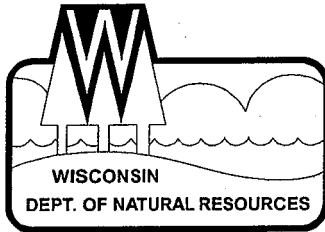


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State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Matthew J. Frank, 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  
FAX 920-662-5413  
TTY 920-662-5112

November 7, 2008

Casetrack ID # 2007-NEEE-042

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

BRRTS # 02-20-202459  
Permit # WI-0046566-4

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

**SUBJECT: NOTICE OF VIOLATION  
RESPONSE REQUESTED**

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 Wisconsin's hazardous substance spill law by not addressing a known release of a hazardous substance to the environment at its property located at 201 North Main Street, Oakfield, Fond du Lac County, Wisconsin (the Site).

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.

On July 19, 2007, the Department issued an NOV to Exfoliate for failure to follow the terms of its Wisconsin Pollutant Discharge Elimination System (WPDES) permit, number WI-0046566-4, which requires Exfoliate to monitor its site after treatment.

On August 8, 2007, the Department met with Exfoliate in an enforcement conference to discuss the alleged violations. On August 13, 2008, the Department sent a summary of the conference to Exfoliate.

On August 27, 2007, the Department received a letter from Exfoliate with its commitment to monitor the Site.

On October 4, 2007, the Department contacted Exfoliate by phone to inquire about the monitoring. Exfoliate stated that the sampling took place September 20, 2007 and it would forward the results when received.

On January 14, 2008, the Department sent an Email to Exfoliate requesting results from the September and December 2007 monitoring events.

On February 13, 2008, TEMCO sent an email to the Department advising that groundwater monitoring results for both December 2007 and September 2008 (dates are as in the email) will be forwarded later in the day.

On February 13, 2008, Exfoliate sent groundwater monitoring results to the Department for a round of sampling conducted September 20, 2007 along with historic data. The monitoring results show numerous volatile organic compounds above the enforcement standard. No results were submitted for a quarterly monitoring round that was to have taken place in December 2007.

On July 21, 2008, the Department sent an email to Exfoliate requesting an update of the status of groundwater monitoring at the Site. Exfoliate failed to respond to this request.

On October 30, 2008, 2:46 p.m., the Department and Exfoliate discussed the Site by telephone. At that time Exfoliate advised that it is financially unable to afford continued remediation of the Site.

On November 5, 1998, the Department sent Exfoliate a letter advising of its responsibility to investigate and restore the environment at the Site under Section 292.11, Wisconsin Statutes. The letter requested that Exfoliate hire an environmental consultant and submit a workplan and schedule for conducting an investigation. All actions taken were required to comply with s. 292.11(3), Wis. Stats. which states:

**A person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands, or waters of this state.**

Section 292.11(3), Wis. Stats., requires that a person who possesses or controls a hazardous substance which is discharged shall take the actions necessary to restore the environment to the extent practicable. As Exfoliate controls the hazardous substance which has been discharged, the Department construes Exfoliate's failure to complete an investigation and cleanup as failure to take appropriate action. Therefore, the Department alleges that Exfoliate is in violation of s. 292.11(3), Wis. Stats.

The Department is very concerned about the contamination of the Site, the length of time that has elapsed since the contamination was discovered and Exfoliate's lack of appropriate response. The Department is extending to Exfoliate the opportunity to describe the circumstances surrounding the alleged violations. **By no later than Monday, November 24, 2008, please provide to me** at the address in the letterhead, your written response describing the circumstances surrounding the alleged violation. More specifically, provide results of groundwater monitoring as required and a schedule that will be adhered to.

Please be advised that violations of s. 292.11(3), Wis. Stats., are enforceable under s. 292.99, Wis. Stats. Section 292.99, Wis. Stats., provides for forfeitures of not more than \$5,000 for each violation with each day of continuing violation being a separate offense.

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,



Karl P. Roovers  
Environmental Enforcement Specialist

cc: J. Easterly – Oshkosh  
J. Renville – LC/8  
Jeff Hosler, TEMCO, PO Box 856, Cedarburg, WI 53012