State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
2984 Shawano Avenue
Green Bay WI 54313-6727

Tony Evers, Governor
Karen Hyun, Ph.D., Secretary
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TTY Access via relay - 711

March 21, 2025

Matthew S. Berg
Horicon Bank
105 E. Industrial Dr.
Beaver Dam, WI 53916
Via Email Only to matthewb@horiconbank.com

Subject: Lender Liability Clarification Letter
329 S. Church St., Berlin, WI
Parcel #: 206-00860-0100
BRRTS Activity Name: Aurora Manufacturing Inc (Former)
BRRTS Activity #: 07-24-596104

Dear Matthew S. Berg:

On January 6, 2025, the Wisconsin Department of Natural Resources (DNR) received a request for a lender liability clarification letter (Request) from Horicon Bank. The Request was submitted with the appropriate review fee under Wisconsin Administrative (Wis. Admin.) Code § NR 749.04(1). It is our understanding that Horicon Bank is seeking liability clarification with regard to its status under Wis. Stat.§ 292.21(1)(a) as a lender that is engaged in mortgage lending for the property located at 329 S. Church St. Berlin, WI (Property). The DNR understands that Horicon Bank does not otherwise possess, control, or have title to the Property and that Horicon Bank is not presently seeking clarification with regard to an acquisition through enforcement of a security interest in the Property. The purpose of this letter is to provide Horicon Bank with the requested clarification of the environmental liabilities associated with the Property. Wisconsin Statutes (Wis. Stat.) § 292.55(1)(d)4. authorizes the DNR to issue a letter to a person seeking assistance concerning the liability for environmental pollution at a property.

The DNR based this letter on review of documents provided in the Request as well as the DNR site file:

- Liability clarification letter request, completed Form 4400-237, signed December 27, 2024.
- Phase I Environmental Site Assessment Report, 329 S. Church St., Berlin, Wisconsin, prepared for Horicon Bank by SET Engineering, LLC, dated December 23, 2024.

Additional information was provided in an email response to the DNR from Matthew S. Berg, Horicon Bank, dated January 13, 2025.

The Request, dated December 27, 2024, requests a determination from the DNR on whether Horicon Bank is eligible for the lender liability exemption identified in Wis. Stat. § 292.21, with respect to the Property. The Request also indicated that Horicon Bank is seeking clarification regarding whether soil vapor analysis may be required. The topic of soil vapor investigation for the above-referenced BRRTS case is addressed in the March 5, 2025, Liability Clarification Letter Concerning Environmental Liability provided to Horicon Bank. This letter solely addresses the lender liability exemption under Wis. Stat. § 292.21, regarding Horicon Bank, for the subject Property.

PROPERTY USE

According to a report provided in the Request, the Property is comprised of one parcel of land identified with the address of 329 South Church Street, Berlin, Wisconsin. The Property is associated with parcel number 206-00860-0100 and occupies a total of approximately 1.47 acres.

The Property is currently utilized for truck and equipment rentals and minor repairs. There are three buildings on the property with concrete and gravel parking areas surrounding. According to aerial photos reviewed, the property appeared to be vacant farmland until approximately 1950, when it was developed and used as a lumberyard with bulk petroleum storage. The property was previously owned and occupied by Berlin Small Engine, Boots Oil, Berlin Oil, and Aurora Manufacturing. The site was formerly multiple lots and was combined into one parcel when the final of the three buildings was constructed in 2010.

ENVIRONMENTAL SUMMARY

The Property was historically undeveloped until the 1950s when it was developed as a lumberyard with bulk petroleum storage near the eastern edge of the property. Prior to 2011, the Property was divided into 3 parcels. The arrangement of the historic parcels can be seen on the attached map (Figure 2: Site Plan and Site Assessment Sample Location, 04/08/1999).

Boots Oil (BRRTS #: 03-24-109790) was investigated for the release of petroleum products following the detection of petroleum-impacted soils near the fill ports for the former above ground storage tanks (ASTs) located near the southwest corner of the historic Boots Oil parcel in August of 1996. During the investigation of Boots Oil, petroleum contaminated soil was identified on the south adjoining Berlin Oil (Former) property. Berlin Oil (Former) (BRRTS #: 02-24-224071) was subsequently investigated for the release of petroleum products in relation to a former petroleum bulk plant located on the property.

As a result of the identified contamination, excavation of the most highly contaminated soil was selected as the remedial option. A total of 1,821 tons (1,771 tons from Boots Oil and 50 tons from Berlin Oil) of contaminated soil was excavated from both Boots Oil and Berlin Oil (Former) in December 2003. An additional 55 tons of soil was excavated from the Berlin Small Engine property in Spring of 2006, which was historically an off-site impacted property. Following the excavation, soil contamination above the RCLs remained on the Boots Oil, Berlin Oil (Former), and Berlin Small Engine properties as shown on the attached map (Figure 3, Site Layout Showing Excavation Limits and Benzene SSRCL DC (Ingestion), August 2005).

Berlin Oil (Former) (BRRTS #: 02-24-224071) closed January 2, 2007, with continuing obligations for residual soil contamination and residual groundwater contamination. Boots Oil (BRRTS #: 03-24-109790) closed on January 3, 2007, with continuing obligations for residual soil contamination, residual groundwater contamination, and a requirement for maintaining the grass and gravel cover. The former Berlin Small Engine property was identified as an affected off-site property and received continuing obligations for residual soil contamination and residual groundwater contamination.

A Phase I Environmental Site Assessment Report (Phase I) dated December 23, 2024, conducted by SET Engineering on behalf of Horicon Bank, identified Vapor intrusion (VI) as a potential concern due to the past release of petroleum products from the closed BRRTS cases, Berlin Oil (Former) (BRRTS #: 02-24-224071) and Boots Oil (BRRTS #: 03-24-109790) on the Property. At the time of these case closures, the DNR did not have established requirements for soil vapor intrusion assessment.

LENDER LIABILITY EXEMPTION

Under Wis. Stat.§ 292.11, a person who "possesses, controls or causes" a hazardous substance discharge is liable for taking necessary investigative and cleanup actions. Wis. Stat.§ 292.21(1) provides a liability exemption for lenders for lending activities, preacquisition inspections of real property, acquisitions of real property through enforcement of a security interest, and acquisitions of personal property and fixtures through enforcement of a security interest, provided that the lender meets the respective statutory conditions for each of these activities. Pursuant to the Request, this letter primarily addresses the eligibility of Horicon Bank for an exemption for lending activities under Wis. Stat. § 292.21(1)(a).

LENDING ACTIVITIES

Under Wis. Stat. § 292.21(1)(a), a "lender" is not deemed to possess or control a hazardous substance or cause the discharge of a hazardous substance as a result of engaging in "lending activities," provided that:

- The lender does not physically cause a discharge; and
- The lender does not through tortious conduct with respect to lending activities cause a discharge of a hazardous substance or exacerbate an existing discharge of a hazardous substance.

Under Wis. Stat. § 292.01(8), "lender" means a bank, credit union, savings bank, savings and loan association, mortgage banker or similar financial institution, the primary business of which is to engage in lending activities or an insurance company, pension fund or government agency engaged in secured lending.

Under Wis. Stat. § 292.01(9), "lending activities" means advancing funds or credit to and collecting funds from another person; entering into security agreements, including executing mortgages, liens, factoring agreements, accounts receivable financing arrangements, conditional sales, sale and leaseback arrangements and installment sales contracts; conducting inspections of or monitoring a borrower's business and collateral; providing financial assistance; restructuring or renegotiating the terms of a loan obligation; requiring payment of additional interest; extending the payment period of a loan obligation; initiating foreclosure or other proceedings to enforce a security interest in property before obtaining title; requesting and obtaining the appointment of a receiver; and making decisions related to extending or refusing to extend credit.

DETERMINATIONS

Based on the information provided with the Request, and with respect to the Property, the DNR has determined that Horicon Bank is exempt under Wis. Stat. § 292.21(1)(a) as a lender conducting lending activities, provided that the lender does not otherwise possess, control or have title to the Property.

If Horicon Bank continues to meet the conditions of the lender liability exemption that are listed in Wis. Stat. § 292.21, Horicon Bank will not be held responsible under Wis. Stat. § 292.11 for the hazardous substance discharge (BRRTS #03-23-002587).

Any specific determinations made by the DNR in this letter are based specifically on information made available to the DNR as part of the Request and are subject to change if other information arises. In the event that the case is reopened, the lender liability exemption will continue to apply, provided that Horicon Bank continues to meet all conditions of the lender liability exemption under Wis. Stat. § 292.21(1)(a). The lender liability exemption determination applies to Horicon Bank and is not transferable to any other party. The DNR makes no determination for other persons or entities concerning the presence or absence of hazardous substances on the Property.

In the future, if Horicon Bank considers acquiring the Property through enforcement of a security interest, Horicon Bank should be aware that separate conditions apply for lenders that acquire properties through foreclosures or deeds in lieu of foreclosure. The lender must satisfy all applicable conditions identified in Wis. Stat. § 292.21 to qualify for the lender liability exemption.

FEDERAL LIABILITY INFORMATION

To determine what specific actions would satisfy the federal lender liability requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), contact either Thomas Krueger at (312) 886-0562 or krueger.thomas@epa.gov, or Larry Kyte at (312) 886-4245 or kyte.larry@epa.gov at the U.S. EPA. The mailing address is U.S. EPA REGION 5, Office of Regional Counsel (C-14J), 77 W. Jackson Blvd., Chicago, IL 60604-3590. The U.S. EPA should be able to provide you with guidance on whether your current and proposed actions concerning the Property are consistent with federal CERCLA requirements.

CLOSING

This letter, site and case-related information and DNR contacts can be found online in the Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web (BOTW); go to dnr.wi.gov and search "BOTW." Use the BRRTS # found at the top of this letter. The site can also be found on the map view, Remediation and Redevelopment Sites Map (RRSM) by searching "RRSM."

If you have any questions or concerns regarding this letter, please contact Ethan Keller at (920) 718-0063 or ethan.keller@wisconsin.gov.

Sincerely,

Karen L. Campoli
Team Supervisor
Northeast Region
Remediation and Redevelopment Program

Attachments:

- Figure 2, Site Plan and Site Assessment Sample Location, 04/08/1999, Fischer
- Figure 3, Site Layout Showing Excavation Limits and Benzene SSRCL DC (Ingestion), August 2005, Environmental Compliance Consultant Inc.

cc:
Heather Hadel, HSM Investments LLC – terbeesttrucking@outlook.com
Ethan Keller, DNR, Remediation and Redevelopment Program – ethan,keller@wisconsin.gov
Molly Schmidt, DNR, Remediation and Redevelopment Program – mollye.schmidt@wisconsin.gov

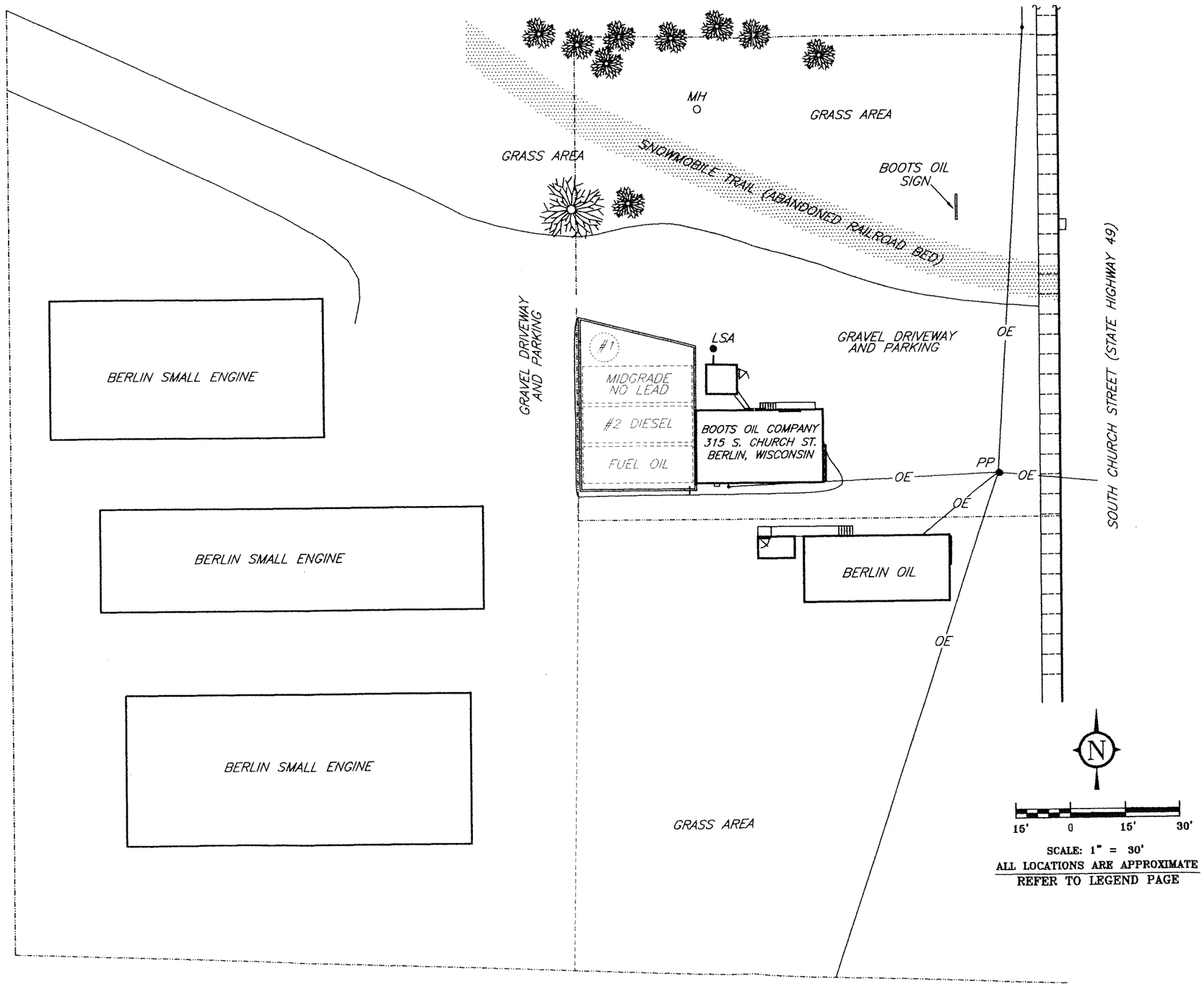


FIGURE 2: SITE PLAN AND SITE ASSESSMENT SAMPLE LOCATION

BOOTS OIL COMPANY
BERLIN, WISCONSIN
SITE INVESTIGATION

96164.002

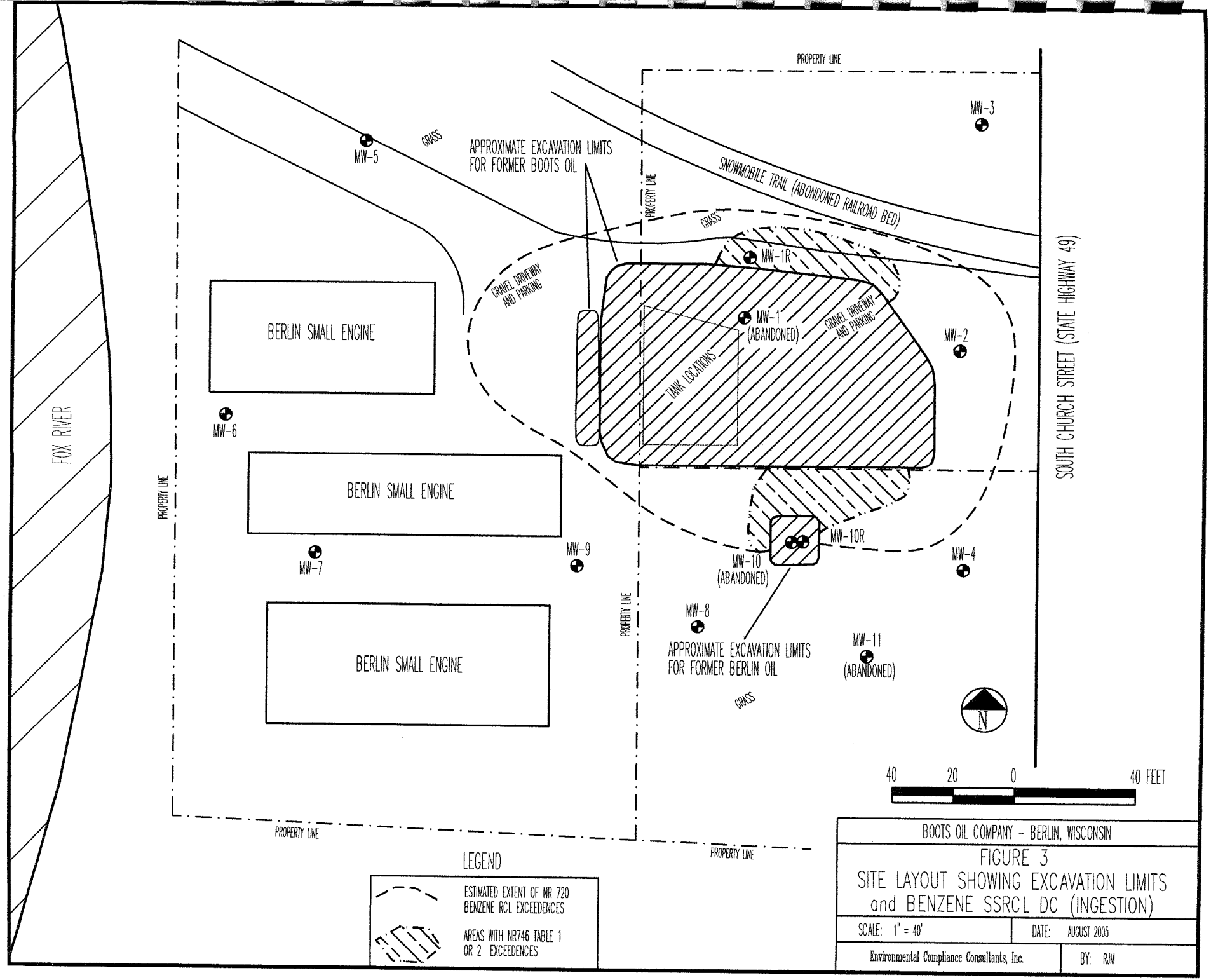
DRAWN BY: KP
DATE: 4/6/99
ID#: 96-PLOT2

REVIEWED BY: [illegible]
APPROVED BY: MC

FISCHER

RIPON OFFICE P.O. BOX 552
RIPON, WISCONSIN 54971

KAUKAUNA OFFICE P.O. BOX 127
KAUKAUNA, WISCONSIN 54130



BOOTS OIL COMPANY - BERLIN, WISCONSIN

FIGURE 3
SITE LAYOUT SHOWING EXCAVATION LIMITS
and BENZENE SSRCL DC (INGESTION)

SCALE: 1" = 40'	DATE: AUGUST 2005
Environmental Compliance Consultants, Inc.	BY: RJM