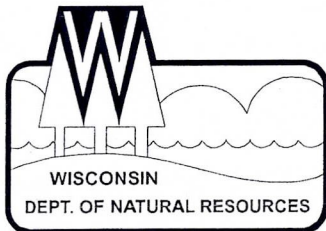


AC 14 7-19-07 File COPY



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary
Ronald W. Kazmierczak, Regional Director

Northeast Region Headquarters
2984 Shawano Ave., P.O. Box 10448
Green Bay, Wisconsin 54307-0448
Telephone 920-662-5100
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July 19, 2007

Casetrack ID # 2007-NEEE-042
BRTS # 02-20-202459
Permit # WI-0046566-4

MR RANDY MUELLER
EXFOLIATE PROPERTIES LLC
201 NORTH MAIN STREET
OAKFIELD, WI 53065

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

**SUBJECT: NOTICE OF VIOLATION
ENFORCEMENT CONFERENCE**

Dear Mr. Mueller:

This notice is to advise you that the Department of Natural Resources (Department) has reason to believe that Exfoliate Properties, LLC (Exfoliate) is in violation of its Wisconsin Pollutant Discharge Elimination System (WPDES) permit, number WI-0046566-4 (the Permit) effective December 5, 2006, and Injection Approval for Remediation dated December 5, 2006 (the Approval), at property Exfoliate owns located at 201 North Main Street, Oakfield, Fond du Lac County, Wisconsin (the Site).

The Department alleges the following specific violations:

- 1. Section A. of the Permit, requires that Exfoliate conduct monitoring as outlined in the injection approval letter.**
- 2. Condition C. 8. of the Approval requires that after the injection, Exfoliate conduct quarterly groundwater monitoring for a period of one year from injection.**

On November 30, 2006, Exfoliate requested approval to inject sodium permanganate and edible oil substrate (groundwater remediation chemicals) at the Site.

On December 5, 2006, the Department issued the Permit and Approval to Exfoliate allowing it to inject groundwater remediation chemicals at the Site. The Approval was issued under the authority of s. NR 815.05, Wisconsin Administrative Code. Exfoliate did not exercise its appeal rights and contest the conditions of the Approval as allowed under s. 227, Wisconsin Statutes. The Permit and Approval both require monitoring of the on-site groundwater monitoring wells during injection hourly for the first day and then twice daily for each day of injection. Condition C. 8. of the Approval requires that after the injection, Exfoliate conduct quarterly groundwater monitoring for a period of one year from injection. Exfoliate has failed to conduct groundwater monitoring as required.

On December 19, 2006, The Environmental Management Company, LLC (TEMCO) conducted injection of groundwater remediation chemicals at the Site.

On May 15, 2007, the Department contacted TEMCO by phone to discuss the Site. TEMCO advised that no groundwater monitoring has been conducted since injection of the groundwater remediation chemicals at the Site.

On May 16, 2007, the Department contacted Exfoliate to discuss the Site. Exfoliate stated that it did not conduct the groundwater monitoring because TEMCO provided an estimate of \$10,000 per quarter for monitoring and Exfoliate could not afford monitoring.

On May 17, 2007, the Department sent an email to Exfoliate regarding the phone conversation of May 16, 2007, and further stressed the need to conduct monitoring as required. Further, the email advised of a pending notice of noncompliance (NON).

On May 23, 2007, the Department issued a NON to Exfoliate for failure to conduct groundwater monitoring as agreed. Further, the NON requested a response within 14 days. Exfoliate failed to respond to the NON.

On June 13, 2007, the Department contacted Exfoliate by phone to inquire about groundwater monitoring at the Site. Exfoliate stated it contacted the Department of Commerce to inquire about additional grant money, complained about Department consistency and stated that it was not going to a bank for money. Exfoliate stated that it would conduct monitoring when it could afford to but that it could be a while. The Department advised it would be escalating enforcement actions.

On June 13, 2007, the Department sent an email to Exfoliate advising that the time period for monitoring after injection is critical and it should move forward with the required monitoring.

The Department believes that Exfoliate has failed to collect and analyze groundwater monitoring samples as required by the Permit and Approval. The Department therefore alleges Exfoliate to be in violation of the Permit and Approval and therefore provisions of ch. 283 and ch. 281, Wis. Stats.

Please be advised that the Department is authorized to seek injunctive or other appropriate relief for violations of pollution discharge elimination laws, including forfeitures of no more than \$10,000 per day of violation, pursuant to s. 283.91(2), Wis. Stats. Any person who willfully or negligently violates laws relating to pollution discharge elimination may be fined not more than \$25,000 per day of violation or imprisoned for not more than 6 months or both, pursuant to s. 283.91(3), Wis. Stats. Each day of violation is considered a separate offense.

Section 281.17(8), Wis. Stats. empowers the Department to establish, administer, and maintain a safe drinking water program no less stringent than the Federal Safe Drinking Water Act of 1974. Failure to comply with rules promulgated under this authority, i.e. violations of ch. NR 812, Wis. Adm. Code, provides for forfeitures of not more than \$5,000.00 for each violation under s. 281.98, Wis. Stats. Each day of violation is considered a separate offense.

The Department is very concerned about the contamination of the Site, the length of time that has elapsed since the injection and your failure to monitor groundwater as required. **Please plan to attend an enforcement conference on Wednesday, August 8, 2007, at 10:00 a.m. The meeting will be held at the Department of Natural Resources Oshkosh Service Center, located at 625 E. County Road Y, Suite 700, in Oshkosh.** A map is enclosed for your convenience. Failure to attend the meeting will result in the Department considering further enforcement action. **You should contact me immediately if you are unable to attend the conference on this date.** Please be prepared to discuss what action will be taken to commence the required groundwater monitoring at the Site and to set a reasonable time schedule that will be adhered to.

If you have any technical questions about your Site, contact Department Hydrogeologist Ms. Jennie Easterly, at (920) 303-5447. If you have any questions concerning this notice, please contact me at (920) 662-5409.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karl P. Roovers', with a long horizontal flourish extending to the right.

Karl P. Roovers
Environmental Enforcement Specialist

Enclosure

cc: J. Easterly – Oshkosh
D. Hansen / B. Urben – NER
J. Renville – LS/5

DEPARTMENT OF NATURAL RESOURCES
OSHKOSH SERVICE CENTER
625 East County Road Y, Suite 700
Oshkosh, WI

