



December 23, 2020

BRRTS #: 07-13-586935

Mr. Jacob Klein  
818 S Park Street  
Madison, WI 53715

Subject: Off-Site Liability Clarification for a Prospective Purchaser of Property  
Located at 160 Westgate Mall Drive, Madison, Wisconsin  
Current Parcel Identification # 251-0709-304-0401-0

Dear Mr. Klein:

### **Purpose**

The Department of Natural Resources ("the Department") has reviewed the request by JT Klein Company, Inc., dated November 25, 2020, for an off-site exemption letter for a portion of land located in the Westgate Mall, 160 Westgate Mall Drive, Madison, Wisconsin. The former Westgate Mall property is proposed to be subdivided and the 'northern portion' referred to in this letter is to be known as "the Parcel." Please refer to the attached Figure 2, Site Vicinity Plan for a map of the Property. The purpose of this letter is to describe what provisions of the off-site exemption JT Klein Company, Inc. presently satisfies as a potential purchaser of the Parcel and the conditions that would apply to maintain the off-site exemption in s. 292.13, Wis. Stats. The Department received a \$700 fee for providing this letter pursuant to s. 292.13 (2) and (3), Wis. Stats, and Ch. NR 749, Wisconsin Administrative Code,

### **Summary Determination**

Other than not currently owning the Parcel, the provisions in the off-site exemption statute are satisfied by JT Klein Company, Inc. for the Parcel and JT Klein Company, Inc. will not be held responsible for investigation or cleanup of the substances migrating from another property including any of the known contaminants from the former Klinke Cleaners location. As such, the conditions for the off-site exemption will be fully satisfied when JT Klein Company, Inc. acquires title to the Parcel. There are certain conditions that JT Klein Company, Inc. will need to comply with after purchasing the Parcel to maintain their off-site exemption, as set forth below.

### **Request**

On November 25, 2020, JT Klein Company, Inc. requested that the Department determine whether JT Klein Company, Inc. is 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 hazardous substances in the soil and groundwater that JT Klein Company, Inc. postulates could be migrating onto the Parcel from a source on another property, and more specifically, from the former Klinke Cleaners location. Wisconsin's Spill Law includes an "off-site exemption," in s. 292.13, Wis. Stats. and JT Klein Company, Inc. has requested clarification from the Department as to whether or not JT Klein Company, Inc. is eligible for the off-site liability exemption.

In addition to the documents that the Department already has in the former Klinke Cleaners location file (BRRTS 02-13-199414), a completed Form 4400-201 was submitted by JT Klein Company, Inc.

### **Background**

The Parcel is located in the northern portion of the Westgate Mall property. The Department has determined that hazardous substances, more specifically perchloroethylene-("PCE"), were historically discharged to the environment at the former Klinke Cleaners location from the facility operations. The Department has determined that Klinke Cleaners and/or its owners are responsible for the contamination at the former Klinke Cleaners location under s. 291.11 Wis. Stats. Klinke Cleaners has ceased its' business operation and the location is now covered by the Hy Vee grocery store. The Department determined that Klinke Cleaners Remediation and Redevelopment case did not require additional site investigation or remediation on November 2, 2006. The Klinke Cleaners case was 'closed' with continuing obligations pertaining to the soil and groundwater contamination. The contamination was located on the southern and southeast parts of the Westgate Mall property.

JT Klein Company, Inc. desires to develop the Parcel. The Department has determined that the Parcel is not the source of the contamination at the former Klinke Cleaners location.

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, JT Klein Company, Inc. does not possess or control the Parcel, but it is the Department's understanding that JT Klein Company, Inc. intends to purchase the Parcel. However, the Department does have the ability under s. 292.55, Wis. Stats., to clarify JT Klein Company, Inc. as the future owner of the Parcel would fully qualify for the off-site liability exemption for the Klinke Cleaners environmental pollution at the Parcel once it is purchased.

### **Liability Determinations**

Based on the Department's review of technical information on file for the Westgate Mall property, including Form 4400-201 and the attached map submitted by JT Klein Company, Inc. in accordance with s. 292.13(2), Wis. Stats., the Department makes the following determinations under ss. 292.13(3) and 292.55, Wis. Stats., regarding the presence of presence of perchloroethylene (PCE) and other hazardous substances in the soil and groundwater at the Parcel:

1. The hazardous substance discharge originated from a source on property that is not possessed or controlled by JT Klein Company, Inc.
2. JT Klein Company, Inc. did not possess or control the hazardous substances on the property on which the discharge originated.
3. JT Klein Company, Inc. did not cause the discharge.
4. JT Klein Company, Inc. will not have liability under the Hazardous Substance Spill Law for investigation or remediation of the soil or groundwater contamination originating from another site onto the Parcel, including contamination related to the former Klinke Cleaners location, provided that JT Klein Company, Inc. does not take possession or control of the property on which the discharges originated.

Because JT Klein Company, Inc. does not currently own the Parcel, the Department is not able at this time to issue JT Klein Company, Inc. a letter determining that JT Klein Company, Inc. qualifies for all the provisions of the off-site liability exemption, s. 292.13, Wis. Stats. When JT Klein Company, Inc. acquires title to the Parcel, JT Klein Company, Inc. will fully qualify for the off-site liability exemption. JT Klein Company, Inc. will maintain the exemption as long as JT Klein Company, Inc. complies with the conditions described below.

### **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. JT Klein Company, Inc. and their contractors should work with the Department as future site preparation work and construction on the Parcel is undertaken to be sure that these conditions are met.

1. The facts upon which the Department based its determination are accurate and do not change.
2. JT Klein Company, Inc. agrees to allow the following parties to enter the Parcel to take action to respond to the discharge previously identified at the former Klinke Cleaners property: (1) the Department and its authorized representatives; (2) any party that possessed or controlled the hazardous substances or caused the discharge; and (3) any consultant or contractor of such a party.
3. JT Klein Company, Inc. agrees to avoid any interference with action undertaken to respond to the discharge at the former Klinke Cleaners property.
4. JT Klein Company, Inc. agrees to any other conditions that the Department determines are reasonable and necessary to ensure that the Department and any other authorized party can adequately respond to the discharge at the former Klinke Cleaners property.

### **Conclusion**

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

Except for owning the Parcel, the provisions in the off-site exemption statute, (s. 292.13, Wis. Stats.) are satisfied at this time by JT Klein Company, Inc. for the Parcel. The conditions for the off-site exemption will be fully satisfied when JT Klein Company, Inc. takes title to the Parcel. As such, when JT Klein Company, Inc. takes title to the Parcel, JT Klein Company, Inc. will not be responsible for investigating or cleaning up environmental contamination that migrates onto the Parcel from a neighboring property, as long as the exemption conditions identified above are met.

Future owners of the Parcel are eligible for the exemption under s. 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 Parcel, if such a determination is requested in accordance with the requirements of s. 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 me at (608) 293-0112 or by email at [StevenL.Martin@wisconsin.gov](mailto:StevenL.Martin@wisconsin.gov) or at the address listed in the letterhead.

Sincerely,



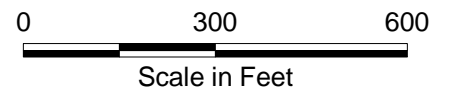
Steven L. Martin, P.G.  
South Central Region Team Supervisor  
Remediation and Redevelopment Program

Attachment: Figure 2, Site Vicinity Plan by Apex Companies, LLC dated April 2020.

cc: Janet DiMaggio (electronic)  
Michael Prager – RR/5 (electronic)  
Paula Richardson, Apex Companies, LLC 3015 SW 1<sup>ST</sup> Ave, Portland, OR 97201



**Note:** Base map prepared from Dane County GIS (<https://gis-countyofdane.opendata.arcgis.com>) and a Google Earth Pro Aerial (9/21/2014)



**Legend:**

- Area with Potential Residual Soil Contamination

## Site Vicinity Plan

Phase I Environmental Site Assessment  
160 Westgate Mall Drive  
Madison, Wisconsin

Apex Companies, LLC  
3015 SW First Avenue  
Portland, Oregon 97201

Project Number	2578-00
April 2020	

Figure  
**2**