

New York State Department of Environmental Conservation
Division of Environmental Enforcement
Bureau of Superfund and Brownfield Restoration, 14th Floor
625 Broadway, Albany, New York 12233-5550
Phone: (518) 402-9512 • **FAX:** (518) 402-9019
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VIA REGULAR MAIL

16 May 2006

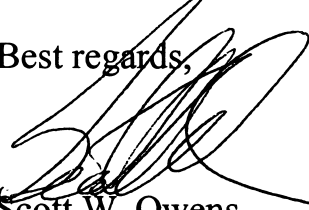
Lisa M. Bromberg, Esq.
Porzio, Bromberg & Newman, P.C.
100 Southgate Parkway
P.O. Box 1997
Morristown, New Jersey 07962-1997

Re: West Mahopac, Access Agreement
1 Secor Road, Putnam County

Dear Ms. Bromberg:

Please find the enclosed red-lined draft access agreement and certificates of insurance. The Department reserves all rights with regard to the enclosed red-lined draft access agreement and certificates of insurance as they only serve for negotiation purposes. When you return to your office on Monday 22 May 2006, please contact me (518-402-9525) to further discuss the enclosed instruments.

Best regards,



Scott W. Owens
Senior Attorney

SWO:231191

New York State Department of Environmental Conservation

AGREEMENT
for
TEMPORARY USE AND OCCUPANCY OF PRIVATE PROPERTY
FOR PURPOSE PURSUANT TO ENVIRONMENTAL CONSERVATION LAW
ARTICLE 27

This agreement (hereinafter "Agreement") made this ____ day of _____, _____ between Mr. Alan Woermann and Lakeland Manufacturing Corporation, hereinafter referred to as "owners", and the COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR THE PEOPLE OF THE STATE OF NEW YORK, hereinafter referred to as "the Department," pursuant to the above cited law,

WITNESSETH:

Property location in: Putnam County
Town of Putnam Valley
230 Wood Street
Tax Map Number 74.11 – 2 – 15 (hereinafter "the 230 Wood Street Property")

and

Putnam County
Town of Putnam Valley
1 Secor Road
Tax Map Number 74.11 – 2 – 15 (hereinafter "the 1 Secor Road Property") (1 Secor Road and 230 Wood Street shall hereinafter be collectively referred to as "the Properties")

WHEREAS, the owners represent as follows:

(a) That the owners own the Properties described above and on the ~~attached~~ sketch map attached hereto as Exhibit A, or some right, title or interest therein.

(b) That said Properties are free and clear of all leases, tenancies, easements, contracts of sale, (except) – a portion of the 1 Secor Road Property is the subject of a tenancy by Salem Transmission.

WHEREAS, the Properties were, or will be, entered upon and occupied by the Department, its representatives, employees, agents or contractors, for the performance of work thereon for one or more of the purposes set forth in Environmental Conservation Law Article 27; ~~and solely and particularly~~ including but not limited to as follows: (a) for the purpose of obtaining environmental samples from or of the septic tank, indoor air, and subslab air at Salem Transmission on the 1 Secor Road Property and (b) accessing neighboring property with truck mounted drilling trucks and support equipment through the 230 Wood Street Property.

NOW THEREFORE, the parties hereto agree as follows:

1. As consideration for this Agreement, the Department will pay to owner one dollar (\$1.00), payment of which is waived.

2. The owner will permit entry on and use of the Properties by the Department, its agents, employees, contractors and representatives solely for the sampling activities set forth above from the effective date until ~~June~~ December 30th, 2006.

Such right of entry includes the right to:

- a) operate a work area on the 1 Secor Road Property;
- b) remove therefrom any material excavated on the 1 Secor Road Property;
- c) placement of fencing to secure the work area on the 1 Secor Road Property;
- d) conduct air, water, or soil samples or analyses on the 1 Secor Road Property;
- e) remove air, water, or soil samples on the 1 Secor Road Property;
- f) carry on any activity necessary for the completion of installing monitoring wells and collecting samples together with the rights at all times during the duration of this Agreement of ingress, egress and regress by the State of New York, its employees, agents, contractors and/or representatives for the purposes connected with the above work on the 1 Secor Road Property;

3. The rights set forth above shall be conditioned as follows:

- a) ~~The Department shall provide written notice to owners, at least ten (10) working days prior to each entry upon the Properties. This~~ For access to the Properties or access to property adjacent to the site for the purpose of investigating, sampling or remediation, a minimum of ten days written notice ~~shall include a detailed description of~~ will be given to the property owners of the Department's intent to enter onto the property. If the Commissioner makes a written determination that the ten day notice will not allow the Department to protect the environment or public health, two days notice will be sufficient. The notice must also describe the work to be conducted, ~~the number of~~

cause to be removed all IDW from the Properties within ~~twenty four (24) hours of its generation~~ a reasonable time;

h) The Department shall ensure that no equipment or materials are stored on the Properties at any time other than when installation and testing activities are being conducted and then ~~only for the duration of such activities~~;

~~i)~~ upon the completion of all activities, the Department shall remove or cause to be removed all equipment or materials;

i) Any well, boring, probe hole or piezometer which is installed by the Department or its contractor will be closed and sealed by the Department in compliance with applicable procedures or rules when it is no longer needed.

~~4. The Department agrees to hold owners harmless, and defend and indemnify owners against any and all claims for personal injury or property damage arising from or resulting by the negligence of the Department or the Department's contractor in performing the activities set forth herein. The indemnity provisions of this Paragraph shall not apply to claims arising from or resulting by the negligence or recklessness of owners. This indemnification shall survive the termination of this Agreement.~~

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4. The Department covenants that all work to be performed hereunder will be done at no cost or expense to the owner; provided, however, this does not constitute a waiver of any rights the Department may have to recover such cost from any responsible party, pursuant to relevant provisions of ~~statutory or common~~ state and/or federal law.

65. Prior to the termination of this Agreement, the Department, at its cost and expense, will restore the Properties to their former condition, by reseeding and revegetating but not including replacement of large trees. No trees shall be removed without prior consultation with the owners, a commitment to replace the subject trees if required by the owners, and the owners' permission to remove any trees which permission shall not be unreasonably withheld.

~~7~~The 6. The Department's contractor shall provide and keep in force the following ~~i~~Certificates of Insurance set forth in Exhibit B to this Agreement for the activities conducted ~~on~~the Properties:

a) ~~Worker's Compensation and Employer's Liability Insurance in accordance with any law, rule, regulation or ordinance that may be applicable to all of its employees, agents and/or subcontractors engaged in performing the work set forth herein~~

b) ~~Comprehensive General Liability and Automobile Liability Insurance against any claims for bodily injury, death, or property damage occurring in or about the Property and in connection~~

~~with the activities set forth herein with limits of not less than \$1,000,000 for bodily injury or death to any one person and aggregate limits of \$2,000,000 for bodily injury or death to any number of persons and property damage with limits of not less than \$1,000,000;~~

~~c) — Umbrella Insurance not less than \$1,000,000 and Pollution Liability Insurance of not less than \$1,000,000~~

~~At least ten (10) days prior to entering upon the Properties for the purpose of performing the activities set forth herein the Department's contractor shall provide the attorney for the owners, as identified below, with Certificates of Insurance which will name owners as named and additional insureds on the Properties. Neither the Department nor the Department's contractor shall continue to perform any activities at the Properties until said Certificates of Insurance are provided to the attorney for the owners, nor will the Department or the Department's contractor continue any such activities in the event any required insurance described in Exhibit B is terminated or materially changed.~~

—— The Department will cooperate and will cause its contractor to cooperate with the owners in pursuing with the insurer any claim that may arise. Despite the above, it shall be the sole and independent obligation of the Department and/or its contractor to pursue any claims that may relate to this matter against this insurer. Owners shall have no separate or independent obligation to pursue the insurer in regard to any claims that may arise from this Agreement.

8.—— 7. All notices desired or required to be given hereunder pursuant to this access agreement shall be in writing and shall be given: (i) next day express courier-, or (ii) by certified mail, return receipt requested, postage prepaid, or (iii) by facsimile (with a copy sent by U.S. mail or next day courier), addressed as follows:

If to Owners:

Lakeland Manufacturing Corporation
C/o Alan Woermann
11 Lake Secor Road
West Mahopac, NY 10541

Mr. and Mrs. Alan Woerman
230 Wood Street
West Mahopac, NY 10541

With a copy to:

Lisa M. Bromberg, Esq. (attorney for owners)
Porzio, Bromberg & Newman, P.C.
100 Southgate Parkway
Morristown, New Jersey 07962-1997

Or to such other or additional address or addresses as any party shall have specified by notice in writing to the other in accordance with this paragraph.

a. The right of access conferred by this Agreement shall not be construed as any form of tenancy interest, ownership interest, control of the Properties or any type of real estate interest.

b. This Agreement is not intended as an admission of liability as against or by any party hereto, nor is it admissible in any preceding except in connection with the enforcement of its terms.

c. Each of the signatories to this Agreement hereby confirms that he or she is authorized by the respective entities on whose behalf they are signing to bind such entity to the terms of this Agreement.

d. This Agreement shall become effective upon the date of execution hereof by the last party to sign the Agreement.

THIS AGREEMENT shall inure to the benefit of and bind the distributees, legal representatives, successors and assigns of the parties.

~~In witness whereof, this Agreement has been executed on the day and date first above written.~~

Lakeland Manufacturing Corporation

Owner

By

Its

Alan and Diane Woermann

Owner

New York State Department of
Environmental Conservation

By _____

Its _____