



March 28, 2019

BRRTS: # 07-41-583038

Dental 360 Partners, LLC  
Attorney Dan Seibel  
2060 North Humboldt Ave., Suite 225  
Milwaukee, WI 53212

Subject: Liability Clarification for Prospective Purchaser of Property Located at  
10809 West Lincoln Ave., West Allis, WI  
with suspected contamination from an Off-Site Source  
Parcel # 4840001000

Dear Attorney Seibel:

### Purpose

The Department of Natural Resources ("the Department") has reviewed your request for an off-site exemption letter for 10809 West Lincoln Ave., West Allis, referred to in this letter as "the Property." Please refer to the attached Figure B.1.b. for a site map of the Property. The purpose of this letter is to determine what provisions of the off-site exemption you presently satisfy and the conditions under which you ("the Applicant") would satisfy all the requirements of the off-site exemption in s. 292.13, Wis. Stats. Currently, Dental 360 Partners, LLC is the potential purchaser of the Property. The Department received a \$700 fee for providing this letter pursuant to s. 292.13 (2) and (3), Stats, and ch. NR 749, Wis. Admin. Code.

### Summary Determination

With the exception of no confirmed impact of a hazardous substance on the Property and owning the Property, the provisions in the off-site exemption statute are satisfied by Dental 360 Partners, LLC for this Property and Dental 360 Partners, LLC will not be held responsible for investigation or cleanup of the vinyl chloride and cis-1,2-Dichloroethene that may be migrating from another property, if they continue to satisfy all conditions as described in this letter. When you acquire the Property, you would have limited responsibility under ss. 292.12 and 292.13, Stats, for the soil and groundwater contamination that has migrated or is migrating onto the Property. The conditions for the off-site exemption would be fully satisfied when you acquire title to the Property and if contamination from the property at 2311 S. 108<sup>th</sup> St. were detected on the Property in the future.

### Request

On January 25, 2019, you requested on behalf of Dental 360 Partners, LLC that the Department determine whether they are exempt from s. 292.11(3), (4) and (7)(b) and (c), Wis. Stats., commonly known as the "Spill Law," with respect to the existence of a hazardous substances in soil and

groundwater that you believe may be migrating onto the Property from a source on another property. Wisconsin's Spill Law includes an "off-site exemption", in s. 292.13, Wis. Stats., that limits the liability of a property owner. In particular, you have requested clarification as to whether or not you are eligible for the off-site liability exemption.

The following documents were submitted to the Department with the request:

- The off-site application form dated January 25, 2019
- Phase I Environmental Site Assessment Report, 10809 West Lincoln Ave., West Allis, Wisconsin dated October 15, 2018
- Site Investigation/Remedial Action Completion Report, Dry Cleaners Site (Former), 2311 S. 108<sup>th</sup> Street, West Allis, Wisconsin dated September 2018

### **Background**

The Department considered the information listed above in making the determinations presented in this letter.

The Property is located north and adjacent to an open site with BRRTs #02-41-580667. The adjacent property notified the Department that chlorinated solvents were released to the environment and have impacted soil and groundwater. Groundwater has been shown to be flowing to the east-northeast in the groundwater monitoring wells installed during the investigation. The groundwater monitoring well closest to the Property did not contain chlorinated compounds above the groundwater standards when sampled on July 24, 2018. Soil contamination appears to have been limited to the area directly surrounding the underground storage tank that was removed. The excavation in this area appears to have removed the contaminated soil.

The determinations listed below state which provisions in the off-site exemption statute you presently satisfy for this Property, and whether or not, upon taking title to the Property, the conditions for the off-site exemption would be fully satisfied.

The off-site exemption in s. 292.13, Wis. Stats., limits the environmental liability of a person in possession, (i.e., who owns a property) or control of a property affected by the discharge of a hazardous substance, when the discharge originates from another source not on the Property. At the present time, you do not possess or control the Property, but it is the Department's understanding that you intend to purchase the Property. Because you do not currently possess or own the Property and contamination has not been detected on the Property, the Department cannot issue a written determination that all the provisions in s. 292.13, Wis. Stats., have been satisfied. However, the Department does have the ability under s. 292.55, Wis. Stats., to clarify a person's present or future liability for the environmental pollution of a property.

### **Liability Determinations**

Based on the Department's review of technical information, including the off-site application form submitted in accordance with s. 292.13(2), Stats., the Department makes the following determinations under ss 292.13(3) and 292.55, Stats., if the presence of vinyl chloride and cis-1,2-Dichloroethene in the soil and/or groundwater were to be detected at the Property in the future:

1. The hazardous substance discharge originated from a source on property that is not possessed or controlled by Dental 360 Partners, LLC.

2. Dental 360 Partners, LLC did not possess or control the hazardous substances on the property on which the discharge originated.
3. Dental 360 Partners, LLC did not cause the discharge.
4. Dental 360 Partners, LLC will not have liability under the Hazardous Substance Spill Law for investigation or remediation of the soil or groundwater contamination originating from off-site onto the Property, provided that Dental 360 Partners, LLC does not take possession or control of the property on which the discharges originated.

Because there is not confirmed hazardous substances identified on the Property and you do not currently own the Property, the Department is not able at this time to issue you a letter determining that you qualify for all the provisions of the off-site liability exemption. However, when you acquire title to the Property and if sampling is conducted in the future that confirms contamination on the Property, and the conditions in s. 292.13, Stats, are followed, you will fully qualify for the off-site liability exemption.

### **Exemption Conditions**

The Department's determination, as set forth in this letter, are subject to the following conditions being complied with, as specified in s. 292.13(1) and (1m), Wis. Stats:

1. The facts upon which the Department based its determination are accurate and do not change.
2. Dental 360 Partners, LLC agrees to allow the following parties to enter the Property to take action to respond to the discharges: the Department and its authorized representatives; any party that possessed or controlled the hazardous substances or caused the discharge; and any consultant or contractor of such a party.
3. Dental 360 Partners, LLC agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharges.
4. Dental 360 Partners, LLC agrees to any other condition that the Department determines is reasonable and necessary to ensure that the Department and any other authorized party can adequately respond to the discharge.
5. With respect to soil or sediment contamination only, Dental 360 Partners, LLC agrees to take one or more specified actions directed by the Department, if the Department determines that the actions are necessary to prevent an imminent threat to human health, safety or welfare or to the environment. This would occur after the Department has made a reasonable attempt to notify the party who caused the hazardous substance discharge about that party's responsibilities to investigate and clean up the discharge.

### **Responsibilities for Continuing Obligations**

In addition to the conditions above, after the contamination at the source property is remediated, the approval may include continuing obligations at the source property as well as your Property. Often residual contamination remains after an approved environmental cleanup is completed and sometimes that approval includes requirements to maintain engineering controls, such as a cap or soil cover, to reduce the impact of the contamination. You may also be required to obtain DNR approval to construct a water supply well on your Property. If the cleanup approval includes requirements associated with

your Property, the party conducting the cleanup is required to notify you before the DNR reviews the proposal.

### **Conclusion**

The Department may revoke the determinations made in this letter if it determines that any of the requirements under sections 292.13(1) or (1m), Wis. Stats., cease to be met.

With the exception of owning the Property and a confirmed impact on the Property by the detection of vinyl chloride and cis-1,2-Dichloroethene, the provisions in the off-site exemption statute are satisfied by Dental 360 Partners, LLC for this Property. The conditions for the off-site exemption would be fully satisfied if Dental 360 Partners, LLC takes title to the Property and vinyl chloride and cis-1,2-Dichloroethene contamination from the adjacent property, 2311 S. 108<sup>th</sup> St. were detected on the Property.

A person who meets all the conditions of the off-site exemption is not responsible for investigating and cleaning up environmental contamination that migrates onto her or his property from a neighboring property, with certain limitations, if the statutory conditions are met.

Future Property owners are eligible for the exemption under section 292.13, Wis. Stats., if they meet the requirements listed in that statute section. The determinations in this letter regarding a liability exemption, however, only apply to the Applicant, and may not be transferred or assigned to other parties. The Department will provide a written determination to future owners of this Property, if such a determination is requested in accordance with the requirements of section 292.13(2), Wis. Stats.

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/topic/brownfields/botw.html>.

If you have any questions or concerns regarding this letter, please contact Shanna Laube-Anderson at 262-574-2142 by email at [shanna.laubeanderson@wisconsin.gov](mailto:shanna.laubeanderson@wisconsin.gov) or at the address listed in the letterhead.

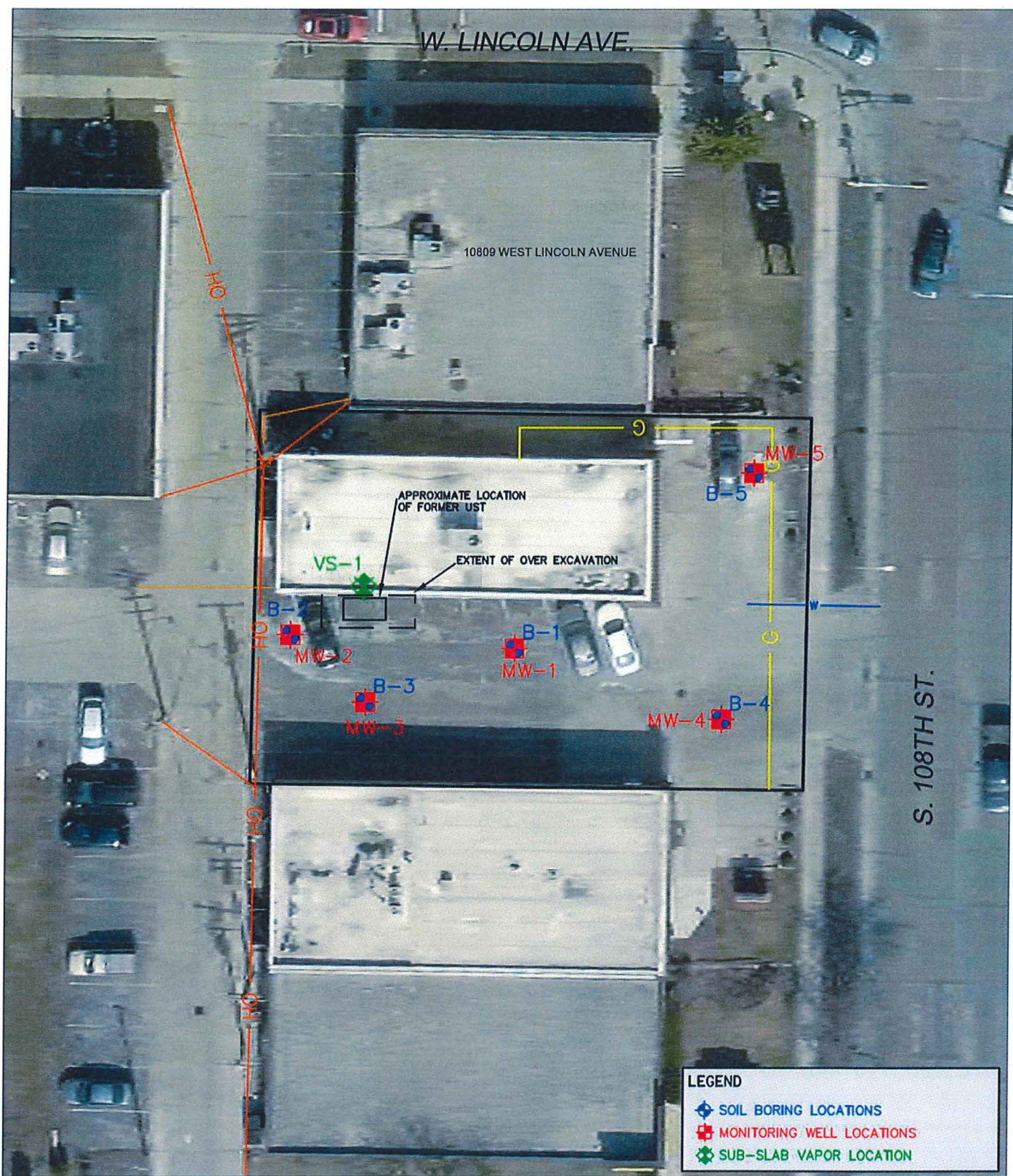
Sincerely,



Pamela Mylotta  
Southeast Region Team Supervisor  
Southeast Region, Remediation & Redevelopment Program

Attachments: Figure B.1.b

cc: Shanna Laube-Anderson(electronic)  
Margaret Brunette(electronic)  
Michael Prager – RR/5 (electronic)  
Rick Frieseke, Friess Environmental Consulting, Inc., 6635 N. Sidney Place, Milwaukee WI  
53209



SHEET:  
DETAILED SITE MAP

FIGURE:  
B.1.b

NORTH ARROW:



SCALE: 1" = 30'



PROJECT:  
DRY CLEANERS SITE (FORMER)

LOCATION:  
2311 S. 108TH STREET, WEST ALLIS, WISCONSIN

SEAL:

**KAPUR & ASSOCIATES, INC.**  
CONSULTING ENGINEERS  
7111 N. PORT WASHINGTON ROAD  
MILWAUKEE, WISCONSIN 53217  
PHONE: 414.351.6618 FAX: 414.351.4117  
www.kapurengineers.com

DRAWN BY:

AHA CHECKED BY:

TWP APPROVED BY:

TWP PROJECT NO.

18.0117.01 DATE:

2018-08-7 REVISION DATE:

FILENAME: S:\\_Environ\180117-PV0A 2311 S 108th St. Env\Figures\AutoCAD\B.1.b.dwg

PLOT DATE/TIME: 8/7/2018 2:50 PM

PLOTTED BY: MADDY SALO

we listen, we know, we turn your vision into reality.

