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April 20, 2011

Via e-mail:

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Subject: Lease Liability Clarification Letter as to Environmental Liability for PNC Bank, National Association, under proposed lease of property from State Street Retail LLC (sale between State Street and the Kitty Glantz Real Estate Trust II
BRRTS No. ~~02-41-556279~~ 07-41-556653
FID No. 241766800

Dear Ms. Buzecky:

The purpose of this letter is to provide PNC Bank, National Association (PNC), the proposed lessee of property located at 6900 West State St., Wauwatosa, Milwaukee County, Wisconsin with clarifications as to the environmental liabilities associated with leasing property from State Street Retail LLC, the proposed owner of property currently owned by the Kitty Glantz Real Estate Trust II. State Street Retail proposes to remove an existing building and construct a new building to house a PNC branch.

State Street Retail has requested that the Department determine whether PNC would be held responsible under the Hazardous Substance Spills Law, s. 292.11, Wis. Stats., for hazardous substances that were discharged on the Property prior to PNC's lease agreement with State Street Retail. Department records show that the property may be affected by polynuclear aromatic (PAHs) hydrocarbons and metals (arsenic and lead.) Impacts upon the property include contamination within a meter of bedrock, in fractured bedrock, in soil, and in groundwater. The Department has received Phase I and Phase II Environmental Site Assessments. The Department has not yet approved the Phase I and Phase II Assessments for the site. State Street Retail has applied for a voluntary party liability exemption under Wis. Stats. s. 292.15. BRRTS Activity No. 06-41-556487. On March 25, 2011, the Department wrote State Street Retail requesting additional information including prior uses of the property and the property immediately to the north of the site, a review of documents associated with nearby properties, an explanation of certain sampling activity, and a proposal for the installation of a monitoring well to determine the extent of offsite groundwater contamination.

The Department of Natural Resources ("Department") has completed its review of the request for a lease liability clarification letter submitted by State Street Retail, and has made the determination that follows below.

Determination

As you are aware, s. 292.55(1)(d)1., Wis. Stats., authorizes the Department to issue a letter to a person seeking assistance concerning the liability of a person owning or leasing a property for environmental pollution of the property. The Department has reviewed the following documents in order to make this determination:

1. Lease letter request application and accompanying correspondence from attorney Jennifer Buzecky on behalf of State Street Retail for PNC.
2. November 29, 2011, Lease between PNC and State Street Retail, with attachments that include site maps.
3. Department summary records of activity for the facility.
4. Correspondence from the Department's project manager to State Street Retail concerning information required for the voluntary party liability exemption.

In addition, the Department's project manager has reviewed correspondence on file between the Department and State Street Retail's representative, and State Street Retail's submissions, including the above mentioned Phase I and Phase II assessments.

In the correspondence submitted with the lease letter, it is indicated that PNC has, to its knowledge ... "no relation with the current property owner, the current tenant, or any other person who has caused a discharge of hazardous substances on the property."

The lease between PNC and State Street Retail sets out the parties' respective responsibilities with respect to environmental issues at the leased premises. The determinations made by the Department in this letter assume that there will be no material changes made to the version of the lease submitted to with the application. Section 22 of the lease discuss the parties' responsibilities in connection with the environmental condition of the leased property. This section provides that State Street Retail is responsible to remediate the environmental conditions existing on the Property before the effective date of the lease, and that PNC is responsible for incidents resulting from its own actions or failures to act. Section 22.3. Each party agrees to indemnify the other for failures on its part to comply with environmental laws. Sections 22.5 and 22.6. State Street Retail specifically accepts responsibility for any work to "investigate, delineate, and remediate" environmental conditions at or associated with the site, and for attaining closure under Wis. Admin. Code ch. NR 726. Section 22.7. PNC acknowledges that compliance with activities associated with such closure may reply upon elements of the construction of its leased premises as an engineering control, soil cover, cap, engineered containment or other action, and that the construction of such elements will be subject to the Departments approval. PNC further acknowledges that its use of the premises may be affected by State Street Retail's compliance with NR 726 requirements and other environmental laws, and that closure of the site may involve listing of certain contamination on a GIS registry, issuance of a permit to build on a historic landfill, and other permitting, inspection, and reporting requirements. These contingencies and requirements are set out in section 22.7(b) of the lease. Under 22.7(c), PNC acknowledges it obligations to provide State Street Retail with its intended development plans and to allow State Street Retail access to perform its environmental work, and its understanding that monitoring wells and the placement of environmental remediation equipment are subject to the approval of the Department.

While the lease will bind the parties to these agreements, please be advised that it does not limit the Department's ability to pursue either PNC or State Street Retail as a party responsible to clean up contamination at the premises. Under s. 292.11(3), the Department can require a person who possesses or controls a hazardous substance discharge or a person who causes a hazardous substance discharge to restore the environment to the extent practicable and minimize the harmful effects from the discharge. Under certain circumstances, either PNC or or State Street Retail, or both, could be interpreted to be "in possession or control" of a hazardous substance discharge at the property. The terms of the lease are generally consistent with the Department's enforcement policy. This policy is to first pursue the party who caused the discharge. If that person is unable or unwilling to conduct the cleanup, the Department would reserve its ability to pursue other responsible parties, such as those in possession or control of the hazardous substance discharge. Of course, that party could then bring a lawsuit against the other party to enforce the indemnification language in the lease.

Based on its review and subject to the preceding statements, the Department determines that PNC as a lessee under the lease, does not "possess or control," as those terms are used in s. 292.11(3), Wis. Stats., any

hazardous substance discharges that were present on the Property prior to the lease agreement, conditioned on compliance with the following standards of performance:

- PNC agrees to provide any responsible party, their consultants and Department personnel with reasonable access to the Property for the purposes of conducting any necessary environmental assessment or remediation activities.

- PNC agrees to comply with all applicable state and federal laws that apply to the excavation and disposal of contaminated soils or other materials.

- PNC agrees to minimize, as applicable and to the extent practicable, the placement of any structures in areas of the property impacted by environmental contamination or construct buildings or structures in such a manner as to allow remedial work to be conducted or after remedial work is concluded.

- PNC agrees to comply with the requirements of s. 292.11, Wis. Stats., and the NR 700 rule series, Wisconsin Administrative Code, for the discharge of any hazardous substances that may be caused by PNC as the lessee.

In addition to the foregoing, PNC is expected to comply with the specific responsibilities it has accepted under the lease, including co-operation in any engineering or other activity associated with the construction as it relates to compliance with ch. NR 726 and other environmental laws.

Under these conditions, the Department agrees not to hold PNC in its capacity as a lessee under the lease, responsible for investigating or remediating any hazardous substances on the property that were existing or occurred, or migrated from or onto the property, prior to the date of the lease agreement, unless one of the aforementioned conditions is not satisfied.

The Department believes that a memorandum of understanding entered into by the State of Wisconsin and the Federal Environmental Protection Agency ("EPA") provides clarification to companies like yours that EPA is not interested in pursuing cleanup of properties where person(s) are working cooperatively with the Department.

If you have any questions concerning this letter or other related matters, please contact me at 608-266-0911.

Sincerely,

Kathleen Strasbaugh
Staff Attorney

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