied by Skana (refer to Attachment 2) regarding its acquisition of this Property, and accepts that Skana has made an affirmative defense against potential liability under s. 107 of CERCLA. Skana appears to have satisfied the requirements to meet the Bona Fide Prospective Purchaser defense of s. 107 CERCLA.

The Department understands that Skana has conducted and relied upon the results of a Phase I Environmental Assessment for a s. 107 of CERCLA defense. Skana has concluded in its May 13, 2010, letter to the Department that the Phase I Environmental Assessment, dated December 10, 2009, was conducted in accordance with ASTM standard E1527-05, and EPA's All Appropriate Inquiry rules. Further, the letter received from Skana asserts that the Skana has complied with and will continue to comply with the federal CERCLA Bona Fide Prospective Purchaser defense requirements at the Property. Skana commits to:

- acquiring the Property after all disposal activities involving hazardous substances at the property (note: the Property was acquired in April 2010);
- provide all legally required notices with respect to the discovery or release of any hazardous substances at the Property;
- exercise appropriate care by taking reasonable steps to stop continuing releases, prevent any threatened future release, and prevent or limit human, environmental, or natural resources exposure to any previously released hazardous substance;
- provide full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restorations;
- comply with land use restrictions established or relied on in connection with a response action;
- not impede the effectiveness or integrity of any institutional controls;
- comply with any CERCLA request for information or administrative subpoena; and
- not be potentially liable, or affiliated with any other person who is potentially liable for response costs for addressing releases at the Property.

Skana understands that to be a bona fide prospective purchaser, Skana should keep in mind that failure to identify an environmental condition or identify a release or threatened release of a hazardous substance on, at, in or to a Property during the conduct of all appropriate inquiries does not relieve Skana from complying with the other post-acquisition statutory requirements for obtaining the liability protections. Skana must comply with all the statutory requirements to obtain the liability protection. For example, an inability to identify a release or threatened release during the conduct of all appropriate inquiries does not negate Skana's responsibilities under the statute to take reasonable steps to stop a release, prevent a threatened release, and prevent exposure to a release or threatened release. None of the other statutory requirements for the bona fide prospective purchaser liability protection is contingent upon the results of the conduct of all appropriate inquiries.

## Lender Liability Determination

The Department understands that the Lender for Skana Aluminum Company is Community Bank and Trust of Sheboygan, Wisconsin, with backing by the USDA Rural Development. Section 292.21, Wis. Stats., provides a liability exemption for lenders and representatives for several situations including normal lender, inspecting property and acquiring title to a Property by enforcing a security interest. A lender is not subject to ss. 292.11(3), (4) or (7)(b) or (c), Wis. Stats., and is not liable under chapters 281, 285, 289, 291, or 293

to 299, Wis. Stats., for a discharge of a hazardous substance that occurred on the Property, if the lender takes title, possession or control of the Property. Section 292.55(1) (d) 1., Wis. Stats., authorizes the Department to issue letters concerning potential liability for environmental pollution.

If Skana Aluminum Company defaults on its loan and Community Bank and Trust complies with Section 292.21 Wis. Stats., the Bank will not be held responsible under Wisconsin's Hazardous Substance Spill Law, s. 292.11, Wis. Stats., for hazardous substance discharges which were present on the Property prior to the lender acquiring title to, or possession and control of, the Property. In order to qualify for the lender liability exemption, Community Bank and Trust must satisfy several conditions that are listed in the statute (s. 292.21(1)(c), Wis. Stats., more information on this lender liability exemption can be reviewed at <http://www.dnr.state.wi.us/org/aw/rr/liability/lenders.htm> There is also a similar liability exemption under CERCLA (Superfund) called the secured creditor exemption for lenders who have to foreclose on contaminated property.

### Summary

This letter is based on information currently known to the Department regarding this Property. The Department makes no determination concerning the presence or absence of hazardous substances other than those identified. If a new discharge of a hazardous substance is discovered at the Property, the owner is required to notify the Department and comply with the requirements of s. 292.11, Wis. Stats.

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification numbers for this liability clarification letter and the contamination sites identified at this Property are included in this letter. Please be aware that information on all determinations is tracked in a Department database that is available on the Internet at "BRRTS on the web" at <http://www.dnr.state.wi.us/org/aw/rr/clean.htm>.

If you have any questions or comments, please feel free to contact me at 920-662-5160 or contact the Project Manager Annette Weissbach at (920)662-5165, or by email at [Annette.Weissbach@Wisconsin.gov](mailto:Annette.Weissbach@Wisconsin.gov). Refer to BRRTS numbers at the top of this letter in any future correspondence.

Sincerely,

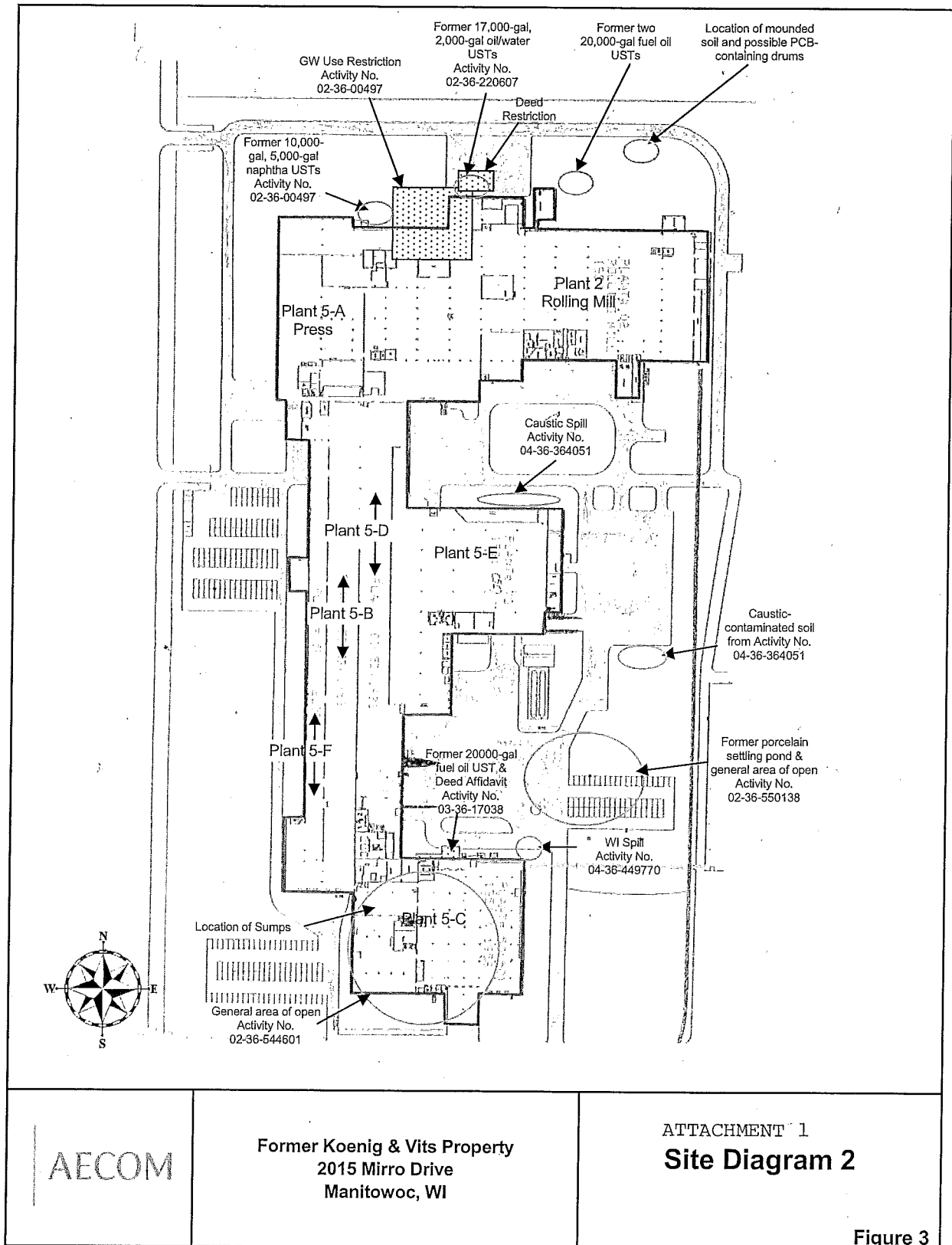


Bruce Urben, Team Supervisor  
Northeast Region Remediation & Redevelopment Program

Attachment 1 Site Map – Figure 3, Site Diagram 2,  
Phase I ESA, Former Koenig & Vits Property, AECOM, Oct 2009  
Attachment 2 Skana – Bona Fide Prospective Purchaser Statement of qualification

E-cc: Tom Testwuide Sr. – Skana Aluminum  
Diane Marchik – Godfrey and Kahn  
Paul Kuplic – Community Bank and Trust  
Jean Tarvin – AECOM

Figure 3 – Site Diagram 2



AECOM

Former Koenig & Vits Property  
2015 Mirro Drive  
Manitowoc, WI

ATTACHMENT 1  
Site Diagram 2

Figure 3



ATTACHMENT 2

May 13, 2010

Annette Weissbach  
DNR Northeast Region  
Department of Natural Resources  
2984 Shawano Avenue  
Green Bay, WI 54313

RE: Statement of Qualification for Skana Aluminum Company to be Deemed a Bona Fide Prospective Purchaser under CERCLA

Dear Ms. Weissbach:

We previously sent you one copy of the Phase I Environmental Site Assessment (ESA) report of the former Koenig & Vits property in Manitowoc, Wisconsin (the "Property"). The report was prepared by AECOM as requested by Skana.

The Phase I Environmental Site Assessment was conducted by AECOM in accordance with ASTM Standard E 1527-05 and EPA's All Appropriate Inquiry rules. The purpose of the Phase I was to provide Skana with information about the general environmental character of the former site and to meet the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 107 Defense.

By completing the Phase I ESA, Skana asserts that Skana has complied with the federal CERCLA Bona Fide Prospective Purchaser defense requirements. Skana also asserts that it will continue to comply with these requirements including, any continuing obligations associated with maintaining the landowner liability protections over time which may include taking reasonable steps to stop a release, prevent a threatened release, and prevent or limit exposure to a release or threatened release from the Property.

Skana is NOT potentially liable for contamination at the site under CERCLA, Section 107, and affirms that:

- (i) Skana did not cause, contribute, or consent to the release or potential release of any hazardous substances at the Property;
- (ii) Skana is not potentially liable, or affiliated with any other person that is potentially liable for response costs at a facility through any direct or indirect familial relationship or any contractual, corporate, or financial relationship, or as a result of a reorganization of a business entity that was potentially liable;



- (iii) Skana will, if necessary, stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any hazardous substance released on or from the Property;
- (iv) Skana intends to provide full cooperation, assistance, and access to persons that are authorized to conduct response actions at the Property in connection with any release or threatened release;
- (v) Skana will comply with any land use restrictions established or relied on in connection with the response action at the facility, and will not impede the effectiveness or integrity of any institutional control employed in connection with a response action;
- (vi) Skana is in compliance with any request for information or administrative subpoena issued by the President under CERCLA;
- (vii) Skana will provide all legally required notices with respect to the discovery or release of any hazardous substances at the site.

If you have any questions regarding the report or need additional information, please feel free to contact me.

Very truly yours,

SKANA ALUMINUM COMPANY

Thomas R. Testwuide, Sr.  
Chairman and CEO