State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
South Central Region Headquarters
3911 Fish Hatchery Road
Fitchburg WI 53711-5397

Scott Walker, Governor
Cathy Stepp, Secretary
Lloyd L. Eagan, Regional Director
Telephone 608-275-3266
FAX 608-275-3338
TTY Access via relay - 711

WISCONSIN DEPT. OF NATURAL RESOURCES

June 15, 2011

BRRTs # 07-54-557210
03-54-000307

Mr. Tim Weeden
Hendricks Commercial Properties, LLC
655 Third Street, Suite 301
Beloit WI 53511

Subject: Liability clarifications for multiple properties in Water Towers Industrial Properties, Inc., 1301 Prince Hall Drive, 6 ABC Parkway, 4 ABC Parkway, and 2 ABC Parkway in Beloit, Rock County impacted by groundwater contamination migrating from an off-site source

Dear Mr. Weeden:

Purpose

The Department of Natural Resources ("the Department") has recently reviewed your request for an off-site liability exemption and liability clarification letter for four properties located in Beloit Wisconsin:

- Lot 1: 1301 Prince Hall Drive
- Lot 3: 6 ABC Parkway
- Lot 5: 4 ABC Parkway
- Lot 6: 2 ABC Parkway

These properties are known as the Water Towers Industrial Properties and are owned by Hendricks Commercial Properties, LLC (hereafter referred to in this letter as the "Properties"). As you are aware, Wisconsin's Hazardous Substance Spill Law, s. 292.11, Wis. Stats., makes persons who possess (i.e., own) or control a discharge of a hazardous substance responsible for conducting an investigation and cleanup of the contamination. Because of this concern, you have requested that the Department determine whether or not the owners of the Properties would be held liable for any hazardous substances in the groundwater that you believe have migrated on to the Properties. Please refer to the attached map for the general location of the impacted Properties.

Request

In particular, you have requested clarification as to whether or not the owners of the Properties are eligible for the protections offered by the Spill Law's off-site discharge liability exemption, in s. 292.13, Wis. Stats. With the creation of the off-site exemption in s. 292.13, Wis. Stats., the Legislature has limited 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 an off-site source, if the conditions listed in the statute are satisfied. Your request dated May 2, 2011 indicates that the environmental contamination affecting the Properties is a result of environmental contamination migrating from an off-site source.

The following were also submitted with the request:

- Off-Site Liability Exemption and Liability Clarification Application Form 4400-201
- Supplemental Figures 1 through 4 (which provide location and legal description of affected properties
- Bi-annual Progress Report – July 1 through December 31, 2010, Fairbanks Morse Engine Site A (FME Site A), prepared by MSA Professional Services on behalf of FME. This site is also known as Colt Industries Facility Site, BRRTS Site #03-54-000307.
- Various reports in Department files for the FME Site A

In response, the Department is providing you with a general liability clarification letter, under s. 292.55(1)(d), Wis. Stats., that should explain the general environmental liability of the owners of Properties in the impacted area.

Summary of Environmental Conditions

The four properties listed above have been used for various purposes historically and were owned by a different party in the past. They are all currently owned by Hendricks Commercial Properties, LLC and are being used for different uses including light manufacturing, warehouse, storage, parking and some areas of land are vacant. The Properties are adjacent to the currently operating Fairbanks Morse Engine manufacturing facility. Based upon the Department's review of the information and reports in Department files, it is our understanding that the petroleum contamination detected in the groundwater in the vicinity of the Properties originates from a discharge of diesel fuel from an underground pipeline which broke in the early 1960's. The underground pipeline break was likely located in the vicinity of the oil storage area on the western side of the FME facility. FME has been conducting a site investigation and remedial action since 1989 when the discharge was reported.

Liability Determinations

Wisconsin's statues include an "off-site exemption", in s. 292.13, Wis. Stats., which limits the liability of a property owner. 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 their property from a neighboring property. An off-site property owner, such as the owners of the Properties being impacted by the contamination migrating from the FME Site A, are provided the protections of this exemption, if certain conditions are met by each of those individual property owners.

In particular, the Department believes that the environmental contamination is originating from FME Site A. As such, we do not anticipate holding any individual owners of the affected off-site Properties responsible for investigation and clean up of petroleum contamination that has migrated into the groundwater on the Properties. This assurance is conditioned on the individual owners of the Properties satisfying the off-site exemption criteria in s. 292.13, Wis. Stats., which include:

1. The hazardous substance discharge originated from a source on property that is not possessed or controlled by the person.

2. The person did not possess or control the hazardous substance on the property on which the discharge originated.

3. An investigation or other information has been submitted to the Department that is adequate to substantiate criteria (1) and (2), listed above.

4. The person did not cause the discharge.

5. The facts upon which the Department based its determination are accurate and do not change.

6. The Property owner agrees to allow the following persons to enter the Property to take action to respond to the discharge: the Department and its authorized representatives; any party that possessed or controlled the hazardous substance or caused the discharge; and any consultant or contractor of such a party.

7. The Property Owner agrees to avoid any interference with actions undertaken to respond to the discharge and to avoid actions that worsen the discharge.

8. With respect to soil contamination only, the person 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, 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.

9. The person agrees to any other conditions that the Department determines are reasonable and necessary to ensure that the Department and the responsible party can adequately respond to the discharge.

If the criteria for the off-site exemption are met by an individual property owner in the impacted area, then the property owner would have no responsibility to investigate and cleanup the groundwater contamination that has migrated onto the property. On the other hand, if a property owner fails to satisfy one or more of the exemption criteria, such as refusing to allow the Department access to the property to respond to the environmental contamination, then that individual property owner would no longer be eligible for the protections of the off-site exemption. Thus, it is very important that the owners of Properties in the impacted area cooperate with the Department and responsible party to ensure that we can adequately respond to the hazardous substance discharges that have migrated onto those properties.

This response letter specifically relates only to the petroleum (diesel fuel) discharge in the groundwater described above and makes no determination concerning the presence or absence of other hazardous substance on the Properties. If the Department becomes aware of new information or the presence of other contaminants on the Properties not previously identified, the Department will need to evaluate that data to determine if response actions may be required. Whenever possible, the Department requires the person who caused the discharge to take the appropriate response actions.

If an owner of one of the Properties in this area would like to receive a property-specific letter from the Department, under s. 292.13, Wis. Stats., each property owner can request such a letter by submitting the appropriate Department review fee, off-site exemption form and the necessary documentation to the Department. If owners of the Properties are interested in such a letter, they can obtain information about the state's off-site exemption by accessing the Department's web page, at http://dnr.state.wi.us/org/aw/rr/liability/index.htm. However, the Department would like to make it clear to the owners of the Properties that, if they meet the criteria in state law for the off-site exemption, they are protected by the exemption regardless of whether they have a property-specific letter from the Department.

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for this activity is included at the top of this letter. The Department tracks information on all determinations such as this in a database that is available on the Internet at http://dnr.wi.gov/org/aw/rr/. See "BRRTS on the web" under "Contaminated Land Databases".

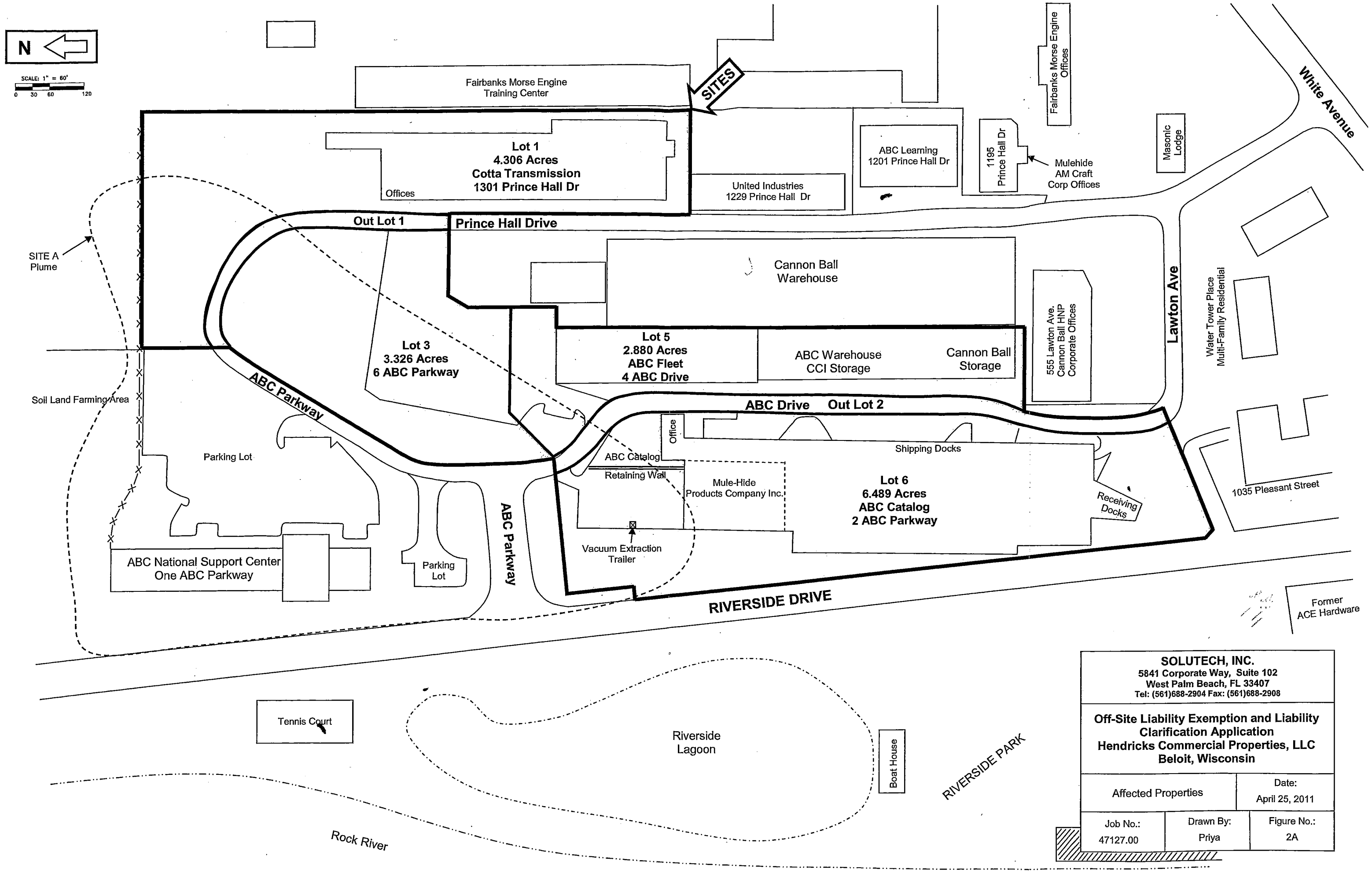
We hope this clarifies for you and the owners of the Properties our understanding of their liability for the contamination migrating onto their Properties. We can assure you that it is our intent to continue to work with Fairbanks Morse Engine to address the cleanup of the contamination on its property, and the contamination that has migrated off the source property. If you have further questions about this letter, please contact Janet DiMaggio directly at (608) 275-3295 or by email at janet.dimaggio@dnr.state.wi.us.

Sincerely,

Linda Hanefeld
Team Supervisor
South Central Region
Remediation and Redevelopment Program

Enclosures: map of affected area

c: Janet DiMaggio - SCR
Michael Prager – RR/3



SOLUTECH, INC.
5841 Corporate Way, Suite 102
West Palm Beach, FL 33407
Tel: (561)688-2904 Fax: (561)688-2908

Off-Site Liability Exemption and Liability Clarification Application
Hendricks Commercial Properties, LLC
Beloit, Wisconsin

Affected Properties		Date: April 25, 2011
Job No.: 47127.00	Drawn By: Priya	Figure No.: 2A