



January 18, 2019

MR STEVE DOYEN
CHAIRMAN
TOWN OF PHELPS
PO BOX 157
PHELPS WI 54554

Subject: Applicability of the state Local Government Unit Environmental Liability Exemption for the Town of Phelps at the former wood treatment facility property owned by the C.M. Christiansen Co., in the Town of Phelps, Vilas County, Wisconsin
Vilas County Parcel Number 018-1391
DNR BRRTS Case Number #02-64-000068

Dear Chairman Doyen:

On December 19, 2018, the Department of Natural Resources (DNR) received your request for an environmental liability clarification letter, on behalf of the Town of Phelps (the "Town"), for the 22.83-acre parcel located adjacent to County Road E within the NE ¼ SW ¼ and Govt. Lot. 3, of Section 35, Township 42 North, Range 11 East, Town of Phelps, Vilas County, Wisconsin. Vilas County real estate tax records identify the parcel as 018-1391. DNR's case file in the Bureau for Remediation and Redevelopment Tracking System (BRRTS) database for the environmental contamination and cleanup efforts at this parcel is BRRTS 02-64-000068. The parcel is further identified on the map included with this letter as Attachment A, and the parcel will hereinafter be referred to as the "Property."

This letter provides clarification to the Town about the local governmental unit ("LGU") liability exemption authorized by Wis. Stat. § 292.11(9)(e), as well as notice of statutory conditions required to maintain the exemption and a reminder of an LGU's responsibilities if any elective demolition, cleanup or redevelopment activities occur on the Property. This letter also includes the DNR's determination about the potential applicability of the LGU liability exemption at the Property given the proposed method of Property acquisition. Finally, this letter addresses the four specific questions listed in a document attached to your request form.

1. Documents and Other Information Reviewed

The DNR has reviewed the following documents provided by the Town to help us make a determination about the potential future applicability of the LGU liability exemption for the Property:

- A Technical Assistance, Environmental Liability Clarification or Post-Closure Modification Request, DNR Form 4400-237, with attachments, dated Dec. 17, 2018, submitted by Robert Egan, Executive Director of the Vilas County Economic Development Corporation, on behalf of the Town of Phelps Chairman, Steven Doyen, and the review fee, which was received by DNR on December 19, 2018.
- Attachments to the Request Form included:
 - A one-page document titled "Technical Assistance, Environmental Liability Clarification Modification Request," which included a summary of the Property and its potential future use as a trailhead parking area, and a list of four questions that the Town wants clarification on. These questions, and DNR's replies, are included below;

- A one-page Vilas County Tax Parcel Map of the Property and neighboring parcels; and
- A one-page copy of a 2018 Vilas County Tax Data document for the Property.

The DNR has reviewed all environmental investigation and cleanup files associated with the Property, related to BRRTS case number 02-64-000068, including:

- A “Declaration of Restrictions” document related to the property that was filed with the Vilas County Register of Deeds on July 17, 2000, as Doc. 364004, in Vol. 924, Page 594, which is included with this letter as Attachment B; and
- A 1998 Spill Response Agreement, related to environmental contamination at the Property, signed by the DNR and the C.M. Christiansen Co., which is included with this letter as Attachment C.

The DNR has also had phone conversations about the Town’s request with Robert Egan, and about the Property with Terry Vosburgh, the Town Assessor. Mr. Vosburgh confirmed that the Property consists of 22.83 acres of land.

2. Environmental Activity Summary for the Property

The C.M. Christiansen Co. (CMC) operated a wood pole treatment facility on the Property from the early 1950s through the 1970s. Wooden poles were treated with a liquid substance that contained 5% pentachlorophenol (PCP) and 95% #2 fuel oil.

In August 1987, the Vilas County Sheriff’s Department notified the DNR of citizen complaints regarding chemicals on the Property that seemed to pose a health and safety hazard. The DNR investigated the complaints and observed evidence of discharges of the pole treatment substance to the land surface at several locations on the Property.

In September 1987, the DNR notified CMC that they were legally responsible for environmental contamination on the Property and were required to 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, per Wis. Stat. § 292.11.

From 1987 through 2018 a variety of site investigation efforts have been conducted at the Property by both CMC and the DNR. The most recent work involved the investigation of sediments in Military Creek, which flows through the Property along the eastern edge of the former treatment facility and then discharges into North Twin Lake.

In April 1997 a Spill Response Agreement was signed between CMC and the DNR which set site investigation and remedial action requirements and timeframes (see Attachment C). In Fall 1999 a remedial action occurred, and 3,700 tons of contaminated soil and debris were excavated from the site and disposed of in a licensed landfill. On July 17, 2000, a Declaration of Restrictions was filed with the Vilas County Register of Deeds and attached to the Property. The purpose of the Declaration of Restrictions was to ensure public health and safety would be protected by limiting the use of five specific areas of the Property, consisting of approximately 22,000 square feet, where an engineering control (soil cover) was placed over soil contamination that remained following completion of the excavation in 1999 (see Attachment B).

Since 2013 CMC has completed additional sediment investigation work, and submitted a site investigation report and a proposed remedial action options report for sediment remediation. See BRRTS case file # 02-64-000068, titled CM Christiansen #1 – Pole Dip at <https://dnr.wi.gov/botw/GetActivityDetail.do?adn=0264000068&siteId=4222200&crumb=1&search=b>.

3. Method and Purpose of Property Acquisition

It is the DNR's understanding that the Town plans to acquire the Property from Vilas County, following acquisition of the Property by the County through tax foreclosure proceedings. DNR's liability determinations below are based on this acquisition scenario.

4. Liability Determinations

The DNR provides the following statutory responsibility clarifications and assurances to the Town concerning its proposed purpose for and method of acquiring the Property, and intended reuse plans:

1. Both the Town of Phelps and Vilas County meet the definition of a "local government unit" as described in Wis. Stat. § 292.11(9)(e)(1).
2. When a county takes title to a property through tax foreclosure proceedings, the county obtains the local government environmental liability exemption authorized by Wis. Stat. § 292.11(9)(e).
3. When a town, village or city takes title to a property from a local governmental unit, such as a county, that is exempt with respect to the property, the town, village or city obtains the local government environmental liability exemption authorized by Wis. Stat. § 292.11(9)(e).
4. If Vilas County acquires title to the Property through tax foreclosure proceedings, and then transfers title of the Property to the Town of Phelps, DNR determines the Town of Phelps will obtain the Wis. Stat. § 292.11(9)(e) local governmental unit liability exemption and the Wis. Stat. § 292.23 solid waste management exemption for the Property.
5. The deed restriction associated with the Property remains in effect, whether the LGU exemption is obtained or not.

5. Specific Questions Posed by the Town of Phelps

The following four questions were included in an attachment to the Town's request for liability clarification.

1. Please explain the liability exemption associated with involuntary acquisitions under S. 292.11(9) of the Wisconsin state statutes, by virtue of Vilas County and ultimately the Town of Phelps acquiring the property through tax foreclosure. Is the Town of Phelps qualified for local government environmental liability exemption under S. 292.11(9) of Wisconsin Statutes?
2. What is the responsibility of the Town of Phelps in order to show due care is exercised in the development of the property?
3. Will the Town of Phelps incur any future expense for future testing or remediation of the property if due care is shown in developing the property for the purposes mentioned above (i.e. a trailhead parking area)?
4. What is the town's liabilities because of the deed restriction stating the property can only be used for "industrial use"? Specifically, in the areas of residual contaminated soil under clean soil cover, ground water contamination and sediment contamination.

Other sections of this letter provide in-depth answers to these questions. As such, DNR's direct replies below are brief and include references to the more detailed corresponding sections.

1. The Town must acquire the Property via one of the methods or for one of the purposes identified in Wis. Stat. § 292.11(9)(e)(1m) to obtain the state's local government environmental liability exemption. See sections 3 and 4 in this letter for additional information.

2. Wis. Stat. § 292.11(9)(e)(2) identifies types of hazardous substance discharges that do not qualify for the LGU exemption, which are caused through direct action or inaction of the LGU after acquisition. See sections 6 and 7 for additional information.
3. Wis. Stat. § 292.11(9)(e)(4) declares that DNR directions to reduce substantial threats to public health or safety must be followed when an exempt LGU redevelops or otherwise reuses the property, in order to maintain the exemption. See section 8 for additional information.
4. The Declaration of Restrictions associated with the Property (see Attachment B) is legally binding on any owner of the Property (i.e., including an exempt LGU). Per the Declaration the owner can request that the DNR determine that one or more restrictions are no longer required and extinguish them. See section 8, regarding future use of the Property, for more information about how the Town can work with DNR to make the Property safe for public use. As stated in section 8 below, the previous remedial action approved by DNR at the Property was based on industrial direct-contact residual soil contamination level (RCL) assumptions calculated under Wis. Admin. Code ch. NR 720. In order for the Property to be used for public access and recreation additional remedial action is likely needed.

6. Local Governmental Unit Exemption Information

When in effect for a specific property, Wis. Stat. § 292.11(9)(e), exempts an LGU from the following statutory responsibilities related to environmental contamination that was caused by another person or entity and exists on the property prior to the LGU's acquisition:

- The responsibility to take actions necessary to restore the environment and minimize harmful effects of hazardous substance discharges to soil, sediment, groundwater, surface waters and air of the state.
- The responsibility to comply with DNR orders to act to prevent hazardous substance discharges.
- The responsibility to reimburse the DNR for activities it takes on the property to identify, locate, monitor, contain, remove or dispose of hazardous substances.

The primary regulatory effect of an exemption from the statutory responsibilities is that an exempt LGU is not required to complete a Wis. Admin. Code ch. NR 716 site investigation or conduct a remedial response action per Wis. Admin. Code chs. NR 722-724 for contamination caused by another party prior to LGU acquisition of the property. An exempt LGU can choose to voluntarily move forward with standard site investigation and cleanup efforts, but it is not required to do so. Little to no environmental response action is required of an exempt LGU while the property remains as is.

7. Exemption Conditions and Limitations

The state's local government environmental and solid waste management liability exemptions are significant and strong, however, they do have a few conditions and limitations, as discussed below.

Wis. Stat. § 292.11(9)(e)(2) states that the exemption does not apply to hazardous substance discharges caused by the LGU before or after acquisition, such as directly spilling, leaking or dumping hazardous substances on a property. Building demolition and soil disturbing activities on a property with environmental contamination also have the potential to make pre-existing contamination worse and thereby cause new contamination. These types of activities should be discussed with DNR before they occur, to prevent the inadvertent cause of new contamination that could give rise to LGU liability.

Wis. Stat. § 292.11(9)(e)(2) also specifically states that an LGU is not exempt from legal responsibility for any contamination caused by the following LGU actions or inactions:

- A failure to take appropriate action to restrict access to the property in order to minimize costs or damages that may result from unauthorized persons entering the property.

- A failure to sample and analyze unidentified substances in containers stored aboveground on the property.
- A failure to remove and properly dispose of, or to place in a different container and properly store, any hazardous substance stored aboveground on the property in a container that is leaking or is likely to leak.

Wis. Stat. § 292.23 authorizes an LGU exemption from certain solid waste management requirements for pre-existing unlicensed solid waste disposal sites. The above-mentioned conditions and limitations of the Wis. Stat. § 292.11(9)(e) exemption also apply to the solid waste exemption, along with others that are specific to solid waste as listed in Wis. Stat. § 292.23(3). Wis. Stat. § 292.23 should be reviewed and consulted if any unlicensed solid waste disposal areas exist on the Property.

Neither Wis. Stat. § 292.11(9)(e) or Wis. Stat. § 292.23 exempt an LGU from Wis. Stat. § 292.11(2), titled “Notice of Discharge.” Therefore, all LGUs (whether exempt or not) must notify the DNR immediately of any known and/or newly discovered discharge of a hazardous substance to the environment at the Property. See DNR publication RR-560, at <http://dnr.wi.gov/files/PDF/pubs/rr/RR560.pdf> for additional information about spill and discharge reporting. When the LGU exemption is in effect, reporting identified contamination to DNR that was caused by others prior to LGU acquisition of the property does not trigger site investigation or cleanup requirements for the LGU.

When an LGU redevelops or otherwise reuses a contaminated property for which it has an exemption, Wis. Stat. § 292.11(9)(e)(4) specifies that the LGU must, to maintain its exemption, take actions directed by DNR to reduce substantial threats to public health or safety that could occur when the property is developed or reused by the LGU. This does not require the LGU to conduct a full site investigation or cleanup, but it may involve protective measures such as those identified in Wis. Admin. Code § NR 708.17.

Before beginning any demolition work at the Property, a pre-inspection is required, along with filing of DNR Form 4500-113, Notification for Demolition. See DNR publication WA-651, at <http://dnr.wi.gov/files/pdf/pubs/wa/wa651.pdf> for additional information about demolition activities. Storm water management permits may also be necessary for demolition and construction activities. All LGUs must comply with these requirements.

Federal and State Tank Regulations: The LGU exemption statutes do not exempt above ground or underground storage tanks on the Property from compliance with federal and state requirements, including Wis. Admin. Code ch. ATCP 93. If you have questions about tank requirements, contact the Wisconsin Department of Agriculture, Trade and Consumer Protection (the Bureau of Weights and Measures) directly. Wis. Admin. Code ch. ATCP 93 is available at https://docs.legis.wisconsin.gov/code/admin_code/atcp/090/93. DNR publication RR-627, titled Removing Underground Storage Tanks, is at <http://dnr.wi.gov/files/PDF/pubs/rr/RR627.pdf>.

The LGU exemption is only available to local units of government, as defined in Wis. Stat. § 292.11(9)(e)(1). This liability exemption is not transferrable from the exempt LGU to future property owners, except to other eligible LGUs. Nonexempt owners are subject to full environmental responsibility and regulation by, at a minimum, Wis. Stat. ch. 292 and Wis. Admin. Code chs. NR 700-754.

8. Future Use of the Property

If the Town intends to redevelop or otherwise reuse the Property during or after taking title and obtaining the liability exemption, the Town should discuss proposed property uses and improvements with the DNR before proceeding. Wis. Stat. § 292.11(9)(e)(4) requires exempt LGUs to take actions the DNR determines are necessary to reduce to acceptable levels any substantial threat to public health or safety when the Property is developed or put into its intended use.

With respect to the Property, the original remedial action was approved by DNR using industrial direct-contact residual soil contamination level (RCL) assumptions calculated under Wis. Admin. Code ch. NR 720, and DNR allowed soil covers over five areas of residual soil contamination that did not meet the RCL standards for

industrial direct contact safety. Since the proposed new use of the Property (i.e., as a trailhead parking area) is public and not industrial, additional actions will need to be conducted to either address the residual contaminated soil (e.g., treatment or removal), install better soil or pavement covers over the residual contamination to protect public health and safety when the proposed new use is implemented, and/or reevaluate the residual contaminant concentrations to see if the site-specific RCLs calculated as part of the remedial action are still applicable.

DNR has previously informed the Town that the capped/covered areas of residual soil contamination at the Property must be addressed in order to repurpose the Property for a public use. Protective measures are necessary to maintain a local government liability exemption as well. Representatives of the Wisconsin Economic Development Corporation (WEDC) have previously indicated that WEDC may be able to fund additional soil cleanup at this site to facilitate the change from industrial to public use.

It is very important to consult with the DNR before and during any demolition, excavation, and/or other development work on the Property. The LGU exemption can be lost if significant public health or safety threats exist in relation to the new use. Wis. Admin. Code § NR 708.17 lists a few types of protective actions that DNR may request when a new use is planned for an LGU-exempt property.

The DNR considers contaminated sediments in Military Creek to be an unresolved health and safety issue that is subject to continuing negotiations between DNR and CMC. If the Town acquires the Property, the Town must, to maintain its liability exemption, allow access to CMC, its consultants and contractors, and DNR as needed to investigate and, if necessary, remediate the contaminated sediments in Military Creek. The Town must also obtain approval from DNR before developing paths and structures adjacent to Military Creek, as these activities could lead to increased human exposure to contaminated creek sediments and/or surface water. This is a significant threat, and action without DNR approval would violate conditions of the LGU exemption.

9. Federal Liability Protections

In addition to state liability protections, an LGU is also eligible for federal CERCLA liability protection in certain situations. In general, CERCLA provides liability protection to local governments that acquire ownership or control of property through seizure or otherwise in connection with law enforcement activity, or through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue of its function as sovereign. More information is available on the US EPA web site at: <http://www.epa.gov/enforcement/state-and-local-government-activities-and-liability-protections>.

In situations involving the purchase of a property, an LGU can obtain CERCLA liability protections if it qualifies as a “bona fide prospective purchaser.” One key requirement for this protection is the completion of a Phase I environmental site assessment (ESA) that meets the “all appropriate inquiries” (AAI) standards under 40 CFR, Part 312. This federal standard also requires that a Phase I ESA be completed within 180 days prior to acquisition of title to a property. ESAs following the ASTM Standard E1527-13 meet EPA’s AAI standards.

For more information, a US EPA fact sheet, titled “CERCLA Liability and Local Government Acquisitions and Other Activities,” is available at <http://www.epa.gov/sites/production/files/documents/local-gov-liab-acq-fs-rev.pdf>.

10. This Letter is Based on Information Provided to DNR

The DNR’s state liability determination in this letter is based on the information provided in the above-referenced document(s). If new or more extensive contamination is discovered at the Property, the LGU is required to notify the DNR in accordance with Wis. Stat. § 292.11(2). The LGU should also know that the LGU exemption from the state Spill Law and Solid Waste Management Requirements will apply to the LGU throughout the LGU’s ownership of the Property, but these liability protections are not transferable from the LGU to future owners, except to another eligible LGU.

Information on LGU exemption determinations and other contaminated site activities is tracked in a DNR database that is available on the internet at <http://dnr.wi.gov/botw/SetUpBasicSearchForm.do>. The BRRTS identification number for this location can be found at the top of this letter. The Property, if it is acquired in a manner consistent with Wis. Stat. § 292.11(9)(e)(1m), will be identified in the database as a location where the DNR has made an "LGU Exemption" determination.

11. DNR Contact Information

The DNR hopes this letter provides the Town with the requested clarification concerning the LGU liability exemption for the Property. The DNR looks forward to working with you on this project and others.

If you have any questions, please contact the DNR Project Manager for the Property, John Hunt at 715-623-4190, ext. 3115 or by email at JohnT.Hunt@Wisconsin.gov. For questions specific to the LGU exemption, and other local government cleanup tools, contact Barry Ashenfelter at 608-267-3120 or Barry.Ashenfelter@wisconsin.gov.

Sincerely,



Christopher A. Saari
Northern Region Team Supervisor
Remediation & Redevelopment Program

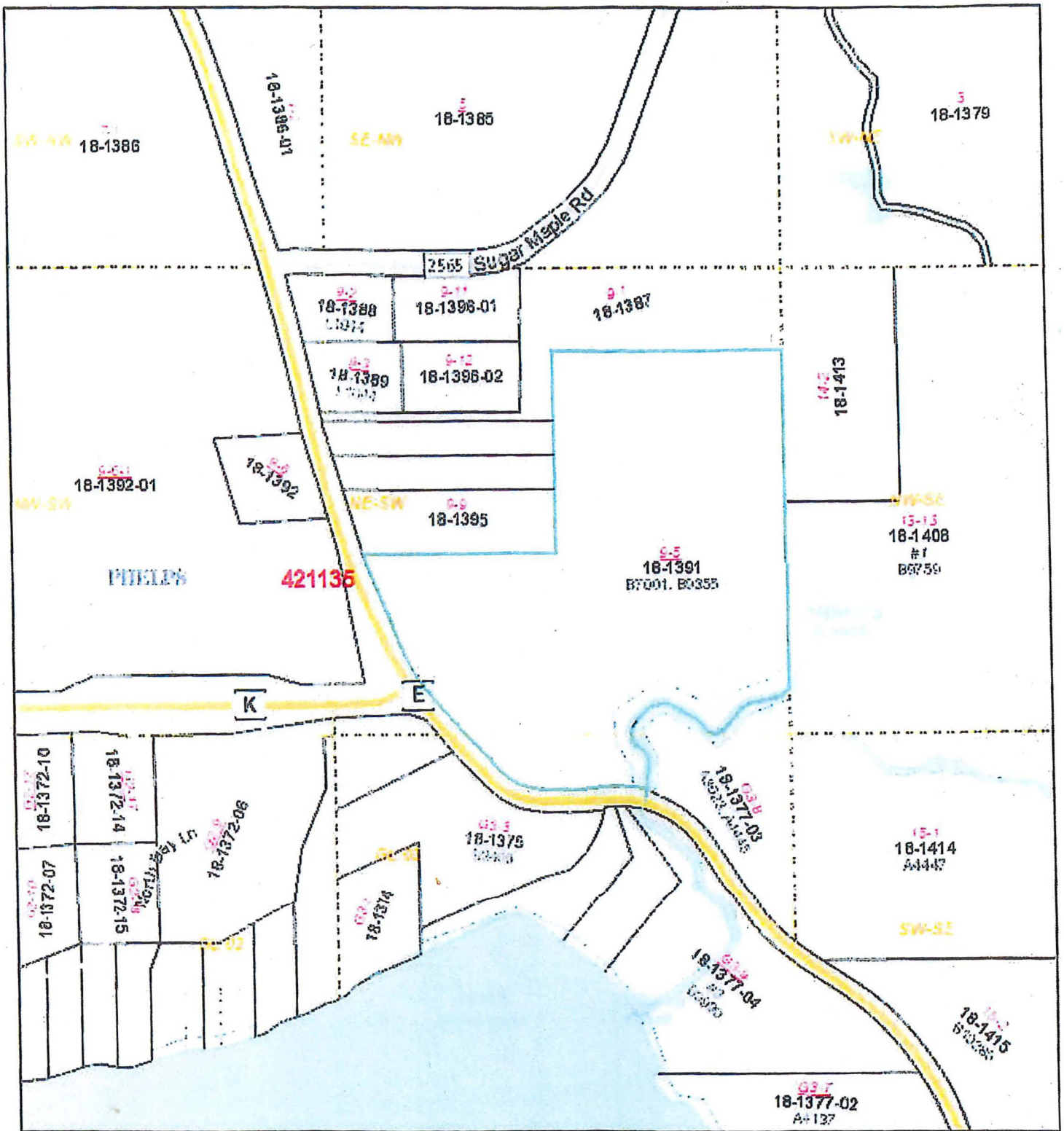
Attachments: Attachment A – Site Map
Attachment B – Declaration of Restrictions
Attachment C – Spill Response Agreement

cc: Bob Egan – Vilas County Economic Development Corporation

ec: John Hunt, DNR Antigo (JohnT.Hunt@Wisconsin.gov)
Barry Ashenfelter, DNR, RR/5 (Barry.Ashenfelter@wisconsin.gov)

Vilas County Tax Parcel Map



Attachment A



12/17/2018, 12:22:41 PM

1:4,800






Section Corners

-  Section Corner
-  Quarter Corner






Water Access

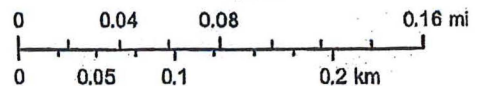
-  Boat Ramp
-  Carry-In Lake Access

Highways

-  US/State Highway
-  County Highway
- Major Roads**
-  Collector Road
-  Local Road
-  Resource Road

Minor Roads

-  Service Road
-  4WD Road
-  Runway
-  Section Line
-  Quarter/Gov't Lot Line



Created by Vilas County Mapping Department

364004

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Attachment B

DECLARATION OF RESTRICTIONS

In Re: a parcel of land located within the NE 1/4 SW 1/4 and Govt. Lot 3, both of Section 35, Township 42 North, Range 11 East, Town of Phelps, Vilas County, State of Wisconsin, more completely described as set forth in Exhibit A, attached hereto and incorporated by reference herein (the "Property").

STATE OF WISCONSIN)
) ss
COUNTY OF VILAS)

WHEREAS, C.M. Christiansen Co., Inc., a Michigan corporation (the "Company"), is the owner of the Property, a map of which is attached hereto as Exhibit B and incorporated by reference herein; and,

WHEREAS, the Company desires and intends to impose on the Property certain restrictions that will make it unnecessary to conduct additional soil or groundwater remediation activities on the Property; and,

WHEREAS, soils impacted with pentachlorophenol exist on that portion of the Property identified on Exhibit B as being SUBJECT TO USE RESTRICTION (the "Use-Restricted Portions"); and

WHEREAS, on-site engineering controls will be utilized for the soils impacted with pentachlorophenol in those portions of the Property identified on Exhibit B as being SUBJECT TO ENGINEERING CONTROLS (the "Engineering Controls Portions")

NOW THEREFORE, the Company hereby declares that the Property shall be held, conveyed or encumbered, leased, rented, used, occupied and improved subject to the following limitations and restrictions (individually and together):

- 1. None of the Use-Restricted Portions may be used or developed for a residential use unless, at the time that the residential use is proposed, an investigation is conducted to determine the degree and extent of pentachlorophenol contamination that remains on such Use-Restricted Portions and, further, that remedial action is taken as necessary to meet all applicable residential soil cleanup standards.
2. Any excavating or grading activities performed in any of the Engineering Controls Portions must handle all soils in accordance with Wisconsin Administrative Code Chapter NR 718. Any surfaces removed from any Engineering Controls Portions shall forthwith be replaced with surfaces that are comparable to or less permeable than the surfaces so removed.

These restrictions are hereby declared to be a covenant running with the land and shall be fully binding upon all persons acquiring the Property under any circumstances, whether by descent, devise, purchase, distribution by dividend or in liquidation, or otherwise.

Any person who is or becomes owner of the Property, or any portion thereof, may request that the Wisconsin Department of Natural Resources, or its successors, issue a determination that one or more of the restrictions set forth in this covenant is(are) no longer required with respect to the Property, or the portion thereof so-owned, as the case may be. Upon receipt of such a request, the Wisconsin Department of Natural Resources shall determine whether or not the restriction(s) contained herein can be extinguished as to the Property or as to the portion so-owned, as the case may be. If the Wisconsin Department of Natural Resources determines that the restriction(s) can be extinguished, an affidavit can be recorded with a copy of the Wisconsin Department of Natural Resources' determination to give notice that the applicable restriction(s) is(are) no longer binding.

RECORDED

JUL 17 2000

11:35am

John Hansen
REGISTER OF DEEDS, VILAS CO., WI

C.M. CHRISTIANSEN CO. INC.
PO. BOX 100 16. Jul
PHELPS, WI 54581-0100

Tax Parcel No. 9QQ-5 [018-1391]

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

EXHIBIT A TO DECLARATION OF RESTRICTIONSLegal Description – the "Property"

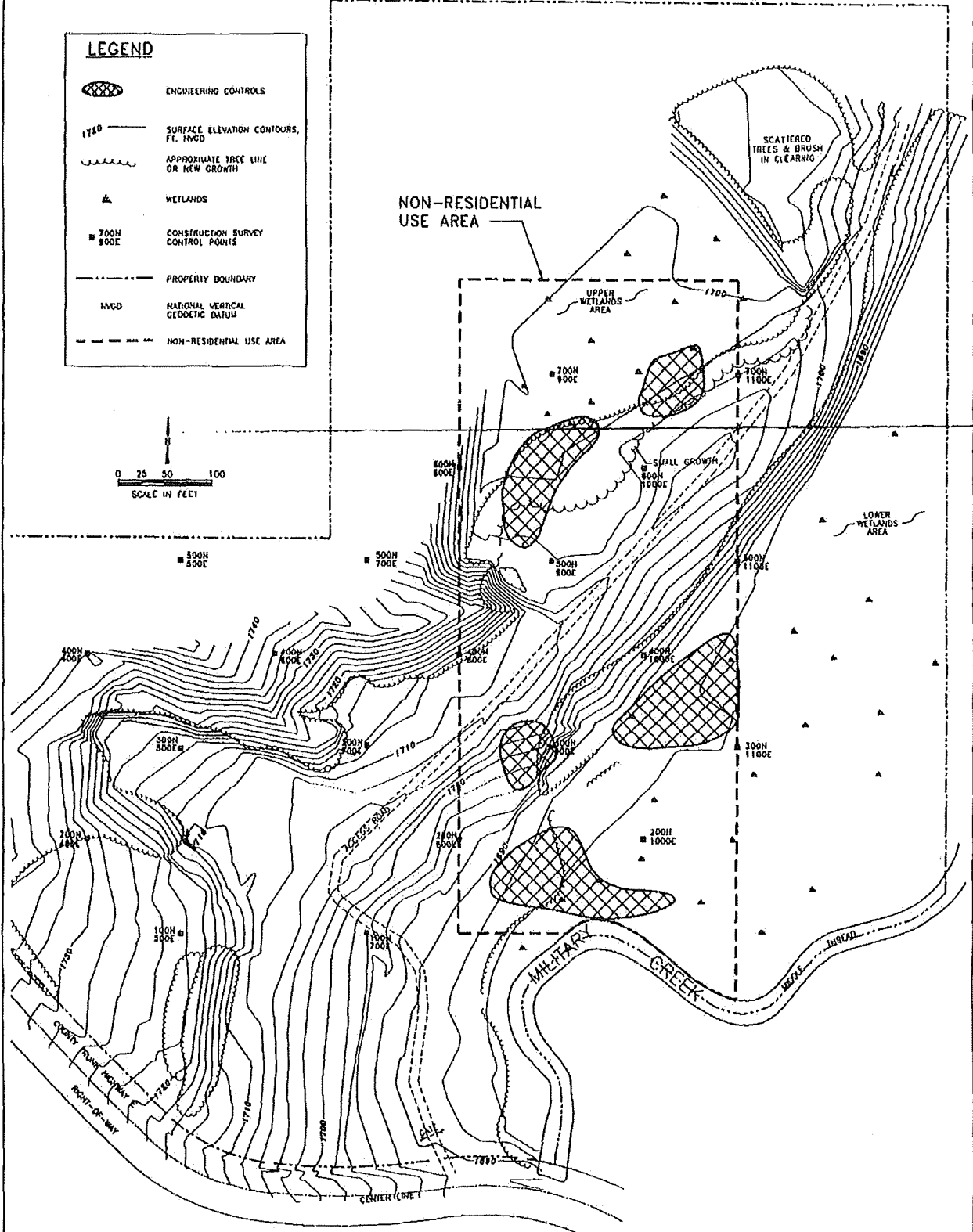
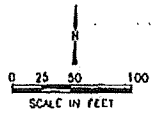
A parcel of land being a part of Gov't. Lot 3 and of the NE $\frac{1}{4}$ -SW $\frac{1}{4}$, Section 35, T 42 N, R 11 E, Town of Phelps, Vilas County, Wisconsin, and being more particularly described as follows:

Commencing at the South $\frac{1}{4}$ corner of said Section 35 being marked by a U.S. Forest Service monument, thence N 0°-04'-39" E 2414.99 feet along the North-South $\frac{1}{4}$ line of said Section 35 to an iron pipe and the Place of Beginning, thence returning S 0°-04'-39" W 884.28 feet along the East line of said NE $\frac{1}{4}$ -SW $\frac{1}{4}$ to an iron pipe on the Right Bank of Military Creek, thence meandering along said Creek Bank S 45°-02'-00" W 73.60 feet, S 73°-08'-00" W 102.50 feet, S 51°-33'-00" W 82.61 feet, N 61°-31'-13" W 179.00 feet, S 55°-07'-00" W 166.00 feet, S 3°-32'-00" E 90.00 feet, S 34°-44'-00" E 77.44 feet and S 2°-29'-00" E 58.17 feet to the Northerly R/W line of County Trunk Hwy. E, thence along the Northerly R/W line of said Hwy. E Easterly 38 feet more or less along the arc of a 336.51 foot radius curve to the Right to the middle thread of said Military Creek, ~~thence returning Westerly 38 feet more or less along~~ the arc of said 336.51 foot radius curve to the Left to the aforementioned point, thence along the Northerly and Northeasterly R/W line of said Hwy. E as follows: Westerly 91.70 feet along the arc of said 336.51 foot radius curve to the Left (chord bearing S 89°-37'-40" W 91.42 feet) to the point of tangency of said curve, S 81°-49'-18" W 5.39 feet to the point of tangency of a 672.00 foot radius curve to the Right, Westerly 177.34 feet along the arc of said 672.00 foot radius curve to the Right (chord bearing S 89°-22'-54" W 176.82 feet) to the point of tangency of a 183.42 foot radius curve to the Right, Northwesterly 121.07 feet along the arc of said 183.42 foot radius curve to the Right (chord bearing N 64°-08'-56" W 118.88 feet) to the point of tangency of a 2952.00 foot radius curve to the Right, Northwesterly 310.80 feet along the arc of said 2952.00 foot radius curve to the Right (chord bearing N 42°-13'-23" W 310.66 feet) to the point of tangency of a 518.61 foot radius curve to the Right, Northwesterly 152.27 feet along the arc of said 518.61 foot radius curve to the Right (chord bearing N 30°-47'-44" W 151.72 feet) to the point of tangency of said curve and N 22°-23'-04" W 285.74 feet to an iron pipe which lies 800.00 feet South of the North line of said NW $\frac{1}{4}$ -SW $\frac{1}{4}$, thence leaving said R/W line S 89°-33'-15" E 568.19 feet parallel with and 800.00 feet South of the North line of said NE $\frac{1}{4}$ -SW $\frac{1}{4}$ to an iron pipe, thence N 0°-01'-30" E 575.00 feet parallel with the West line of said NE $\frac{1}{4}$ -SW $\frac{1}{4}$ to an iron pipe, thence S 89°-33'-15" E 664.78 feet parallel with the North line of said NE $\frac{1}{4}$ -SW $\frac{1}{4}$ and back to the Place of Beginning, including all lands lying between the meander line and the lateral lot lines extended to the middle thread of said Military Creek, and including all riparian rights; the same being approximately 22.50 acres, more or less.

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LEGEND

-  ENGINEERING CONTROLS
-  SURFACE ELEVATION CONTOURS, FT. MVD
-  APPROXIMATE TREE LINE OR NEW GROWTH
-  WETLANDS
-  700H 800E CONSTRUCTION SURVEY CONTROL POINTS
-  PROPERTY BOUNDARY
-  NATIONAL VERTICAL GEODETIC DATUM
-  NON-RESIDENTIAL USE AREA



NOTES:

1. BASE MAP SURVEY COMPLETED BY CEC WITH ADDITIONAL INFORMATION OBTAINED FROM USDA-ASCS HISTORICAL AERIAL PHOTOGRAPHS, A 7/7/85 SITE VISIT WITH C.U. CHRISTIANSEN CO., INC., AND A 5/21/88 FIELD INSPECTION.
2. WETLAND AREA APPROXIMATELY INTERPRETED FROM WISCONSIN WETLAND INVENTORY MAP AND IS NOT FIELD VERIFIED.
3. CONSTRUCTION GRID SURVEY POINTS WITH ORIGIN AT SW 1/4 SECTION CORNER, NE 1/4 OF SE 1/4 IN SECTION 35, T42N, R11E. IRON PIPE LOCATION BASED ON EAGLE LANDMARK SURVEY.
4. EXCAVATION AND CAPPING AREA LIMITS BASED ON FIELD MEASUREMENT OFF OF CONSTRUCTION SURVEY CONTROL POINTS.
5. PROPERTY BOUNDARY TAKEN FROM REGISTER OF DEEDS, WISCONSIN COUNTY, WISCONSIN, VOLUME 801, PAGES 410-411.

SOURCE NOTES:

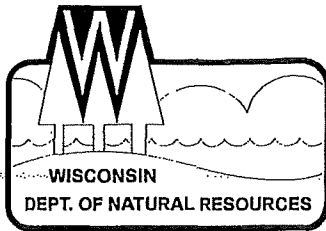
THIS MAP WAS MODIFIED FROM DRAWING BY COLEMAN ENGINEERING COMPANY (CEC), IRON MOUNTAIN, MICHIGAN, DATED FEBRUARY 1987, JOB NO. 95042 A7, AND A SURVEY BY EAGLE LANDMARK SURVEYING, INC., EAGLE RIVER, WISCONSIN, DWG. NO. E1292, DATED 1-08-88, REVISED ON 5-13-89.



PROPERTY MAP FOR DECLARATION OF RESTRICTIONS

C.M. CHRISTIANSEN COMPANY, INC.
TAX PARCEL NO. 900-5 (018-1391)
PHELPS, WISCONSIN

PROJECT NO. 1226/RD/4.4
DRAWING NO. 1226-EX1
EXHIBIT B



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TDD 608-267-6897

April 17, 1998

Elizabeth Gamsky Rich
Whyte, Hirschboeck, Dudek, S.C.
111 East Wisconsin Ave., Suite 2100
Milwaukee, WI 53202-4894

Subject: C.M. Christiansen Co., Inc. Spill Response Agreement

Dear Elizabeth:

I have enclosed one of the fully-executed duplicate originals of the above-referenced agreement. As I indicated in the voice-mail message that I left for you earlier today, the agreement became effective on April 17, 1998 when it was signed by DNR Secretary George Meyer.

The Department appreciates your client's willingness to sign this agreement and we look forward to working with you and your client as the agreement is implemented. Thank you.

Sincerely,

A handwritten signature in cursive script that reads 'Linda Meyer'.

Linda Meyer
Staff Attorney
Bureau of Legal Services

cc: Michelle DeBrock Owens - NOR (Rhineland)
→ Chris Saari - Brule



Quality Natural Resources Management
Through Excellent Customer Service



SPILL RESPONSE AGREEMENT

1. This Agreement is entered into pursuant to s. 292.11(7)(d), Wis. Stats., and shall be construed in a manner consistent with s. 292.11, Wis. Stats. The Department of Natural Resources ("the Department") and the C.M. Christiansen Company, Inc., a Michigan corporation ("CMC") hereby agree that CMC will conduct the activities listed below in compliance with the following schedule, except as provided in paragraph 2 of this agreement:

No	Activity	Compliance Date
1	Submittal to DNR of a Revised Source Control Soil Remedial Action Options Report, that complies with the requirements of s. NR 722.13, Wis. Adm. Code	Within 30 days after the effective date of this agreement
2	Submittal to DNR of an Update to Military Creek Sediment Sampling Plan, that complies with the relevant requirements of ss. NR 716.07, 716.09 and 716.13, Wis. Adm. Code	Within 30 days after the effective date of this agreement
3	Submittal to DNR of a Proposed Groundwater Monitoring Plan	Within 30 days after the effective date of this agreement
4	Military Creek Sampling Start	On or before May 30, 1998, unless an extension is granted by DNR because of adverse weather, or within 30 days after CMC receives DNR comments on the Updated Military Creek Sediment Sampling Plan, whichever is later

5	Submittal to DNR of Soil Remediation System Design that complies with the requirements of ss. NR 724.09 and 724.11 and the relevant requirements of 724.13, Wis. Adm. Code, and application for any permits, variances and other approvals required from DNR	Within 60 days after the effective date of this agreement
6	Start Soil Remedial Action Implementation, including free product removal	On or before the later of June 1, 1998, or within 30 days after CMC or its contractors receive all permits, variances and DNR approvals needed for soil remedial action implementation, including without limitation DNR approval of the Revised Source Control Soil Remedial Action Options Report, and System Design
7	Soil Remediation Construction Completion	Within 90 days after the start of soil remediation construction
8	Submittal to DNR of a Soil Remedial Construction Documentation Report, that complies with the requirements of s. NR 724.15, Wis. Adm. Code	Within 90 days after completion of soil remediation construction
9	Submittal to DNR of Military Creek Investigation Report, that complies with the requirements of s. NR 716.15, Wis. Adm. Code	Within 90 days after completion of the Military Creek sediment sampling

10	Submittal to DNR of a Military Creek Remedial Action Options Report (which may include an evaluation of institutional controls and other non-remedial actions, if appropriate) that complies with the requirements of s. NR 722.13, Wis. Adm. Code, if remediation action is necessary.	Within 60 days after CMC or its contractor receives DNR approval of the Military Creek Investigation Report
11	Implementation of Groundwater Monitoring Plan	In compliance with the schedule contained in the DNR-approved Groundwater Monitoring Plan

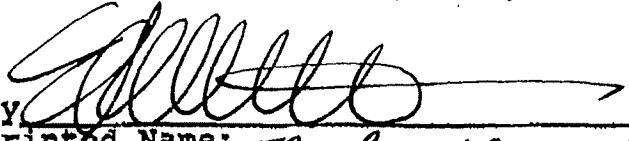
2. CMC will perform all of the work required under this agreement within the time limits set forth herein, unless the schedule is amended by mutual agreement of the parties or unless performance is delayed by events that constitute a "force majeure." The Department will not unreasonable refuse to amend the agreed-upon schedule if CMC submits credible evidence to the Department that new developments in the case require that the schedule be changed. For purposes of this agreement, a "force majeure" is an event arising from causes beyond the control of CMC or an entity controlled by CMC which delays or prevents performance of any work required by this agreement. Increases in cost or changes in economic circumstances do not by themselves constitute a force majeure. However, an event that would otherwise constitute a force majeure shall be deemed a force majeure even though such an event also results in increased costs or changed economic circumstances. CMC shall notify the Department in writing no later than ten (10) business days after CMC becomes aware of any event that CMC contends is a force majeure. If the Department agrees that a delay is attributable to a force majeure, the time period for performance under this agreement shall be extended by adding the time period attributable to the delay caused by the force majeure event to the deadlines specified in this agreement. Nothing in this agreement, including this force majeure provision is intended to expand any obligation which CMC may have pursuant to s. 292.11(3), Wis. Stats.

3. This agreement shall become effective on the date that it is signed by both CMC and the Department.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

BY George R. Meyer, Secretary 4/17/98

C.M. CHRISTIANSEN CO., INC., a Michigan corporation

BY 
Printed Name: ERIC R. CHRISTIANSEN
Title: PRESIDENT