

From: Kylii Grambow <kgrambow@kellybrandlaw.com>
Sent: Monday, January 23, 2023 8:45 AM
To: Chronert, Roxanne N - DNR; Schultz, Josie M - DNR
Cc: Benjamin Brand; Catherine Drayna
Subject: Environmental Remediation of 1233 S. Military Avenue, Green Bay, Brown County, Wisconsin
Attachments: S-01-23-23 Letter to WDNR.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

**CAUTION: This email originated from outside the organization.
Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Dear Ms. Chronert and Ms. Schultz:

Attached, please find a letter from Attorney Brand in the above-captioned matter. Should you have any questions, please advise. Thank you.

Sincerely,

Kylii D. Grambow
kgrambow@kellybrandlaw.com
(920) 230-2100



Kelly & Brand, Attorneys at Law, LLC
303 Pearl Avenue, Suite A
P.O. Box 384
Oshkosh, WI 54903-0384



The information contained in this email is confidential (and may be privileged) and is for the use only of the intended recipient. If you are not the intended recipient, any disclosure, copying, distribution, or other use of this

information is strictly prohibited. If you have received this communication in error, please notify us immediately and delete and destroy this message and any copies immediately.

Pursuant to Circular 230 promulgated by the Internal Revenue Service, if this email, or any attachment hereto, contains advice concerning any federal tax issue or submission, please be advised that it was not intended or written to be used, and that it cannot be used, for the purpose of avoiding federal tax penalties unless otherwise expressly indicated.

Due to the volume of spam we receive, we use strong filters which sometimes block legitimate email. Please do not email time-sensitive instructions without also confirming receipt. Thank you.

KELLY & BRAND

ATTORNEYS AT LAW, LLC

John M. Kelly
Benjamin D. Brand
Catherine A. Drayna

303 Pearl Avenue, Suite A
P.O. Box 384
Oshkosh, WI 54903-0384
920-230-2100

January 23, 2023

Sent Via Email Only

Ms. Roxanne Chronert,
Wisconsin Department of Natural Resources
1984 Shawano Avenue
Green Bay, WI 54313
Roxanne.chronert@wisconsin.gov

Ms. Josie Schultz,
Wisconsin Department of Natural Resources
1984 Shawano Avenue
Green Bay, WI 54313
Josie.schultz@wisconsin.gov

Re: Environmental Remediation of 1233 S. Military Avenue, Green Bay, Brown
County, Wisconsin

Dear Ms. Chronert and Ms. Schultz:

Our client, Innovative Properties Group, LLC, is in receipt of Ms. Schultz's email dated January 18, 2023, dealing with the Dry Clean Environmental Response Fund (DERF) bidding requirements that may impact our client's eligibility for reimbursement of amounts it has expended to date to remediate vapor concentration levels at the subject property. WDNR's recent emphasis on DERF funding comes as a surprise to our client, who was told in no uncertain terms by WDNR previously that DERF was defunct and no funds would be available, which position was reiterated by letter from the WDNR dated October 27, 2020. Those sentiments were also echoed in our recent enforcement conference in the above matters on November 1, 2022. Our client is puzzled by the sudden about-face on this issue by WDNR.

A bit of history is necessary in order to fully appreciate our client's concerns with WDNR's handling of this remediation project to date. Our client originally purchased the real property at issue in 2015. At that time, our client had no contact whatsoever with WDNR. It was not until 2019, four years later, that WDNR began contacting him with immediate demands to remediate the vapor concentration levels at the property which, based on WDNR's silence up to that point, our client verily believed had long been resolved. By 2019, DERF funding was virtually obsolete. Had these issues been brought to our client's attention when he bought the property back in 2015 (when DERF was a viable fund) much of the cost and time constraints our client now faces might well have been alleviated. Could WDNR kindly explain why it took some four years in order to bring these remediation issues to our client's attention?

January 23, 2023

Page 2

Our client is also frustrated to hear that the work that was performed at the site by Terracon to date apparently required prior cost approval from WDNR in order to be covered by DERF. As you will recall, WDNR placed very strict time constraints on our client to commence immediate remediation work following the November 1, 2022, enforcement conference. Those time constraints would have been even stricter had we not negotiated lengthened deadlines, albeit not lengthened by much. The strict time constraints imposed by WDNR, under the threat of an enforcement action and the imposition of the daily fines against our client, made it impossible for our client to put the project out to various contractors for bids and/or obtain prior cost approvals from WDNR. The situation WDNR created for our client was one requiring immediate action. In a good faith effort to operate under those deadlines, our client retained Terracon to immediately begin the work necessary to comply with WDNR's demands. To learn that series of events now has somehow disqualified our client from potential reimbursement from DERF is unacceptable to our client.

Please advise as soon as possible whether WDNR would be willing to provide retroactive approval of the costs associated with the work that was done to date by Terracon in order to maintain our client's DERF eligibility in the event funds become available. We would be happy to provide WDNR with any necessary documentation in order to do so. If WDNR is not willing to accommodate our client given the above set of circumstances, he will have no choice but to pursue all legal remedies available to him.

We look forward to hearing from you. Thank you. Should you have any questions, please advise.

Best,

KELLY & BRAND, ATTORNEYS AT LAW, LLC

/s/ Electronically Signed by Benjamin D. Brand

Benjamin D. Brand

bbrand@kellybrandlaw.com

BDB:kg

cc: Client (via email)