

**CONSENT AGREEMENT REGARDING CH. NR 169 VARIANCES**

This Agreement is made by and between Ralph and Harleene Hoffman (d/b/a Valet Cleaners of Shorewood and Hoffman Valet Cleaners, Inc. ("Hoffman")), and the State of Wisconsin Department of Natural Resources ("DNR").

**RECITALS**

**WHEREAS**, Hoffman received a responsible party ("RP") letter dated June 13, 2002 from DNR regarding contamination discovered on the property located at 7215 West Center Street, Wauwatosa, Wisconsin (the "Site"); and

**WHEREAS**, Hoffman is eligible for potential reimbursement of Site investigation and cleanup costs under the Dry Cleaner Environmental Response Fund program ("DERF") found in Wis. Stats § 292.65, ch. NR 700 Rules Series and ch. NR 169, Wis. Admin. Code; and

**WHEREAS**, DNR has to date reimbursed Hoffman \$29,308.95 for eligible costs under DERF; and

**WHEREAS**, Hoffman also pursued an insurance claim with St. Paul Fire and Casualty Company for payments of past and future defense and indemnity costs related to the Site cleanup, which resulted in a Confidential Settlement Agreement and Release in December, 2012;

**WHEREAS**, On January 3, 2013, Hoffman submitted a request for variance from certain provisions of ch. NR 169, Wis. Admin. Code, related to the allocation and use of insurance settlement proceeds and future participation in DERF;

**WHEREAS**, DNR has authority, pursuant to § NR 169.29 to grant variances it determines are essential to affect departmental objectives and are in the best interest of the State of Wisconsin;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants contained herein, DNR agrees to grant a variance upon the following terms and conditions:

**AGREEMENT**

1. Consultant Selection. Hoffman may have a variance from § NR 169.23(2)(b), and use the services of Enviroforensics, Inc, as its consultant to complete the Site investigation. However, Hoffman must comply with the consultant selection requirements found in §§ NR 169.23(2)(c) and (2)(d).

2. Compliance with § 292.65/Variance for Ineligible Costs. DNR has reviewed the terms of the Hoffman settlement with St. Paul and understands that a portion of the proceeds of that settlement have been used to pay for DERF ineligible work done by the Hoffman's attorneys and its consultant, Enviroforensics. DNR agrees that such costs were likely necessary to obtaining the insurance settlement and, to the extent a variance is required, agrees to grant a variance to Hoffman to use the insurance proceeds for payment of such costs. After payment of the DERF ineligible costs, and other out-of-pocket costs incurred by the Hoffmans, the net settlement proceeds total \$23,690.07 (the "Net Settlement Proceeds").

3. Use of Net Settlement Proceeds. Hoffman acknowledges that if the Site investigation and cleanup were complete and the Site closed and Hoffman had no other costs related to the site, DNR would have a claim to the Net Settlement Proceeds because DERF has reimbursed Hoffman for eligible costs at the site. In light of the foregoing, DNR agrees to grant a variance allowing Hoffman to use the Net Settlement Proceeds under the following conditions:

- a. Hoffman shall promptly implement the work necessary to investigate and remediate the Site and may use the Net Settlement Proceeds to fund such work.
- b. Hoffman may submit a DERF reimbursement claim when the Net Settlement Proceeds have been expended, or a discrete phase of the work is completed.

- c. Notwithstanding sub b, Hoffman shall continue to fund necessary work at the Site pending reimbursement from DERF, provided that the Hoffmans out of pocket costs (including the Net Settlement Proceeds) need not exceed \$50,000.00 of DERF eligible expenses.
- d. At the conclusion of the cleanup, Hoffman agrees to pay the Net Settlement Proceeds to DNR. Hoffmans have the right to seek a variance from this requirement to the extent they incur DERF "ineligible costs", as defined by NR 169.13(3), that are related to the contamination of the site, including but not limited to costs that are deemed to be reasonably necessary in the investigation or remediation of the site

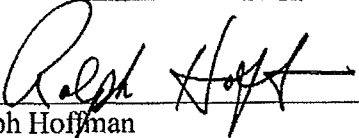
4. By entering into this Agreement, neither DNR nor Hoffman release any claims either may have against any third party related to the Site, or against each for matters not covered by this Agreement.

5. All disputes arising under this Agreement shall be governed by s. 292, Wis. Stats., ch. NR 700 Rules Series and ch NR 169.27(2).

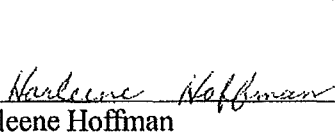
6. This Agreement shall terminate upon case closure under ch NR 700 Rules Series, Wis. Admin. Code.

7. Hoffman shall provide any information to DNR within thirty (30) days of a request by DNR.

Dated this 11<sup>th</sup> day of October, 2013.

  
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Ralph Hoffman

Dated this 11<sup>th</sup> day of October, 2013.


  
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Harleene Hoffman

Dated this 24 day of October, 2013.

WISCONSIN DEPARTMENT OF NATURAL

RESOURCES

By:

  
for Cathy Stepp, Secretary