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April 18, 2024

VIA EMAIL: Joseph.Graham@Wisconsin.gov  
State of Wisconsin Department of Natural Resources  
810 W. Maple Street  
Spooner, WI 54801

Re: Request for Information & Introduction to the Great Lakes Legacy Act  
Tower Avenue Slip, Superior Wisconsin  
WDNR BRRTS # 11-16-591466  
Tax Parce ID #'s 04-804-00967-00 and 04-804-00763-00

Dear Mr. Graham:

Barko Hydraulics, LLC (“Barko” or the “Company”) hereby responds to Wisconsin’s Department of Natural Resources’ (“DNR”) request for information pursuant to §§ 292.11(7)(a), 292.11(8), 292.31(1)(b), and 292.31(1)(d), Wis. Stats for the Tower Avenue Slip (“Request”). Barko appreciates DNR’s approval of an extension to reply to the Request by April 19, 2024.

In responding to the Request, Barko has undertaken a reasonable and diligent search of its historic and current records for the property located at 1 Banks Ave, Superior, WI (the “Site”). Given the passage of time, the availability of older records and documents was very limited. Barko’s response to the RFI contains all the documents that are located at the facility which may predate its ownership.

Barko assembles and sells heavy duty forestry equipment. The Company works hard to maintain the strength of its brand and the viability of its Wisconsin-based business in the face of fierce competition from exponentially larger global brands such as John Deere, Case, Caterpillar, and Komatsu. Barko has a small share of the market in most of its product categories. Although it is working on strategies to grow its business, expand the Company’s product lines, and hire more employees over the next few years, increasing cost pressures could make growth challenging.

This response demonstrates that operations at the Site currently and historically have not handled or generated significant amounts of hazardous substances or hazardous waste. Operations at the Site did not commence until after 1975 (unimproved property was purchased in 1975), around the time of the enactment of many environmental laws, including the Resource Conservation and Recovery Act (1976) and the Clean Water Act (1972). Barko’s operations historically included metal fabrication and painting, machine assembly and testing, and storage of assembly and aftermarket parts. Many of these activities were discontinued by 2015. Information in the Company’s possession demonstrates that the Company has consistently been a RCRA small quantity generator of hazardous waste. As detailed herein, the available evidence does not indicate

that Barko's operations caused or contributed to the existing constituents of concern at the Tower Avenue Slip.

### **General Objections**

While it is the Company's objective to respond comprehensively to the information requests, the responses below are based upon, and therefore necessarily limited by, records still in existence and information presently recollected and thus far learned in the course of preparing these responses.

1. The Company objects to each of the Requests to the extent that they allege or infer that the Company owned the Site at the time of the disposal or treatment of hazardous substances. By responding to these Requests, the Company in no way admits that it or its former companies owned the Site at the time of the disposal of hazardous substances released at the Site.

2. The Company denies that it has any liability for any injury to the Site and reserves and does not waive any and all rights and/or defenses it may have. If it is determined that the Company has any liability for any injury to the Site caused by or related to hazardous substances or hazardous waste at the Site, a reasonable basis exists for such harm to be apportioned.

3. The Company objects to these Requests to the extent that they (i) are vague, overly broad, burdensome, not reasonably calculated to lead to information concerning hazardous substances or hazardous wastes allegedly disposed at the Site, and/or liability for any such hazardous substances or waste, (ii) seek information not in the Company's possession, custody or control, (iii) seek information subject to the attorney-client privilege, the attorney work-product doctrine or any other applicable privilege, and/or (iii) seek information concerning the activities of entities unrelated to the Company.

4. The Company's responses are without waiver or admission of any kind and with full reservation including all rights, claims and defenses it has or may have.

Subject to and without waiving these General Objections, the Company Responses are set forth below.

### **Responses to Requests**

**1. Identify the current owner and operator of the Site. State the dates during which the current owner and operator owned, operated, leased, or occupied any portion of the Site and provide copies of all documents evidencing such ownership, operation, lease, or occupation, including but not limited to purchase and sale agreements, deeds, leases, etc.**

Response: The current owner and operator of the Site is Barko Hydraulics, LLC, a Delaware limited liability company. Barko Hydraulics LLC was formed in 1997.

**2. Identify any persons who in addition to the owner/operator exercises actual control over the Site or who holds significant authority to control activities at the Site.**

Response: Barko objects to Request no. 2 as it calls for a legal conclusion with respect to the meaning of “control” and “significant authority to control”. There is no owner or operator of the Site in addition to Barko.

- 3. Identify any legal or equitable interest that you now have, or previously had, in the Site and describe the nature of any such interest, including when, how, and from whom such interest was obtained as well as when, how, and to whom such interest was conveyed. Provide documentation evidencing the acquisition or conveyance of any identified interest.**

Response: See responses to Requests no. 1 and no. 6.

- 4. Identify all hazardous substance discharges that have occurred at or from the Site and other actual or potential environmental pollution that has been found at the Site, including any hazardous substance discharge into, or environmental pollution found in, a subsurface disposal system or floor drain inside or under any building at the Site. Provide all documentation including reports and data related to hazardous substance discharges and actual or potential environmental pollution of soil, sediment, water (ground or surface) or air quality at or around the Site.**

Response: Barko objects to Request no. 4 as it calls for a legal conclusion with respect to the meaning of “discharges”, “hazardous substances”, and “environmental pollution.”

On June 20, 1990, 55 gallons of engine waste oil leaked on the south side of the building. The contaminated soil was excavated, and all contamination was removed. See Toxic and Hazardous Spill Report Spill ID 0416051183 (on file with WNDR).

On October 26, 2011, there was a non-reportable 1-2 gallon oil leak near the back of the facility. The contaminated soil was excavated, and all contamination was removed. See Attachment 1, 2011- Spill History Form.

On November 16, 2019, 15 gallons of oil spilled onto the soil. The contaminated soil was excavated, and all contamination was removed. See WNDR website SERTS Spill ID 20191126No16-1.

On August 15, 2000, 20 gallons of hydraulic oil leaked into the soil at the facility. The soil was remediated, and all contamination was removed. See Toxic and Hazardous Spill Report Spill ID 0416408350 (on file with WNDR).

From 1995 to present the facility had no emissions above permitted Title V levels. On December 16, 2016, WNDR approved the exemption from the annual operations permit because the hazardous emissions from the source were less than 10 tons per year for PM and each criteria pollutant since 2014. See Review of Revocability Memo (on file with WNDR). The possible HAPs emissions prior to the revocation were xylene and toluene. See 1995-2016 Emissions Summaries (on file with WNDR); Air Operation Permit Compliance Certifications (on file with WNDR).

Barko held wastewater permits with effluent limits for cadmium, chromium, copper, cyanide, lead, mercury, nickel, oil, and grease, phosphorus, silver, total toxic organics, total suspended solids,

zinc, and PH. The wastewater monitoring results contain a list of constituents that did not exceed effluent limits with the exception of phosphorus 1999 and 2003. See Response to Request no. 10; Attachment 2, Wastewater Test Results 2007 to 2014.

- 5. If you are the current owner and/or current operator of the Site, did you acquire or operate the Site or any portion of the Site after the discharge of any hazardous substance on or at the Site? Did you know or have reason to know of any discharge of any hazardous substance on or at the Site before acquiring or operating the Site? Describe all environmental investigations of the Site you undertook before acquiring or operating the Site and provide all documentation of investigations performed.**

Response: Barko objects to Request no. 5 as it calls for a legal conclusion with respect to the meaning of “discharges” and “hazardous substances.” Barko did not know or have reason to know of any discharge of any hazardous substances, after it acquired or operated at the Site, not listed in the response to Request No. 4. Barko is unaware of any environmental investigations that occurred before the Site was purchased in 1974.

- 6. Identify all prior owners of the Site. For each prior owner, further identify:**

- a. The dates of ownership,**
- b. All evidence showing that each identified owner controlled the Site; and**
- c. All evidence of any hazardous substance discharge or environmental pollution (including coal) at or from the Site and/or its solid waste units during the period that each identified owner owned the Site.**

Response: On information and belief, in 1963, Maurice and Edward Bartell formed “Barko Hydraulics” which purchased the Site in 1973. Pettibone Corporation (“Pettibone”) purchased the Bartells’ company in 1975.

On January 31, 1986, Pettibone and eight of its subsidiaries, including “Barko Hydraulics, Inc., a Minnesota Corporation” filed for Chapter 11 bankruptcy. A Plan of Reorganization was confirmed by the Bankruptcy Court on December 9, 1988. See Attachment 3, Order Confirming Plan of Reorganization dated December 9, 1988.

On March 31, 1997, Pettibone went through a corporate restructuring. Barko Hydraulics, LLC was formed as a Delaware limited liability company. See Attachment 4, Certificate of Formation of Barko Hydraulics, LLC; Attachment 5, Limited Liability Company Agreement of Barko Hydraulics, LLC. Pettibone then contributed all of its right, title and interest in the assets of its Barko Hydraulics division to Barko Hydraulics, LLC. See Attachment 6, Contribution and Assumption Agreement.

- 7. Identify all prior operators of the Site, including lessors. For each prior operator, further identify:**

- a. The dates of operation,**
- b. The nature of prior operations at the Site,**
- c. All evidence that each identified operator controlled the Site; and**

**d. All evidence of any hazardous substance discharge or environmental pollution (including coal) at or from the Site and/or its solid waste units during the period that each identified operator operated the Site.**

Response: See response to Request no. 6.

**8. Describe the nature of your activities, business, or operations at the Site with respect to generating, transporting, storing, treating, or disposing hazardous substances or solid or hazardous waste (including coal) at the Site.**

Response: Barko objects to Request no. 8 as it calls for a legal conclusion with respect to the meaning of “transporting”, “disposing”, “treating”, and “hazardous substances.”

Barko Hydraulics is an OEM for Forestry, Material Handling and Site Prep equipment. This equipment includes Knuckle Boom Loaders, Utility Loaders, Material Handling Equipment, Mulchers, Wheeled Feller Bunchers, Harvesters, and Integrated Attachments. Finished components and assemblies are received and converted into finished product through assembly and testing. Materials in various stages of manufacture are securely stored at the facility. Finished vehicles are stored outside awaiting shipment. See Attachment 7, Barko SPCC Plan October 26, 2020. Hydraulic oils, transmission fluids, lubrication oils, greases and diesel fuel are used in the production of these machines, as well as being in the finished product.

Prior to 2015, Barko’s activities included metal fabrication, metal and parts cleaning and washing, and painting in a spray paint booth. Waste from these activities was stored and then transported off site for disposal. See Attachment 8, SPCC Plan 2003.

**9. If any hazardous substances or solid or hazardous waste (including coal) was ever generated, transported, stored, treated, or disposed of at the Site, identify and provide all documentation which relates to:**

- a. the type, quantity, chemical composition, characteristics and physical state (e.g., solid, liquid) of hazardous substances or solid or hazardous waste generated, transported, stored, treated or disposed of at the Site and the dates that such activities occurred;**
- b. the identity of all persons who generated, transported, treated, stored, or disposed of such substances or waste at the Site; and**
- c. the identity of all subsidiary or parent corporations of identified persons.**

Response: Barko objects to Request no. 9 as it calls for a legal conclusion with respect to the meaning of “transporting”, “disposing”, “treating”, and “hazardous substances.” In further response, see Attachment 9; Responses to Request No’s: 4, 8.

| Year | Quantity | UOM | DOT Description  | Federal Waste Code                 | Attachment 9  |
|------|----------|-----|--|------------------------------------|---|
| 2012 | 55       | G   | Used oil and absorbent mixture   | (not a USDOT Hazardous Material)   | 2012 Hazardous Waste Generator Report from Safety Kleen |
| 2012 | 55       | G   | Dirt, sand, soil and oil   | (not a USDOT Hazardous Material)   | 2012 Hazardous Waste Generator Report from Safety Kleen |
| 2012 | 16       | G   | UN1263 waste paint related material, 3 PG II                                   | F005, F003, D001, D018, D035, D039 | 2012 Hazardous Waste Generator Report from Safety Kleen |
| 2012 | 80       | G   | NA 1993 waste combustible liquid, N.O.S. (Petroleum Naptha) PG III DOT-SP11606 | D008, D018, D039, D040             | 2012 Hazardous Waste Generator Report from Safety Kleen |
| 2011 | 55       | G   | Hazardous Waste, Solid, N.O.S. (Chromium) 9 NA307 PG III                       | D007                               | 2011 Hazardous Waste Generator Report from Safety Kleen |
| 2011 | 12       | G   | UN1263 waste paint related material, 3 PG II                                   | F005, F003, D001, D018, D035, D039 | 2011 Hazardous Waste Generator Report from Safety Kleen |
| 2011 | 78       | G   | NA 1993 waste combustible liquid, N.O.S. (Petroleum Naptha) PG III DOT-SP11606 | D008, D018, D039, D040             | 2011 Hazardous Waste Generator Report from Safety Kleen |
| 2010 | 16       | G   | UN1263 waste paint related material, 3 PG II                                   | F005, F003, D001, D018, D035, D039 | 2010 Hazardous Waste Generator Report from Safety Kleen |
| 2010 | 72       | G   | NA 1993 waste combustible liquid, N.O.S. (Petroleum Naptha) PG III DOT-SP11606 | D008, D018, D039, D040             | 2010 Hazardous Waste Generator Report from Safety Kleen |
| 2010 | 70       | G   | RQ waste aerosols, Flammable 2 UN1950  | D001                               | 2010 Hazardous Waste Generator Report from Safety Kleen |

| Year      | Quantity | UOM | DOT Description  | Federal Waste Code                 | Attachment 9  |
|-----------|----------|-----|--|------------------------------------|---|
| 2010      | 110      | G   | Hazardous Waste, Solid, N.O.S. (Chromium) 9 NA307 PG III   | D007                               | 2010 Hazardous Waste Generator Report from Safety Kleen                       |
| 2010      | 110      | G   | Waste Corrosive Liquid, Basic, Inorganic, N.O.S. (Sodium Hydroxide) 8 UN3266 PG II                       | D002                               | 2010 Hazardous Waste Generator Report from Safety Kleen                       |
| 2010      | 165      | G   | RQ waste paint related materials 3 UN1263 PG II  | F003, F005, D001, D035, D005, D006 | 2010 Hazardous Waste Generator Report from Safety Kleen                       |
| 2010      | 55       | G   | Antifreeze for recycle   | Not USEPA or UDOT Haz. Material    | 2010 Hazardous Waste Generator Report from Safety Kleen                       |
| 2008      | 440      | P   | Used oil and water mixture   | Not USEPA or UDOT Haz. Material    | 2008 Safety Kleen Generator Waste Report                                      |
|           | 456      | P   | RQ waste flammable liquids, toxic, N.O.S. (Paint related material)                                       | F002, D001, D039, D040, D005, D006 | 2008 Safety Kleen Generator Waste Report                                      |
| 2005      | 35       | G   | Safety -Kleen Lacquer Thinner 6782   | D001, D018, D035, D039             | SDS for Spray Gun Cleaner submitted by Fax to Robin Capin WNDR (not attached) |
| 1997      | 923      | Lb  | Parts Washer   | D039                               | Notice of non-compliance from WNDR (not attached)                             |
| 1997      | 523.3    | Lb  | Paint waste solvent  | F005                               | Notice of non-compliance from WNDR (not attached)                             |
| 1991-1996 |          |     | Xylene, mixtures aliphatic and aromatic hydrocarbons, mixtures of paint related waste, m-xylene, Toluene |                                    | See 1991-1996 Form R  |

**10. Describe with specificity all occurrences where a Site owner, operator, or person in control over the Site was determined by a federal, state, or local authority to have violated any environmental law or where any environmental violation or deficiency was discovered at the Site, including any violation or deficiency that resulted in the issuance of a citation or the commencement of any enforcement or legal action. Identify the federal, state, and local authorities involved in each identified occurrence. Provide all documentation related to each identified occurrence.**

Response: On October 7, 1997, Wisconsin DNR issued a notice of non-compliance because Barko shipped more than 2200 pounds of hazardous waste and (inadvertently) triggered the RCRA Large Quantity Generator requirements. The violation required Barko to have a contingency plan, training for personnel, and hazardous waste to be stored in closed containers with labels and dates. (Barko is no longer an LQG, and the violations were resolved).

In 1999 and 2003 the phosphorus concentration of wastewater was slightly above effluent limits. In both instances, the source of the issue was resolved. See Attachment 10, 1999 and 2003 Liesch Letters.

On July 28, 2005, WNDR issued a notice of violation to Barko for failure to submit monitoring results, certify source requirements, calculate, and record the emission rates of pollutants, and submit a yearly compliance status. Barko resolved the violation.

**11. Provide a list of all local, state, and federal environmental permits ever granted for the Site or any part thereof (e.g., Resource Conservation and Recovery Act (RCRA) permits, National Pollutant.**

Response: Barko responds as follows:

| Agency   | Type  | Number   |
|--|---|--|
| WNDR   | Air Pollution Control Permit                | 816048640-EXM (current)<br>8164048640-F01, F10, F11, F20 (prior)   |
| WNDR   | Operation permit                            | 95-PJH-801 (1995)  |
| WNDR   | Stormwater general                          | WI-S067857-5 (current)<br>WI-S067857-1-4 (prior)   |
| City of Superior WI  | Industrial Process Wastewater Permit        | A current wastewater permit is no longer needed since discontinuing the wash and painting operations.<br><br>2012BAR5<br>2008BAR4<br>951001BAR2 (2001)<br>951001BAR1 (December 1996) |
| WI Dept.of Agri., Trade, Consumer Protection                       | Mobile Air Cond.Refrig.Permlt (Exp.2/28197) | 1997   |
| "State of Wisconsin Department of Safety and Professional Services | Unfired Pressure Vessel                     | Unknown  |



**12. Did the Site ever file a Hazardous Waste Activity Notification under the Resource Conservation and Recovery Act (RCRA)? If so, provide documentation of such notification.**

Response: Yes. Barko's USEPA ID is WID071758437, however no copy of Notification of Hazardous Waste Activity was found.

**13. Did the Site ever have "interim status" under the Resource Conservation or Recovery Act (RCRA)? If so, and the Site does not currently have interim status, describe the circumstances under which the Site lost interim status.**

Response: Barko is unaware of the Site ever having interim status.

**14. Provide the following information about the Site, if applicable:**

**a. Property boundaries, including a written legal description,**

Response: See Attachment 11, 570099.pdf; 516147 312D36.pdf (legal description); SWPP Plan (Section 3.1, 3.2 Appendix A) signed July 15, 2019 (on file with WNDR); Attachment 12 (1975 Site Map, 1989 Site Map, 1992 Site Map).

**b. Location of underground utilities (telephone, electrical, sewer, water main, etc.),**

Response: See Attachment 13, 1975 Utilities Layout of Property.

**c. Surface structures (e.g., buildings, tanks, etc.),**

Response: The main building is located on the northern half of the Site and contains the manufacturing operations. A small office building is located on the southern half of the site. An open-air shed structure is located to the west of the main building. The drive coming into the facility is paved and the remainder of the property is gravel and dirt. See SWPP Plan signed July 15, 2019 (on file with WNDR).

Hydraulic oil is stored in a 6,000-gallon double wall above-ground storage tank (AST) and diesel fuel is stored in a 1,500-gallon double wall AST. Both tanks are located outside the building. The hydraulic oil is pumped through flexible and rigid piping into the building, then flows through rigid 2" piping along the south and north walls of the assembly plant. All loading ports valves are located inside the building. There are six points, at assembly bays, where the rigid piping is attached to hoses which supply hydraulic oil to processes within the facility. See SWPP Plan signed July 15, 2019; SPCC Plan October 26, 2020 (Attachment 7).

**d. Groundwater wells, including drilling logs,**

Response: None.

**e. Storm water drainage systems, and sanitary sewer systems, past and present, including septic tank(s), subsurface disposal field(s), and other underground structures; and where, when and how such systems are emptied,**

Response: See SWPP Plan signed July 15, 2019 (on file with WNDR); Prior SWPP Plans (on file with WNDR). See Attachment 14, Barko Floor Drain Layout.

- f. All additions, demolitions or changes of any kind on, under or about the Site, its physical structures or to the property itself (e.g., prior removal or excavation of contaminated soil or sediment); and any planned additions, demolitions or other changes to the site, facility to improvements made to reduce oil pollution upgrading tanks moving indoors,**

Response: As stated previously, the facility and infrastructure were built in the late 1970's.

In October 2017, Barko replaced both outdoor tanks with the tanks referenced in response to Request 14.c. The spray paint booths were removed in 2015. See also Attachment 15 (1973 Total Room & Warehouse Addition; 1978 Maintenance & Welding Additions).

- g. Geology and hydrogeology at and around the Site,**

Response: See Attachment 16, 1993 Subsurface Structural Summary.

- h. Maps and drawings of the Site depicting the property boundaries and property features identified above; and**

Response: See responses to Request No. 14a-g.

- i. Photographs of the Site, past and present, including aerial photographs.**

Response: See Attachment 17 (2008, 2009 Outfall Maps and Pictures).

- 15. Describe the conditions of any physical plant facility at the Site during the years each operator operated at the Site, including the status of equipment (operating or dormant), general condition of the facility (e.g., leaking pipes, corroded drain or new piping installed), quality of maintenance (e.g., equipment in disrepair or inspected monthly), adherence to procedures (improper handling of chemicals, incomplete/absent policies, quality of supervision), and management of the plant.**

Response: As stated previously, the facility and infrastructure were built in the late 1970's. The facility conducts regular inspections to ensure the integrity of its infrastructure, including examination of the condition of pipes, drains, and equipment. The facility maintains current SWPP and Spill Prevention plans to prevent facility discharges.

- 16. Are you or your consultants planning to perform any investigations of the soil, sediment, water (ground or surface), geology, hydrology or air quality on or about the Site? Provide all documentation concerning any investigation you have conducted or plan to conduct at or around the Site.**

Response: No investigations have been performed or are planned.

**17. Describe all potential pathways for migration of contamination, including airborne deposition, drainage improvements, utility corridors, sediments, bedrock and permeable material or soil along which dust/particulate, vapors, and free product may flow as well as potential pathways contaminated water may flow.**

Response: As stated previously, the facility and infrastructure were built in the late 1970's. Barko conducts regular inspections and maintenance to prevent the migration of hazardous substances.

The facility's SWPP Plan indicates possible sources of pollution are metals, oils, paints, and dust from long-term exposure to Stormwater. See SWPP Plan, Section 3.4 Inventory of Potential Sources of Contamination, signed dated October 26, 2017 (on file with WNDR); SWPP Plan November 1, 2009, revised in 2011(on file with WNDR). Other potential sources of contamination include oils and diesel fuel from leaks or spills, none of which occurred at the facility except for those noted in Response to Request no. 4.

Prior to the removal of the spray paint booths in 2016, Barko was required to hold an air permit and a wastewater permit. During the times the spray paint booths were in operation, Barko would generate waste associated with spray painting. See Response to Request nos. 4, 9; SWPP Plan, Section 3.3, November 1, 2009, revised in 2011; 1995-2016 Emissions Summaries (on file with WNDR); Air Operation Permit Compliance Certifications (on file with WNDR); SPCC Plan 2020 (Attachment 7).

**Conclusion**

We trust this submittal has been responsive. As directed by the RFI, our response has been completed to the best of Barko's ability. Please contact the undersigned with any questions.

Very truly yours,

/s/ Jacqueline Vidmar

Jacqueline Vidmar

on behalf of Barko Hydraulics LLC