

September 28, 2017

The Ideal, LLC  
c/o Joseph Gallina  
101 East Main Street, Suite 500  
Mount Horeb, WI 53572

Subject: Liability Clarification for 901 Drake Street, Madison  
For Suspected Contamination Coming from an Off-site Source  
Parcel Number - 251/0709-233-1523-2

Dear Mr. Gallina:

**Purpose**

The Department of Natural Resources ("the Department") reviewed your request for an off-site exemption letter for 901 Drake Street, Madison, WI ("the Property"). Page 4 of this letter contains the Property map submitted with the request. The purpose of this letter is to determine what provisions of the off-site exemption you presently satisfy and the conditions under which you would satisfy all the requirements of the off-site exemption in s. 292.13, Wis. Stats. Currently, Ideal, LLC ("Ideal") is the owner of the Property. The Department received the necessary fee for providing this letter pursuant to s. 292.13 (2) and (3), Stats, and ch. NR 749, Wis. Admin. Code.

**Summary Determination**

With the exception of no confirmed impact of a drycleaning-related hazardous substance on the Property, the provisions in the off-site exemption statute are satisfied by Ideal for this Property and Ideal will not be held responsible for investigation or cleanup of the substances migrating from another property, if Ideal continues to satisfy all conditions as described in this letter. The Property owner would have limited responsibility under ss. 292.12 and 292.13, Stats, for the groundwater contamination that has migrated or is migrating onto the Property. The Property owner is responsible for any discharges of hazardous substances whose source originates on the Property. The conditions for the off-site exemption would be fully satisfied if contamination from the nearby former drycleaner site at 501 South Park Street, Madison (DNR case # 02-13-551461, "La Hacienda") were detected on the Property in the future.

**Request**

On September 20, 2017, Scott Chiu of Partner Engineering and Science, Inc., requested on your behalf that the Department determine whether you are exempt from s. 292.11(3), (4) and (7)(b) and (c), Wis. Stats., commonly known as the "Spill Law," with respect to the existence of drycleaning-related hazardous substances in groundwater that you believe are migrating onto the Property from an off-site source. Wisconsin's Spill Law includes an "off-site exemption" in s. 292.13, Wis. Stats., that limits the liability of a property owner. Specifically, you requested clarification as to whether or not you are eligible for the off-site liability exemption.

The following documents were submitted to the Department with the request:

- The Off-Site Liability Exemption and Liability Clarification Application, received 9-20-2017
- SCS BT Squared's "Phase 2 Site Assessment Report" for Ideal Development Properties, dated 11-30-2012
- Seymour Environmental Services, Inc.'s "Proposed Soil Delimitation Points" map for La Hacienda Restaurant, dated 4-10-2014

- Seymour Environmental Services, Inc.'s "Proposed Groundwater Sample Locations" map for La Hacienda Restaurant, dated 10-29-2008
- SCS Engineer's "Excavation Summary" for Ideal Development Properties, dated 8-12-2013

The reports and maps refer to a portion of the Property by the old address of 502 S. Park Street.

### **Background**

The Department considered the information listed above in making the determinations presented in this letter. Groundwater contaminated with drycleaning-related chlorinated compounds is emanating from the 501 South Park Street location (now the La Hacienda Restaurant) and moving off that site and to the northwest. The plume of contaminated groundwater could possibly extend beneath the Property (at 901 Drake Street).

### **Liability Determinations**

Based on the Department's review of technical information, including the off-site application form submitted in accordance with s. 292.13(2), Stats., the Department makes the following determinations under ss 292.13(3) and 292.55, Stats., if the presence of drycleaning-related contaminants in groundwater were to be detected at the Property in the future:

1. The hazardous substance discharge(s) originated from a source on property that is not possessed or controlled by Ideal.
2. Ideal did not possess or control the hazardous substances on the property on which the discharge originated.
3. Ideal did not cause the discharge.
4. Ideal will not have liability under the Hazardous Substance Spill Law for investigation or remediation of the groundwater contamination originating from off-site onto the Property, provided that Ideal does not take possession or control of the property on which the discharge(s) originated.

Because there is not confirmed hazardous substances identified on your Property, the Department is currently not able to issue you a letter determining that you qualify for all the provisions of the off-site liability exemption. However, if sampling is conducted in the future that confirms contamination on your Property, and the conditions in s. 292.13, Stats, are followed, you will fully qualify for the off-site liability exemption.

### **Exemption Conditions**

The Department's determination, as set forth in this letter, are subject to the following conditions being complied with, as specified in s. 292.13(1) and (1m), Wis. Stats:

1. The facts upon which the Department based its determination are accurate and do not change.
2. Ideal agrees to allow the following parties to enter the Property to take action to respond to the discharges: the Department and its authorized representatives; any party that possessed or controlled the hazardous substances or caused the discharge; and any consultant or contractor of such a party.
3. Ideal agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharges.
4. Ideal agrees to any other condition that the Department determines is reasonable and necessary to ensure that the Department and any other authorized party can adequately respond to the discharge.

### **Responsibilities for Continuing Obligations**

In addition to the conditions above, after the contamination at the source property is remediated, the approval may

include continuing obligations at the source property as well as your Property. Often residual contamination remains after an approved environmental cleanup is completed and sometimes that approval includes requirements to maintain engineering controls, such as a vapor mitigation system, to reduce the impact of the contamination. You may also be required to obtain DNR approval to construct a water supply well on your Property. If the cleanup approval includes requirements associated with your Property, the party conducting the cleanup is required to notify you before the DNR reviews the proposal.

**Conclusion**

The Department may revoke the determinations made in this letter if it determines that any of the requirements under sections 292.13(1) or (1m), Wis. Stats., cease to be met.

With the exception of a confirmed impact on the Property by the detection of drycleaning-related contaminants, the provisions in the off-site exemption statute are satisfied by Ideal for this Property. The conditions for the off-site exemption could be fully satisfied if drycleaning-related contaminants from another property were detected on the Property.

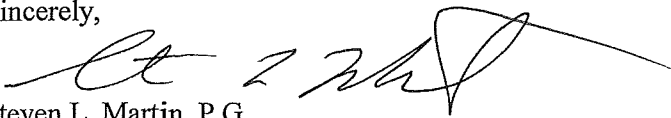
A person who meets all the conditions of the off-site exemption is not responsible for investigating and cleaning up environmental contamination that migrates onto her or his property from a neighboring property, with certain limitations, if the statutory conditions are met.

Future Property owners are eligible for the exemption under section 292.13, Wis. Stats., if they meet the requirements listed in that statute section. The determinations in this letter regarding a liability exemption, however, only apply to the Applicant, and may not be transferred or assigned to other parties. The Department will provide a written determination to future owners of this Property, if such a determination is requested in accordance with the requirements of section 292.13(2), Wis. Stats.

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for this activity is shown at the top of this letter. The Department tracks information on all determinations such as this in a Department database that is available on the Internet at: [BRRTS on the Web](#).

If you have questions regarding this letter, please contact Jeff Ackerman at 608-275-3323, at [jeff.ackerman@wisconsin.gov](mailto:jeff.ackerman@wisconsin.gov), or at the address in the letterhead.

Sincerely,



Steven L. Martin, P.G.  
South Central Region Team Supervisor  
Remediation and Redevelopment Program

ec: Scott Chiu, Partner Engineering and Science, Inc.  
Paul Matusiak, Berkadia  
Jeff Ackerman, DNR  
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