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State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary
Ronald W. Kazmierczak, Regional Director

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NER WASTE

January 24, 2001

Mr. Craig Dousharm
Mercury Marine
W 6250 Pioneer Road
P.O. Box 1939
Fond du Lac, WI 54936-1939

Mr. David Patek
City of Oshkosh
215 Church Avenue
P.O. Box 1130
Oshkosh, WI 54902-1130

SUBJECT: General Liability Clarification for Former Entrance Road to the Mercury Marine Oshkosh Landfill in the City of Oshkosh located on South Oakwood Road, Oshkosh
WDNR BRRTS ID # 07-71-262043

Dear Mr. Dousharm & Mr. Patek:

On January 8, 2001, Mercury Marine and the City of Oshkosh requested a liability clarification from the Wisconsin Department of Natural Resources (WDNR) for the property which consists of the former entrance road between State Highway 91and the Mercury Marine Landfill (formerly Universal Foundry Landfill) located near South Oakwood Road in the City of Oshkosh. This roadway property consists of tax parcels #91329103000, #91329103003 and #91329103005, which will be referred to in this letter as "the Property" (see attached Figure 1 as provided by the City). The Property is currently owned by the City of Oshkosh. This letter will clarify the responsibility of various parties for the cleanup of the Property under state regulations.

Background

In 1985, Mercury Marine purchased the former Universal Foundry Landfill. Mercury Marine has never used this property as a landfill. Prior to the construction of South Oakwood Road, the landfill property was accessed via the Property. This entrance road was constructed of foundry sand waste and is the subject of this liability clarification letter.

Mercury Marine has been working with Jon Brand, WDNR Solid Waste Specialist, to remove all foundry sand waste from the Property and portions of the landfill and use it in Wisconsin Department of Transportation (WDOT) construction projects. In October 2000, WDOT completed the removal of approximately 45,000 cubic yards of foundry sand from the Property and southeastern area of landfill. Post-removal confirmation samples were taken of native soils as WDNR requested. Documentation of this work is detailed in correspondence dated December 30, 2000 from Mercury Marine. Visual observation and data evaluation indicate that all foundry sand wastes have been removed from the Property.

Clarifications

Given the DNR's understanding that all the known foundry sand waste has been removed from the Property, it does not appear that any additional environmental action would be necessary on the Property related to foundry sand waste disposal. Furthermore, as you may know, the Hazardous Substance Spills statute (s. 292.11, Wis. Stats.) imposes potential liability on the owner of property where contamination is present based on possession and control of the contaminants. In this case however, the evidence presented to the DNR regarding the Property indicates that there are no releases of hazardous substances from the foundry waste in the soil or groundwater on the Property and as a result, current or future owners would have no liability under the Hazardous Substances Spill law to take further actions to investigate or cleanup the Property. The current or future owners of the Property would not need DNR approval if the Property is developed and there is no indication that any environmental liability would be incurred by Mercury Marine, the City of Oshkosh, or any future owners regarding the waste foundry sand that was removed from this Property.

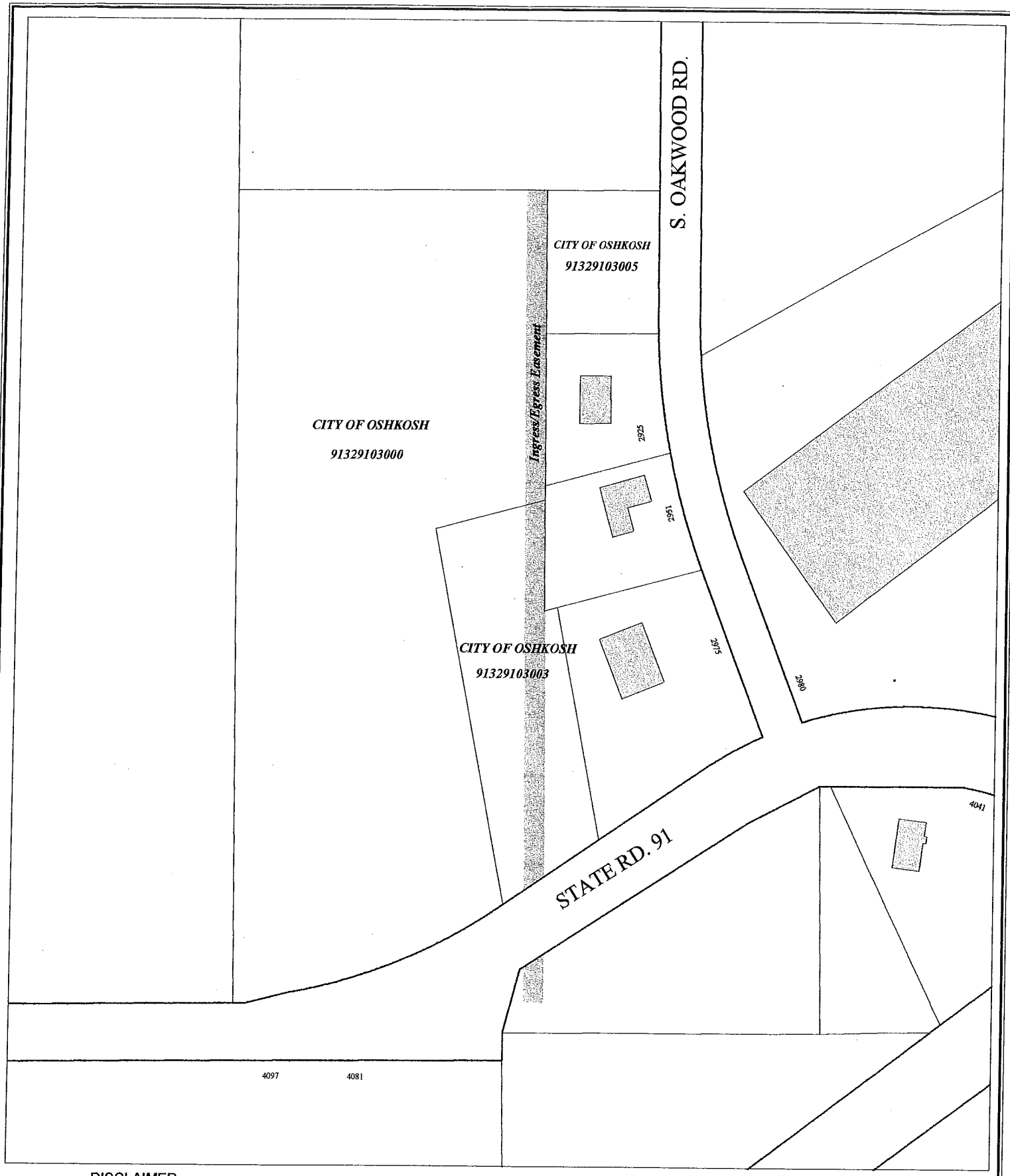
Please understand that this determination applies only to the foundry sand waste which was removed from the Property. The property owner will be responsible for any discharge of a hazardous substance on the Property that they may cause on the property. Also, this determination is regarding only the Property (the former entrance road) and does not apply to the actual foundry sand landfill.

I hope this letter provides you with the level of comfort you need to proceed with the redevelopment of the Property. The Department appreciates the City's and Mercury Marine's efforts to beneficially reuse the foundry sand and improve their property for future redevelopment. If you have any questions please contact Kathy Sylvester at (920) 424-0399.

Sincerely,

Bruce G. Urben, Supervisor
Northeast Region
Remediation & Redevelopment Program

cc: Case File – OSH (Sylvester)
Jon Brand – NER
Kathy Erdmann – NER
Alan Haase, Mercury Marine, P.O. Box 1939, Fond du Lac, WI 54936-1939
Jackson Kinney, City of Oshkosh, P.O. Box 1130, Oshkosh, WI 54902-1130



DISCLAIMER

This map is neither a legally recorded map nor a survey and it is not intended to be used as one. This drawing is a compilation of records, data and information located in various city, county and state offices and other sources affecting the area shown and it is to be used for reference purposes only. The City of Oshkosh is not responsible for any inaccuracies herein contained. If discrepencies are found, please contact the City of Oshkosh.

Parcel Ownership and Identification
Ingress/Egress Easement

City of Oshkosh Wisconsin
Community Development

1" = 200'

OSHKOSH
ON THE WATER

Created by - MT

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01/17/2001