



July 19, 2022

Ms. Nicole Robbins  
Five Points MLKEDC, LLC  
2745 N. Dr. Martin Luther King Jr. Drive  
Milwaukee, WI 53212  
*Via Email Only* [nrrobbins@mlkedcmke.org](mailto:nrobbins@mlkedcmke.org)

Mr. Rick Frieseke  
Charmoli Holdings, LLC  
6635 North Sidney Place  
Milwaukee, WI 53209  
*Via Email Only* [rfrieseke@fecinc.us](mailto:rfrieseke@fecinc.us)

Subject: Approval to Manage Contaminated Soil under Wis. Admin. Code § NR 718.12 at a Different Site or Facility

Generating Property: Five Points Development – Historic Fill, 3317-3345 N. MLK Jr. Drive and 456 W. Concordia Avenue, Milwaukee, WI 53212, WI, BRRTS #: 02-41-589558, FID #: 341350240

Receiving Property: R&R Excavating Site, County Rd I, Cedarburg, WI, Parcel ID #: 03-0222-04-000, BRRTS#: 15-46-579884, FID #: 246105750

Dear Ms. Robbins and Mr. Frieseke:

On June 9, 2022, Freiss Environmental Consulting, Inc., submitted a *Soil Placement Approval Request (Report)* on your behalf requesting to manage 5,000 cubic yards of contaminated soil on the R&R Excavating Site in accordance with Wis. Admin. Code § NR 718.12. Supplemental information regarding this request was also provided on June 15, 2022, June 29, 2022, and on July 6, 2022. The Wisconsin Department of Natural Resources (DNR) received all applicable technical assistance and database fees for providing review and response, in accordance with Wis. Admin. Code § NR 749.04 (1).

The Five Points Development – Historic Fill site is planned to be developed into a multi-family apartment complex that will include first floor commercial/retail spaces along with playground, parking, and greenspace areas. Excavations for grading, utility installations, building footings and foundations, greenspace areas and parking areas will generate 5,000 cubic yards of soil contaminated with polycyclic aromatic hydrocarbons (PAHs) and metals. An approval through Wis. Admin. Code NR 718.12 has been requested to manage the contaminated soil off site at the R&R Excavating Site where it will be used as backfill.

#### **Wis. Admin. Code § NR 718.12 Approval**

This letter grants an approval to manage contaminated soil under Wis. Admin. Code § NR 718.12. This approval is based, in part, on the requirement established by the R&R Excavation Site's Reclamation Plan (BRRTS # 15-46-579884) to ultimately cap the contaminated soil placed at the R&R Excavating Site with topsoil and clay and on the following:

### **Compliance with Locational Criteria**

Managing contaminated soil in areas of the site or facility identified on Figure 1 – Site Diagram will meet the locational criteria listed under Wis. Admin. Code § NR 718.12 (1) (c).

### **Characterization of Soil to be Excavated**

Soil samples were collected for analysis of contaminants previously detected or expected to be present at this site including PAHs and metals, from areas most likely to contain residual contamination. The sampling conducted has adequately characterized fill material that will be excavated and reused off-site.

### **Submittal of a Soil Management Plan**

A complete soil management plan, as defined by Wis. Admin. Code §§ NR 718.12 (2) (b) and (c), was provided to the DNR.

### **Assessment of Risk Posed by Soil Management**

The proposed management of contaminated soil at the R&R Excavating Site is expected to meet the criteria of Wis. Admin. Code §§ NR 726.13 (1) (b) 1. to 5.

### **Notice Provided Prior to Commencing Soil Management Activities**

Per Wis. Admin. Code § NR 718.12 (2), the DNR was provided with written notice at least seven days prior to commencing the proposed contaminated soil management.

### **Requirement of Continuing Obligations**

The current owners of R&R Excavating Site acknowledged that the continuing obligations described below will be required as a condition of managing the contaminated soil on their property as proposed.

The current property owner of the R&R Excavating Site, and any subsequent property owners, must comply with the following continuing obligations at this site, established under Wis. Admin. Code § NR 718.12 (2) (d), to ensure that conditions will remain protective. DNR staff will conduct periodic, pre-arranged inspections to ensure that the conditions included in this letter are met. If these requirements are not followed, the DNR may take enforcement action under Wis. Stat. ch. 292.11 to ensure compliance with the specified requirements, limitations or other conditions related to the property.

Documents submitted to the DNR to request the Wis. Admin. Code § NR 718.12 approval meet the requirements of Wis. Admin. Code § NR 718.12 (2) (e) and are available in PDF on the DNR's Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web (BOTW) and RR Sites Map (RRSM), to provide public notice of remaining contamination and continuing obligations. Both BOTW and RRSM are available at [dnr.wi.gov](http://dnr.wi.gov) and search "WRRD."

More information on responsibilities related to continuing obligations can be found in the DNR publication "Continuing Obligations for Environmental Protection" (RR-819), which can be found at [dnr.wi.gov](http://dnr.wi.gov), search "RR-819."

Send documents to the DNR using the RR Program Submittal Portal at [dnr.wi.gov](http://dnr.wi.gov), search "RR submittal portal" (<https://dnr.wi.gov/topic/Brownfields/Submittal.html>). Questions on using this portal can be directed to the contact below or to the environmental program associate (EPA) for the regional DNR office. Visit [dnr.wi.gov](http://dnr.wi.gov), search "RR contacts" and select the EPA tab (<https://dnr.wi.gov/topic/Brownfields/Contact.html>). More information on submitting electronic documents can be found in the DNR publication "Guidance for Electronic Submittal for the Remediation and Redevelopment Program" (RR-690), which can be found at [dnr.wi.gov](http://dnr.wi.gov), search "RR-690."

### Residual Soil Contamination

If contaminated soil that was managed as proposed in the Report is excavated in the future, the property owner at the time of excavation will have the following responsibilities per Wis. Admin. Code § NR 727.05 (1) (d):

- determine if contamination is present;
- determine whether the soil is considered solid or hazardous waste; and
- ensure that any storage, treatment or disposal is in compliance with applicable statutes and rules.

Excavated contaminated soil may be managed in accordance with Wis. Admin. Code § NR 718 with DNR pre-approval. In addition, all current and future property owners and occupants of the property need to be aware that excavation of the contaminated soil may pose a hazard, and special precautions may be necessary to prevent a health threat to humans.

The location(s) where contaminated soil is proposed to be managed at the R&R Excavating Site is depicted on the attached Figure 1, Site Diagram.

The DNR's approval prior to well construction or reconstruction is required where contaminated soil was managed, in accordance with Wis. Admin. Code § NR 812.09 (4) (w). This requirement applies to private drinking water wells and high-capacity wells. To obtain approval, complete and submit DNR Form 3300-254 to the DNR Drinking and Groundwater Program's regional water supply specialist. This form is available at [dnr.wi.gov](http://dnr.wi.gov), search "3300-254."

### Other Information

- 1) Any hazardous substance discharge discovered during soil management activities must be reported to the DNR following the requirements of Wis. Admin. Code ch. NR 706.
- 2) Contaminated soil and solid waste management activities approved by this letter are scheduled to be completed by summer 2023. Notify the DNR if this schedule will change.
- 3) Unless otherwise directed by the DNR, documentation of contaminated soil management activities shall be provided within 60 days of the completion of this project (Wis. Admin. Code § NR 724.15 (1)). The documentation must comply with the requirements of Wis. Admin. Code § NR 724.05 (2) and § NR 724.15 (3). Documentation must include:
  - a. A cover letter that contains the information required by Wis. Admin. Code § NR 724.05(2) (e) 1.
  - b. Owner contact and property location information for the Five Points Development – Historic Fill site and the R&R Excavating Site.
  - c. Maps, drawings and cross sections that depict how contaminated soil was managed.
  - d. A synopsis of the work conducted and an explanation as to how it complied with the soil management plan and the conditions in this approval.
  - e. A description of any changes made to the planned management activity and an explanation as to why they were necessary for the project.
  - f. Any field observations or results of monitoring conducted during the management activity.
  - g. A description of how new site conditions are protective of human health, safety, welfare and the environment at the R&R Excavating Site.
  - h. A revised cover maintenance plan, if needed.

The DNR will request that incomplete documentation be amended as allowed by Wis. Admin. Code § NR 724.07 (2).

- 4) This approval is granted under Wis. Admin. Code § NR 718.12 and applies only to the specific activities described within the submitted Report. Any contaminated material that is excavated or otherwise disturbed at the Five Points Development – Historic Fill site and the R&R Excavating site, not covered under this or another approval, must be managed in compliance with the requirements of Wis. Admin. Code chs. NR 500 through NR 599. The management of contaminated material on a property that does not comply with these rules may be considered a hazardous substance discharge or environmental pollution and would be required to be addressed by the process outlined in Wis. Admin. Code chs. NR 700 to NR 799.
- 5) All current owners of the R&R Excavating Site are responsible for obtaining any local, federal or other applicable state permits to carry out the project.

All remediation sites are included in DNR's Bureau of Remediation and Redevelopment Tracking System (BRRTS) database. All documents and project milestones related to the cleanup of the Five Points Development site are listed in the database entry identified by BRRTS activity # 02-41-58955. Actions relating only to the management of contaminated soil at the R&R Excavating Site are tracked in the BRRTS system under activity # 15-46-579884.

The DNR appreciates your efforts to protect the environment at this site. If you have any questions regarding this approval decision, please contact the DNR Project Manager for this site, Jane Pfeiffer, at (414)-435-8021 or at [jane.pfeiffer@wisconsin.gov](mailto:jane.pfeiffer@wisconsin.gov).

Sincerely,



Michele R. Norman  
Southeast Region Team Supervisor  
Remediation & Redevelopment Program

Attachments:

- Figure 1, Site Diagram, received via email on June 15, 2022.

cc:

- Cory Katzban, The Sigma Group, Inc., [ckatzban@thesigmagroup.com](mailto:ckatzban@thesigmagroup.com)
- Mat Reimer, Redevelopment Authority City of Milwaukee, [Mathew.reimer@milwaukee.gov](mailto:Mathew.reimer@milwaukee.gov)



Site Diagram  
 R&R Excavating Site  
 Cedarburg, Wisconsin

Figure  
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