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March 16, 2020

Mr. Christopher A. Saari
Wisconsin Department of Natural Resources
Northern Region Team Supervisor
Remediation and Redevelopment Program
2501 Golf Course Road
Ashland, WI 54806-3505

Mr. John Sager
Wisconsin Department of Natural Resources
1701 N. 4th Street
Superior, WI 54880

Re: Ashland/NSP Lakefront Superfund Site - Institutional Control and Continuing Obligation
Notification Letters to Third-Party Property Owners

Dear Mssrs. Saari and Sager:

Enclosed pursuant to Sec. 292.12(4), Wis. Stats. and Sec. IX of the 2012 Consent Decree, please find a copy of a letter with enclosures sent via overnight delivery to the following property owners:

- Gary A. Kabasa;
- Joseph J. O'Brien;
- Blue Lion Trust;
- Ralphie & Kathryn Rossing; and
- Our Lady of the Lake Catholic Church.

Also enclosed is a copy of the letter sent via overnight delivery to the City of Ashland. We will provide you with evidence of receipt upon successful delivery.

Regards,

MICHAEL BEST & FRIEDRICH LLP

David A. Crass

DAC:rve

cc: Kristen Shults Carney, Esq.
Michael Bebeau
Eric J. Ealy
Mike Raimonde
Craig Melodia, Esq.
Scott Hansen

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2400 Farm Road
Ashland, WI 54806

800.895.4999
xcelenergy.com



March 16, 2020

VIA FEDERAL EXPRESS

Mayor Debra Lewis
City of Ashland
601 Main Street West
Ashland, WI 54806

Mr. John Butler
Director of Public Works
City of Ashland
2020 6th Street
Ashland, WI 54806

Subject: Remedial Action Approval for Ashland NSP Lakefront Superfund Site, 300 St. Claire Street, Ashland, WI

Dear Mayor Lewis and Mr. Butler:

Northern States Power Company of Wisconsin (“NSPW”) is providing you this notification in compliance with state law and in connection with environmental work recently completed at the Ashland NSP Lakefront Superfund Site (the “Site”). The Site is located at 300 St. Claire Street, Ashland and a map is enclosed. Further information concerning the site is available here: <https://cumulis.epa.gov/supercpad/cursites/csinfo.cfm?id=0507952> or by visiting the document repository maintained at the Vaughn Public Library.

The Wisconsin Department of Natural Resources (“DNR”) recently approved a Remedial Action Plan associated with this work and the U.S. Environmental Protection Agency (EPA), in concurrence with DNR, has approved the substantial completion of that work. As part of this approval, we must notify you that your property, which is within the Site, and that you either own or lease pursuant to a June 2018 Submerged Lands Lease from the Board of Commissioners for Public Lands (the “Property”) is subject to certain continuing obligations.

State law directs parties responsible for environmental contamination to take actions to restore the environment and minimize harmful effects to the extent practicable. In the course of conducting such cleanups, the law allows some amount of residual contamination to remain in soil and groundwater provided it does not pose a threat to public health, safety, welfare or to the environment.

The DNR has recently approved of a Remedial Action Plan and NSPW has implemented that Plan to the extent required by state and federal law. Residual groundwater and soil contamination remains beneath the Property as described further below and in the *Institutional Control Implementation and Assurance Plan* (FE/JV 2020). Because that residual contamination has been determined to not pose any threat to public health, safety, welfare or to the environment, DNR has allowed that contamination to remain, subject to compliance with certain ongoing use restrictions and continuing obligations applicable to the Property.

Continuing Obligations Applicable to the Property

The Property is subject to certain use restrictions which can be found in and enforceable by the following:

- Granting reasonable access to DNR, the U.S. Environmental Protection Agency, NSPW or its contractors;
- Compliance with the property use restrictions of the *Institutional Control Implementation and Assurance Plan* (FE/JV 2020);
- Compliance with the soil management requirements of the *Soil Management Plan* (FE/JV 2020);
- Compliance with the property use restrictions of the Submerged Lands Lease;
- Compliance with the property use restrictions in various agreements with NSPW including (i) the Framework Agreement for Cooperation and Coordination Concerning Redevelopment Activities; (ii) the Remediation Easement, recorded as document number 334736 in Vol. 742, Page 901-906 of the Ashland County Register of Deeds; (iii) the Cooperation and Access Agreement, as amended.
- Avoiding actions that make the contamination worse (e.g., interfering with the performance of the remedy, demolishing or damaging a structure and causing or worsening the discharges to the environment, or exacerbating site conditions).

You are required to manage the Property in compliance with these use restrictions and continuing obligations. Further detail is provided below. Please be aware that failure to comply with the continuing obligations may result in enforcement action by the EPA and DNR. The EPA and DNR intend to conduct inspections in the future to ensure that the conditions included in this letter are met.

Residual Soil Contamination (Wis. Admin. Code ch. NR 718, chs. NR 500 to NR 555, or Wis. Stat. ch. 289)

Soil contamination remains throughout Kreher Park and in portions of the former Upper Bluff filled ravine, as depicted on Figs. 2-3, 2-5, and 2-6 of the *Institutional Control Implementation and Assurance Plan* (FE/JV 2020). At Kreher Park, an engineered cap has been constructed over impacted soil, which cap must be monitored and maintained (Braun Intertec, 2020). If soil in the specific locations described above is excavated in the future, you must comply with the requirements of the *Soil Management Plan* (FE/JV 2020). At the time of excavation, you must sample and analyze the excavated soil to determine if residual contamination remains. If sampling confirms that contamination is present, you will need to determine whether the material is considered solid or hazardous waste and ensure that any storage, treatment or disposal is in compliance with applicable standards and rules. Contaminated soil may be managed in accordance with Wis. Admin. Code ch. NR 718, with prior DNR approval.

In addition, you need to be aware that excavation of the contaminated soil may pose an inhalation or other direct contact hazard and as a result special precautions may need to be taken to prevent a direct contact health threat to humans. If you construct or reconstruct any structures

on the Property, you should evaluate site conditions in accordance with DNR publication RR-800, *Addressing Vapor Intrusion at Remediation & Redevelopment Sites in Wisconsin*, dated January 2018 (DNR, 2018), and any subsequent versions thereof.

Residual Groundwater Contamination (Wis. Admin. Code ch. NR 140, NR 812)

Due to the existence of residual contamination after completion of the remedial action approved in the Remedial Action Plan approval, this Site, which includes the Property, will be listed on the Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>. If you intend to construct or reconstruct a well on the Property, you will need to get Department approval in accordance with Wis. Admin. Code § NR 812.09 (4) (w). To obtain approval, Form 3300-254 needs to be completed and submitted to the WDNR Drinking and Groundwater program's regional water supply specialist. A well driller can help with this form. This form can be obtained online at: <https://dnr.wi.gov/files/PDF/forms/3300/3300-254.pdf>.

The attached DNR fact sheet RR-819, *Continuing Obligations for Environmental Protection*, helps explain a property owner's responsibility for continuing obligations on their property. You may obtain additional copies at <http://dnr.wi.gov/files/PDF/pubs/rr/RR819.pdf>.

You have thirty (30) days to comment on the issues addressed in this letter. You may submit any information that you believe is relevant to be considered by DNR and NSPW. You may submit that information at the address(es) provided below.

Notices


Department of Natural Resources
Attn: John Sager
1701 N. 4th Street
Superior, WI 54880
P: 715.392-7822
E: John.Sager@Wisconsin.gov

Michael BeBeau
Xcel Energy
Community Service Manager
2400 Farm Road
Ashland, WI 54806
P: 715.682.6936 F: 715.682.6921
E: michael.s.bebeau@xcelenergy.com

You should retain this document with your property records.

Questions regarding this notification may be directed to Michael Bebeau at 715-682-6936.

Sincerely,


Michael Bebeau (DK)

Attachments

Legal Description of Property

RR-819 – Continuing Obligations for Environmental Protection

RR-671 – What Landowners Should Know: Information About Using Natural Attenuation To Clean Up Contaminated Groundwater

RR-589 – When Contamination Crosses a Property Line

DNR Form 3300-254 – GIS Registry Site Well Approval Application

Decision Tree – I Want to Construct a Well or Building

Decision Tree – I Want to Excavate Soil – City

**EXHIBIT A
LEGAL DESCRIPTION**

(City of Ashland)

Parcel No. 201-01003-0000

Lots 1 - 6 inclusive, Block 25, Lots 1 - 6 inclusive, Block 26, Lots 1 - 6 inclusive, Block 27, Lots 1 - 6 inclusive, Block 28, that part of Lots 1 - 5, inclusive, Block 32, lying North of railroad right of way, Lots 13 - 24 inclusive, Block 32 and that part of Lots 17-24 inclusive, Block 33, lying North of railroad right of way, all in Ellis Division, City of Ashland, Ashland County, Wisconsin.

Parcel No. 201-01009-0000

Lots 1 - 6 inclusive, Block 29, Lots 1 - 6 inclusive, Block 30, Lots 13-24 inclusive, Block 31, Ellis Division, City of Ashland, Ashland County, Wisconsin.

Also, Lots 8 and 9, Fifield Place Subdivision, City of Ashland, Ashland County, Wisconsin.

Parcel No. 201-01012-0000

Wisconsin Central Ltd.'s 100 foot wide railroad right of way extending on, over and across Lots 1 through 12, inclusive, and Lots 13 through 16, inclusive, Block 32, Ellis Division to the City of Ashland Wisconsin, as per the recorded plat thereof, lying 50 feet on each side of Wisconsin Central Ltd.'s track centerline, as originally located and constructed.

Parcel No. 201-01028-0000

Wisconsin Central Ltd. 's 100 foot wide railroad right of way extending on, over and across Lots 1 through 4, inclusive, and Lots 13 through 24, inclusive, all in Block 33, Ellis Division to the City of Ashland Wisconsin, as per the recorded plat thereof, lying 50 feet on each side of Wisconsin Central Ltd. 's track centerline, as originally located and constructed.



Continuing Obligations for Environmental Protection Responsibilities of Wisconsin Property Owners

Wis. Stat. § 292.12

Purpose

This fact sheet is intended to help property owners understand their legal requirements under s. 292.12, Wis. Stats., regarding continuing obligations that arise due to the environmental condition of their property.

Introduction

The term “continuing obligations” refers to certain actions for which property owners are responsible following a completed environmental cleanup. They are sometimes called environmental land use controls or institutional controls. These legal obligations, such as a requirement to maintain pavement over contaminated soil, are most often found in a cleanup approval letter from the state.

Less commonly, a continuing obligation may apply where a cleanup is not yet completed but a cleanup plan has been approved, or at a property owned by a local government that is exempt from certain cleanup requirements.

What Are Continuing Obligations?

Continuing obligations are legal requirements designed to protect public health and the environment in regard to contamination that remains on a property.

Continuing obligations still apply after a property is sold. Each new owner is responsible for complying with the continuing obligations.

Background

Wisconsin, like most states, allows some contamination to remain after cleanup of soil or groundwater contamination (residual contamination). This minimizes the transportation of contamination and reduces cleanup costs while still ensuring that public health and the environment are protected.

The Department of Natural Resources (DNR), through its Remediation and Redevelopment (RR) Program, places sites or properties with residual contamination on a public database in order to provide notice to interested parties about the residual contamination and any associated continuing obligations. Please see the “Public Information” section on page 3 to learn more about the database. (Prior to June 3, 2006, the state used deed restrictions recorded at county courthouses to establish continuing obligations, and those deed restrictions have also been added into the database.)

Types of Continuing Obligations

1. Manage Contaminated Soil that is Excavated

If the property owner intends to dig up an area with contaminated soil, the owner must ensure that proper soil sampling, followed by appropriate treatment or disposal, takes place. Managing contaminated soil must be done in compliance with state law and is usually done under the guidance of a private environmental professional.

2. Manage Construction of Water Supply Wells

If there is soil or groundwater contamination and the property owner plans to construct or reconstruct a water supply well, the owner must obtain prior DNR approval to ensure that well construction is designed to protect the water supply from contamination.

Other Types of Continuing Obligations

Some continuing obligations are designed specifically for conditions on individual properties. Examples include:

- keeping clean soil and vegetation over contaminated soil;
- keeping an asphalt “cover” over contaminated soil or groundwater;
- maintaining a vapor venting system; and
- notifying the state if a structural impediment (e.g. building) that restricted the cleanup is removed. The owner may then need to conduct additional state-approved environmental work.

It is common for properties with approved cleanups to have continuing obligations because the DNR generally does not require removal of all contamination.

Property owners with the types of continuing obligations described above will find these requirements described in the state’s cleanup approval letter or cleanup plan approval, and *must*:

- comply with these property-specific requirements; and
- obtain the state’s permission before changing portions of the property where these requirements apply.

The requirements apply whether or not the person owned the property at the time that the continuing obligations were placed on the property.

Changing a Continuing Obligation

A property owner has the option to modify a continuing obligation if environmental conditions change. For example, petroleum contamination can degrade over time and property owners may collect new samples showing that residual contamination is gone. They may then request that the DNR modify or remove a continuing obligation. Fees are required for the DNR’s review of this request and for processing the change to the database (\$1050 review fee, \$300/\$350 database fee). Fees are subject to change; current fees are found in Wis. Admin. § NR 749 online at http://docs.legis.wisconsin.gov/code/admin_code/nr/700/749.

Public Information

The DNR provides public information about continuing obligations on the Internet. This information helps property owners, purchasers, lessees and lenders understand legal requirements that apply to a property. The DNR has a comprehensive database of contaminated and cleaned up sites, *BRRTS on the Web*. This database shows all contamination activities known to the DNR. Site specific documents are found under the *Documents* section. The information includes maps, deeds, contaminant data and the state’s closure letter. The closure letter states that no additional environmental cleanup is needed for past contamination and includes information on property-specific continuing obligations. If a cleanup has not been completed, the state’s approval of the remedial action plan will contain the information about

continuing obligations.

Properties with continuing obligations can generally be located in the DNR's *RR Sites Map*. RR Sites Map provides a map view of contaminated and cleaned up sites, including sites with continuing obligations, and links to BRRTS on the Web. *BRRTS on the Web* and *RR Sites Map* are part of the Wisconsin Remediation and Redevelopment Database (WRRD) at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>.

If a completed cleanup is shown in *BRRTS on the Web* but the site documents cannot be found in the documents section, the DNR's closure letter can still be obtained from a regional office. For assistance, please contact a DNR Environmental Program Associate (see the RR Program's Staff Contact web page at dnr.wi.gov/topic/Brownfields/Contact.html).

Off-Site Contamination: When Continuing Obligations Cross the Property Line

An off-site property owner is someone who owns property that has been affected by contamination that moved through soil, sediment or groundwater from another property. Wis. Stat. § 292.13 provides an exemption from environmental cleanup requirements for owners of "off-site" properties. The DNR will generally not ask off-site property owners to investigate or clean up contamination that came from a different property, as long as the property owner allows access to his or her property so that others who are responsible for the contamination may complete the cleanup.

However, off-site property owners are legally obligated to comply with continuing obligations on their property, even though they did not cause the contamination. For example, if the state approved a cleanup where the person responsible for the contamination placed clean soil over contamination on an off-site property, the owner of the off-site property must either keep that soil in place or obtain state approval before disturbing it.

Property owners and others should check the *Public Information* section above if they need to:

- determine whether and where continuing obligations exist on a property;
- review the inspection, maintenance and reporting requirements, and
- contact the DNR regarding changing that portion of the property. The person to contact is the person that approved the closure or remedial action plan.

Option for an Off-Site Liability Exemption Letter

In general, owners of off-site properties have a legal exemption from environmental cleanup requirements. This exemption does not require a state approval letter. Nonetheless, they may request a property-specific liability exemption letter from the DNR if they have enough information to show that the source of the contamination is not on their property. This letter may be helpful in real estate transactions. The fee for this letter is \$700 under Chapter NR 749, Wis. Adm. Code. For more information about this option, please see the RR Program's Liability web page at dnr.wi.gov/topic/Brownfields/Liability.html.

Legal Obligations of Off-Site Property Owners

- Allow access so the person cleaning up the contamination may work on the off-site property (unless the off-site owner completes the cleanup independently).
- Comply with any required continuing obligations on the off-site property.

Required Notifications to Off-Site Property Owners

1. The person responsible for cleaning up contamination must notify affected property owners of any proposed continuing obligations on their off-site property **before** asking the DNR to approve the cleanup. This is required by law and allows the off-site owners to provide the DNR with any technical information that may be relevant to the cleanup approval.

When circumstances are appropriate, an off-site neighbor and the person responsible for the cleanup may enter into a “legally enforceable agreement” (i.e. a contract). Under this type of private agreement, the person responsible for the contamination may also take responsibility for maintaining a continuing obligation on an off-site property. This agreement would not automatically transfer to future owners of the off-site property. The state is not a party to the agreement and cannot enforce it.

2. If a cleanup proposal that includes off-site continuing obligations is approved, the DNR will send a letter to the off-site owners detailing the continuing obligations that are required for their property. Property owners should inform anyone interested in buying their property about maintaining these continuing obligations. For residential property, this would be part of the real estate disclosure obligation.

More Information

For more information, please visit the RR Program’s Continuing Obligations website at dnr.wi.gov/topic/Brownfields/Residual.html.

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Chief, Public Civil Rights, Office of Civil Rights, U.S. Department of the Interior, 1849 C. Street, NW, Washington, D.C. 20240.

This publication is available in alternative format (large print, Braille, etc.) upon request. Please call for more information. Note: If you need technical assistance or more information, call the Accessibility Coordinator at 608-267-7490 / TTY Access via relay - 711



Using Natural Attenuation to Clean Up Contaminated Groundwater: What Landowners Should Know

RR-671

December 2016

What Is Natural Attenuation?

Natural attenuation makes use of natural processes in soil and groundwater to contain the spread of contamination and to reduce the amount of contamination from chemical releases.

Natural attenuation is an *in-situ* treatment method. This means that contaminants are left in place while natural attenuation works on them. Natural attenuation is relied upon to clean up contamination that remains after the source of the contamination is removed. An example of a source of contamination would be a leaking underground petroleum tank.

How Does Natural Attenuation Work?

Natural attenuation processes work at many sites, but the rate and degree of effectiveness varies from property to property, depending upon the type of contaminants present and the physical, chemical and biological characteristics of the soil and groundwater.

Natural attenuation processes can be divided into two broad categories – destructive and non-destructive. Destructive processes destroy contaminants. The most common destructive process is **biodegradation**.

Non-destructive processes do not destroy the contaminant, but reduce contaminant concentrations in groundwater through **dilution, dispersion** or **adsorption**.

Biodegradation

Biodegradation is a process in which micro-organisms that naturally occur in soil and groundwater (e.g. yeast, fungi, or bacteria), break down, or degrade hazardous substances to less toxic or non-toxic substances. Microorganisms, like humans, eat and digest organic compounds for nutrition and energy (organic compounds contain carbon and hydrogen atoms).

Some types of microorganisms can digest organic substances such as fuels or solvents that are hazardous to humans. Microorganisms break down the organic contaminants into harmless products – mainly carbon dioxide and water. Once the contaminants are degraded, the microorganism populations decline because they have used their food sources. These small populations of microorganisms pose no contaminant or health risk.

Many organic contaminants, like petroleum, can be biodegraded by microorganisms in the underground environment. For example, biodegradation processes can effectively cleanse soil and groundwater of hydrocarbon fuels such as gasoline and benzene, toluene, ethylbenzene, and xylene – known as the BTEX compounds, under certain conditions.

Biodegradation can also breakdown other contaminants in groundwater such as trichloroethylene (TCE), a chlorinated solvent used in metal cleaning. However, the processes involved are harder to predict and are less effective at contaminant removal compared to petroleum-contaminated sites.



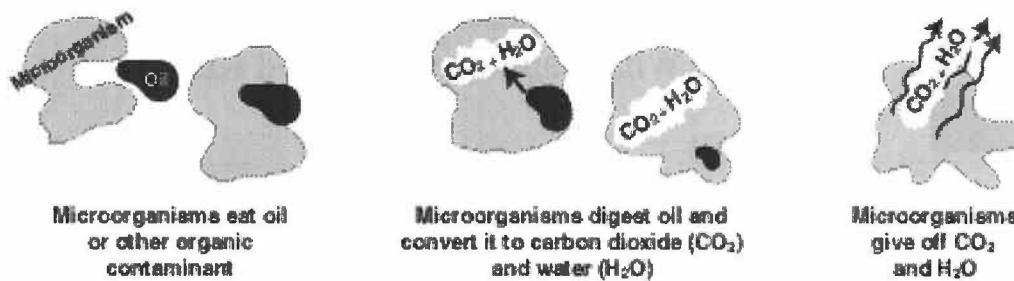


Figure 1. Schematic Diagram of Aerobic Biodegradation in Soil

Dilution and Dispersion

The effects of dilution and dispersion reduce contaminant concentrations but do not destroy contaminants. Clean water from the surface seeps underground to mix with and dilute contaminated groundwater.

Other processes that lead to reduced concentrations of contaminants include clean groundwater flowing into contaminated areas, and the dispersion of pollutants as they spread out and away from the main path of the contaminated plume.

Adsorption

Adsorption occurs when contaminants attach or “sorb” to underground particles. Most oily substances (like petroleum compounds) repel water and escape from the groundwater by attaching to organic matter and clay minerals in the subsurface.

This process holds back or retards contaminant movement and reduces the concentration of contaminants in the groundwater. However, like dilution and dispersion, adsorption does not destroy contaminants.

Why Consider Natural Attenuation To Clean Up Soil And Groundwater?

In certain situations, natural attenuation is an effective, inexpensive cleanup option and the most appropriate way to remediate some contamination problems. Natural attenuation focuses on confirming and monitoring natural remediation processes rather than relying on engineered or “active” technologies (such as pumping groundwater, treating it above ground, then disposing of the treated water).

Contaminants from petroleum are good candidates for natural attenuation because they are among the most easily destroyed by biodegradation. Natural attenuation is non-invasive, which allows treatment to go on below ground, while the surface can continue to be used.

Natural attenuation can also be less costly than active engineered treatment options, and requires no special equipment, energy source, or disposal of treated soil or groundwater.

Will Natural Attenuation Work At My Property?

Whether natural attenuation will work at a particular location is determined by investigating the soil and groundwater. These investigations determine the type of contaminants present, the levels of contamination, and the physical and chemical conditions that lead to biodegradation of the contaminants.

In order to rely on natural attenuation, responsible parties are required to confirm that natural attenuation processes are working by monitoring the soil and groundwater over a period of time to show that the contaminant concentrations are decreasing and that the contamination is no longer spreading.

Those conducting the cleanup need to know whether natural attenuation, or any proposed remedy, will reduce the contaminant concentrations in the soil and groundwater to legally acceptable limits within a reasonable period of time.

Natural attenuation may be an acceptable option for sites where active remediation has occurred and has reduced the concentration of contaminants (for instance, removing leaking underground tanks and contaminated soil).

However, natural attenuation is not an appropriate option at all sites. If the contamination has affected a drinking water well, or has entered a stream or lake, active cleanup options may be necessary to make sure people and the environment are protected from direct contact with the contamination.

The speed or rate of natural attenuation processes is typically slow. Monitoring is necessary to show that concentrations decrease at a sufficient rate to ensure that contaminants will not become a health threat in the future.

Closure Of Contaminated Sites Using Natural Attenuation As A Final Remedy

When contamination is discovered at a property (such as a gas station with leaking underground tanks), the person who is responsible for causing the contamination, and persons having possession or control of hazardous substances that have been discharged, have the responsibility to remove the source of contamination and investigate and clean up the contamination that has escaped into the soil and groundwater.

The contaminant release must be reported to the Wisconsin Department of Natural Resources (DNR) and the site investigation and cleanup are overseen by a state agency. Depending on the type of contaminant, the oversight agency could be the Department of Agriculture, Trade and Consumer Protection or Department of Natural Resources.

When the cleanup has complied with state standards, the person responsible for the contamination will ask the state agency for closure of the case. If natural attenuation is relied upon to finish cleaning up a contaminated property after closure, the responsible person will need to show that contaminant concentrations are not spreading, that contaminant concentrations are stable or decreasing, and that the concentrations will decrease in the future until state groundwater standards are met.

Because natural attenuation processes are slow, it may take many years before the properties with contamination are clean. State rules require that all owners of properties where groundwater contamination has spread must be informed of the contamination below their property.

In addition, the properties with groundwater contamination exceeding state groundwater enforcement standards must be listed on a database to notify future owners and developers of the presence of contamination. If future monitoring occurs and shows that natural attenuation processes have removed the contaminants to state-required cleanup levels, then the properties can be removed from the database.

The state agency will grant closure if the site investigation and monitoring shows that natural attenuation will clean up groundwater to state standards within a reasonable period of time. All state rules for cleanup must be met and the person who is responsible for the contamination must comply with all conditions of the state's closure approval.

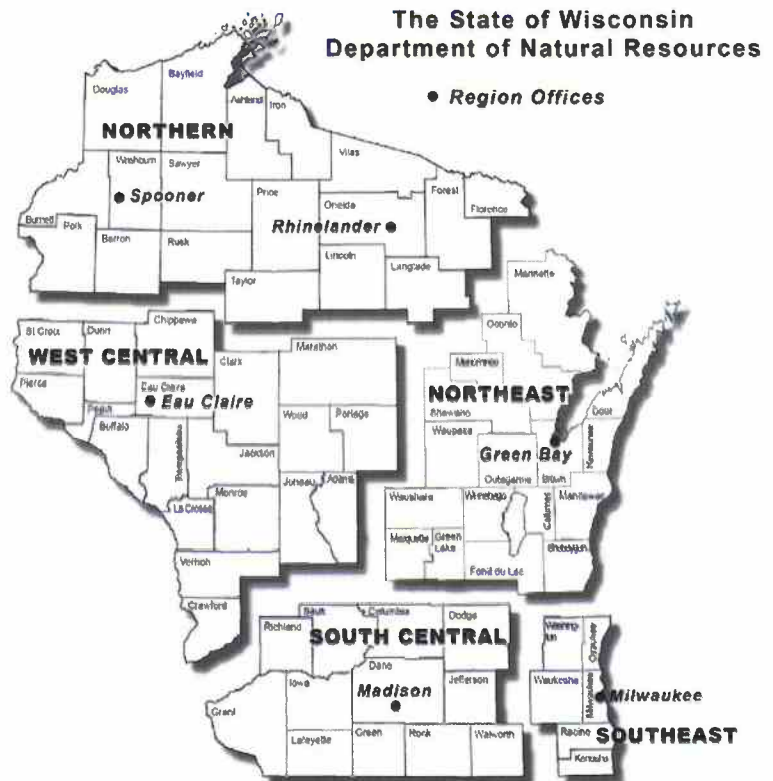
Publications

The following publications provide additional information on natural attenuation. Websites where these can be downloaded free of charge are also listed.

- *A Citizen's Guide to Bioremediation*, September 2012, EPA 542-F-12-003; https://www.epa.gov/sites/production/files/2015-04/documents/a_citizens_guide_to_bioremediation.pdf
- *Commonly Asked Questions Regarding the Use of Natural Attenuation for Petroleum-Contaminated Sites at Federal Facilities*, www.clu-in.org/download/techfocus/na/na-petrol.pdf
- *Monitored Natural Attenuation of Petroleum Hydrocarbons: U.S. EPA Remedial Technology Fact Sheet*, May 1999, EPA 600-F-98-021; www.clu-in.org/download/remed/pet-hyd.pdf
- *Monitored Natural Attenuation of Chlorinated Solvents*, May 1999, EPA 600-F-98-0022; www.clu-in.org/download/remed/chl-solv.pdf
- *Guidance on Natural Attenuation for Petroleum Releases, WI DNR, Bureau for Remediation and Redevelopment*, March 2003, PUB-RR-614; dnr.wi.gov/files/PDF/pubs/rr/RR614.pdf

Contact Information

If you have questions about natural attenuation contact a [DNR Environmental Program Associate \(EPA\)](#) in your local DNR regional office. The EPA can direct you to a project manager.



Note: These are the Remediation and Redevelopment Program's designated regions. Other DNR program regional boundaries may be different.

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.



When Contamination Crosses a Property Line

The Off-Site Environmental Liability Exemption - Wis. Stat. §§ 292.12 and 292.13 Rights and Responsibilities of Off-site, Affected Property Owners

Purpose

This fact sheet summarizes the state's statutory liability exemption for owners of real property affected by environmental contamination migrating from another property. It also explains how contamination from one property can impose health and safety obligations on other properties even when the liability exemption is in effect.

Background

It is relatively common to discover that substances used at an older commercial or industrial property have migrated into the soil, surface water and groundwater and have traveled onto a neighboring property. When this occurs, the party responsible for investigating and cleaning up the source of the contamination is required to take action to address health and safety concerns at both the source property and the off-site property.

When contamination from one property crosses a property boundary, Wisconsin law provides an environmental liability exemption to the affected property owner who meets the conditions in the law. The affected property owner is identified as the "off-site" owner in state law, because environmental contamination has moved beyond the source property's boundaries.

The Wisconsin Department of Natural Resources (DNR) will generally not ask off-site, exempt property owners to investigate or remediate contamination that did not originate on their property. A few exceptions to the exemption, related to imminent health and safety threats and long term obligations, are described in the next section.

The statutory off-site exemption is self-implementing and is effective as long as an eligible party meets all the statutory conditions. Property owners and others may request a written exemption determination letter from the DNR for a fee, but this letter is not required to have the exemption protections.

Summary of an off-site property owner's rights and responsibilities

Wisconsin law, Wis. Stat. § 292.11(3), requires anyone who causes, possesses or controls a hazardous substance discharge to the environment (i.e. land, air, water) to take action to restore the

environment to the extent practicable and minimize harmful effects. When contamination from one property migrates and affects another property, however, Wisconsin law provides an exemption for an owner (possessor) of the affected, neighboring property from the requirement to take response actions under Wis. Stat. §§ 292.11(3), (4) and (7)(b) and (c). This statutory provision is known as the "off-site liability exemption," and is authorized by Wis. Stat. § 292.13.

Related Guidance

- [Off-site Liability Exemption Application \(Form 4400-201\)](#)
- [General Liability Clarification Letters \(RR-619\)](#)
- [Continuing Obligations for Environmental Protection \(RR-819\)](#)
- [Environmental Contamination and Your Real Estate \(RR-973\)](#)

An off-site property owner is someone who owns property affected by soil, groundwater, sediment, soil gas (vapor) or other environmental contamination that originated on another property. The property where the contamination began is known as the source property. An affected off-site property owner is eligible for an off-site liability exemption if all of the following conditions in Wis. Stat. § 292.13 are satisfied, including, but not limited to:

- The off-site property owner did not cause the original discharge of the hazardous substance;
- The off-site property owner did not, and does not, possess or control the hazardous substance that was discharged on the source property;
- The property that contains the source of the migrating contamination is not owned or controlled by the same person or entity that owns the affected off-site property;
- The off-site property owner allows reasonable access to their property, so the DNR and its contractors, along with those responsible for the contamination, can take necessary response actions to protect public health;
- The off-site property owner does not interfere with the response actions of others and does not do anything to make the contamination situation worse;
- The off-site property owner agrees to other conditions that the DNR determines are reasonable and necessary to ensure that response actions are adequate; and
- For soil and sediment contamination, when the responsible party is not responding appropriately to the contamination, the off-site property owner agrees to take actions that the DNR determines are necessary to prevent an imminent threat to human health and safety. For example, taking action to limit public access to the property, installing containment barriers, and addressing fire, explosion and vapor hazards on the property.

No Exemption from Reporting Requirements

The off-site exemption does not exempt an affected property owner from Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR.

Limitations of the Exemption

The off-site exemption is conditional, limited in scope and applies solely to legal responsibilities identified in Wis. Stat. §§ 292.11(3), (4) and (7)(b)(c). The off-site exemption does not exempt a property owner from:

- Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR;
- Wis. Stat. § 292.12, which authorizes the DNR to require continuing public health protection obligations on any property affected by environmental contamination (see page 4 of this fact sheet); and
- Limited, immediate actions, as specified in Wis. Stat. § 292.13(1m)(e). For instance, off-site property owners may be required to address an imminent threat from fire, explosion or vapors if there is not a party responsible for the cleanup who can conduct the actions.

In addition, the off-site liability exemption is not automatically transferable, nor assignable, to future owners of the off-site property. However, it is likely that a new owner could be eligible for the exemption if they meet the conditions in Wis. Stat. § 292.13, including the ability to substantiate that they do not currently, or have ever, owned the source property and did not cause the discharge.

Overview of migrating contamination

Hazardous substances that are spilled or otherwise discharged to the environment can disperse and move around underground. These substances can spread out and migrate, or travel, through the soil into groundwater and nearby lakes and rivers. Gases (vapors) emanating from underground hazardous substances can also make their way upward into houses and other buildings.

When hazardous substances (contamination) move from their starting place (source) and affect the soil, sediment, groundwater or indoor air of an adjacent or nearby property, it is important to accurately determine who is legally responsible for investigating the nature and extent of the contamination, cleaning it up, and mitigating its harmful effects.

Discovering contamination from an off-site source

When a property owner discovers soil or groundwater contamination they believe came from another property, the owner must first notify the DNR of the contamination. The DNR will then work with the owner and potentially responsible parties to ensure appropriate actions are taken to investigate and clean up the contamination to protect health and safety.

Migrating contamination and access to property

Responsible parties are required by state law to investigate and remediate, to the extent practicable, all contamination that migrates within and beyond the boundaries of a source property. If the contamination crosses a property line, the responsible party must investigate where it goes and ask owners of affected, off-site properties for permission to access their properties. Property access is needed so the environmental investigation and cleanup or mitigation work can be completed.

An off-site property owner must allow access to their property to be eligible for the off-site liability exemption. When signing an access agreement, the off-site owners may wish to negotiate with the responsible party on issues such as the work schedule, the restoration of disturbed landscaping, etc.

If the owner of an affected off-site property does not allow the responsible party's environmental consultants or the DNR onto their property, the off-site owner will not qualify for the off-site exemption and the off-site owner may assume legal responsibility for the contamination on their property.

Obtaining an off-site liability determination letter from the DNR

Off-site property owners can request a liability determination letter from the DNR, for a fee, that documents the exemption in writing.

To obtain a letter, the off-site property owner must provide information to demonstrate that there are hazardous substances impacting their property from a source on another property and that all the other conditions for the exemption have been met. The off-site property owner can use the investigation data collected by the responsible party in response to the contamination or an owner of an off-site property may collect their own data to demonstrate the contamination is coming from somewhere else.

Requesting a Determination or Clarification Letter

To obtain an off-site liability determination letter or liability clarification letter, submit the DNR's [Off-site Liability Exemption application, Form 4400-201](#) and the applicable fee. This form includes instructions and describes the information needed by the DNR for a site-specific letter.

Obtaining a liability clarification letter from the DNR

If someone does not meet all the requirements for the exemption, (e.g. a prospective purchaser) and therefore doesn't qualify for an off-site liability determination letter, anyone with an interest in a property that is or may be affected by migrating contamination can still request that the DNR review the site-specific situation and provide a written liability clarification letter for a fee. Liability clarification letters may be helpful when evaluating the potential purchase of a property or when contamination is suspected to be impacting a property.

Continuing obligations for the protection of health and safety at off-site properties

When residual contamination extends across a property line, continuing obligations may also extend onto an affected, off-site property. In these situations, owners of off-site properties may not be legally responsible for responding to the contamination, but they are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety.

Wisconsin, like most states, allows some residual contamination to remain after a cleanup of contaminated soil, vapors, sediment or groundwater has been approved by the state (see Wis. Stat. § 292.12). The removal of all contamination is generally not practicable, nor is it always necessary for the protection of public health and the environment.

When the DNR approves the completion of an interim action, or a remedial action, or issues a case closure letter at a site where residual contamination exists, the DNR may condition or qualify its case closure approval on compliance with continuing obligations at the source property and affected off-site properties to protect public health and the environment.

These continuing obligations are property-specific requirements and restrictions identified in the DNR approval or case closure letter. They are legal responsibilities associated with the source property, and apply to current and future owners of the property. If contamination has migrated off-site, there may be continuing obligations that also apply to off-site, affected properties.

Common Continuing Obligations for Source and Affected, Off-site Properties

One common continuing obligation, for the owners of the source property and affected, off-site properties, is the proper management and disposal of contaminated soil that is excavated. Other continuing obligations and requirements necessary to protect health and safety may include:

- Keeping clean soil and vegetation over contaminated soil;
- Maintaining a cover of pavement, soil, asphalt, etc. over contaminated soil or groundwater;
- Operating and maintaining a vapor mitigation system that is installed by the responsible party;
- Obtaining DNR approval prior to constructing or reconstructing a well at properties with groundwater contamination; and
- Maintaining industrial use for a property that was cleaned up to industrial standards.

Owners of off-site properties are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety, except for those continuing obligations imposed for residual sediment contamination.

Notice to Affected Off-site Property Owners of Case Closure Request and Possible Continuing Obligations

The party responsible for cleaning up contamination must notify affected, off-site property owners of a proposed continuing obligation on their property before the DNR reviews a request for case closure. State law requires this, and it allows the off-site property owners some time to provide the DNR with any technical information that may be relevant to the cleanup approval.

An off-site property owner is, of course, free to discuss responsibility for the proposed off-site continuing obligations with the responsible party. If an off-site property owner enters into a legally enforceable agreement (i.e. a private contract) with the party responsible for the contamination, under which the responsible party assumes responsibility for maintaining a continuing obligation on the off-site owner's property, that agreement must be submitted to the DNR and recorded in the database per Wis. Stat. § 292.12(5)(c).

If the DNR approves a case closure request that includes continuing obligations at an off-site property, the DNR will notify off-site owners of the continuing obligation. A property owner may request modification of a continuing obligation in the future if environmental conditions change. For example, petroleum contamination degrades over time and laboratory test results of new soil, groundwater or vapor samples may support modifying or removing a continuing obligation.

Finding information about continuing obligations

Information about property-specific continuing obligations can be found (as applicable) in the DNR interim action approval letter, the case closure letter for the source property, and in the DNR documents giving notice to off-site property owners. These letters and related documents are available in the DNR database of property cleanup activities.

This database, called [BRRTS on the Web](#), is available at dnr.wi.gov (search "BRRTS"). The documents about affected, off-site properties that are associated with a specific source property can be found in BRRTS when you search the site number or address of the property that is the source of the contamination. Property owners, local government officials, building contractors, well drillers and others may review the database to find out if there are any land-use restrictions or continuing obligations associated with a specific property before beginning work there.

For more information

Questions about the off-site environmental liability exemption and continuing obligations can be directed to the brownfields specialist in your local DNR regional office. To find a specialist in your area, go to dnr.wi.gov and search "brownfields contacts."

For additional information about off-site contamination and liability clarification letters go to dnr.wi.gov and search for "off-site contamination." For additional information about residual contamination and continuing obligations go to dnr.wi.gov and search for "continuing obligations."

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Chief, Public Civil Rights, Office of Civil Rights, U.S. Department of the Interior, 1849 C Street, NW, Washington, D.C. 20240. This publication is available in alternative format (large print, Braille, etc.) upon request. Please call for more information. Note: If you need technical assistance or more information, call the Accessibility Coordinator at 608-267-7490 / TTY Access via relay - 711

Notice: This form is authorized under ss. 280.11 and 281.11, Stats., and s. NR 812.09(4) and (4)(w), Wis. Adm. Code. Information requested is required to determine if an approval for construction or reconstruction of a well may be granted, under s. NR 812.09(4) and (4)(w), Wis. Adm. Code: "Prior department approval is required for the construction or reconstruction of a well on a property that is listed on the department's geographic information system (GIS) Registry of Closed Remediation Sites." Failure to submit this form or provide all required information may result in your application for approval being denied or your well operating in violation of ch. NR 812, Wis. Adm. Code, or both, and may result in forfeitures under s. 281.98, Stats., of not less than \$10 nor more than \$5,000 for each violation. Personally identifiable information on this form is not likely to be used for any purpose other than administration of the water supply program. However, copies of this form are available to requesters under Wisconsin's Open Records Law [ss. 19.31 - 19.39, Wis. Stats.].

Applicant Information

Last Name	First	MI	Daytime Phone Number (include area code)		
Mailing Street Address and PO Box			City	State	ZIP Code

Well Site Information

Facility or Site Name (if any)			BRRTS ID No. (if known)		
Address of well (if different than owner)			Gov't Lot #	$\frac{1}{4}$ $\frac{1}{4}$	$\frac{1}{4}$
			Section	Township	Range <input type="radio"/> E <input type="radio"/> W
				N	
<input type="radio"/> City <input type="radio"/> Town <input type="radio"/> Village of _____		State	ZIP Code	County	
Subdivision Name			Lot Number	Block Number	

Well Construction Information

If approval request is for an existing well, include the following well construction information, if known. Include copy of well report if possible.

Well Type <input type="radio"/> Drilled <input type="radio"/> Driven Point <input type="radio"/> Other _____	Casing Depth	Total Well Depth
Name of Original Well Owner	Date Well Constructed	Constructed By
		WUJWN

Approval Information

Proposed construction and location of well, i.e., to avoid the contamination.

Identify well construction reports for any existing wells, on property or adjacent property, if available.

Are there any other setback separation distance requirements in NR 812.08 that would require a variance to construct the well?

Site Drawing

- Sketch the property and location of the water supply. Include the scale of the drawing and distances to known sources of contamination (for example, contaminant plume, septic systems, gas tanks, drain tiles, animal pens, etc.)
- Show slope arrows from well and contamination sources, if lot is sloped
- Attach any extra sheets of other information, which may be useful in describing your situation

(North)

SITE DRAWING

- Department regional personnel may inspect this property to verify information provided and to determine comparable protection options. You may be contacted by phone for an appointment, or if more information is needed.
- **NO CONSTRUCTION SHALL BEGIN UNTIL THE OWNER OR CONTRACTOR HAS RECEIVED A WRITTEN APPROVAL DOCUMENT.**
- Written notification will be provided of approval or denial with 65 business days of receipt of this application, as provided by s. NR 812, Wis. Adm. Code.

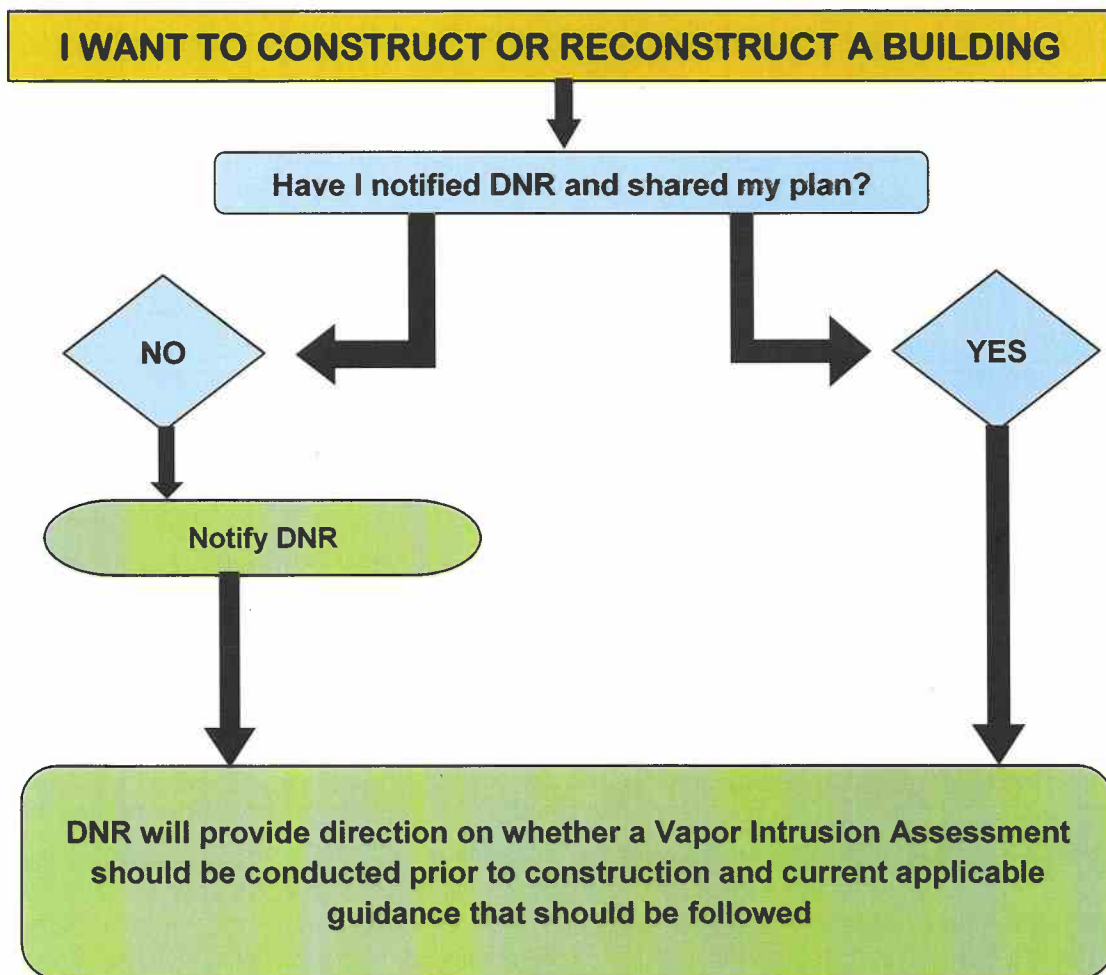
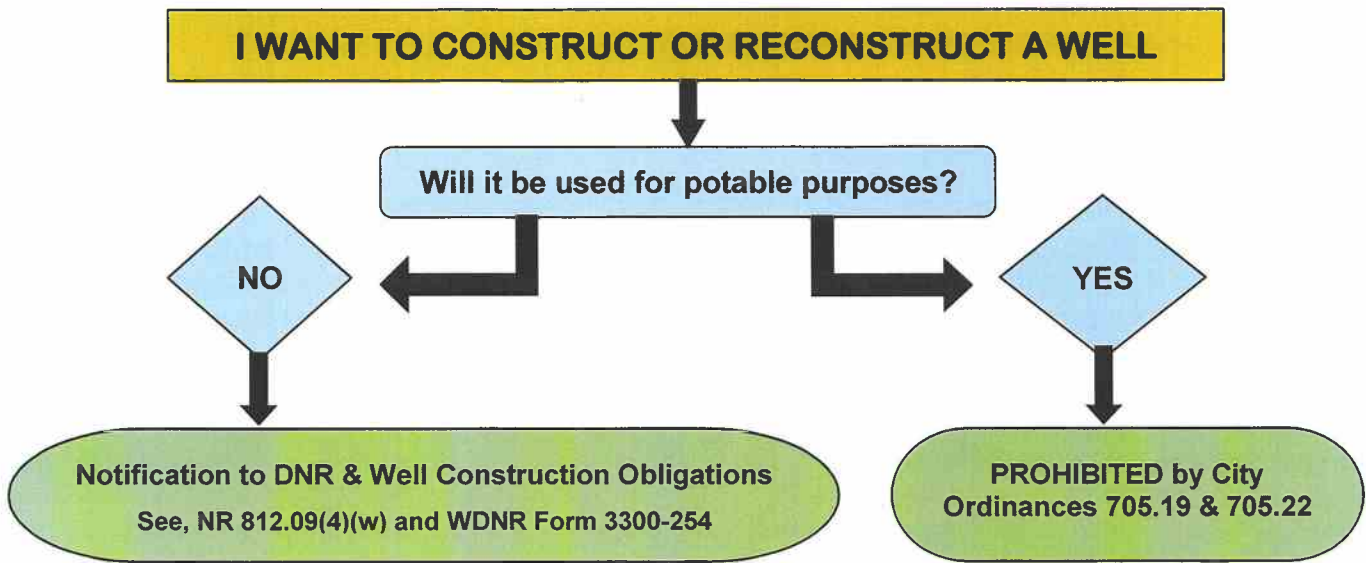
I certify to the best of my knowledge the information provided in this application is true, complete, and correct. I understand that the information I provide will be used by the Department to determine if an approval can be granted and what construction specifications will be required to provide comparable protection. I further understand that in granting an approval the Department does not guarantee acceptable water quality or quantity.

Owner's Signature

Date Signed

Name and Address of Well Driller, Well Contractor or Pump Installer, if known

MAIL THIS APPLICATION TO:



I'M THE CITY AND I WANT TO EXCAVATE SOIL

Follow the below restrictions

1. Consult SMP and follow its instructions.
2. Soil cannot be excavated from area covered by Kreher Park Cap, unless approved by DNR and EPA. (Cap to be repaired and replaced to meet as-built conditions.)
3. Soil cannot be excavated from areas within buffer zones around remedial infrastructure. Consult ICIAP for figures.
4. Do not interfere with the remedial action or remedial infrastructure at the Site.
5. Prior to performing any work at the Site or within 100 ft. of the Site, the City must:
 - a. Have the design stamped by a licensed PE certifying that the work will not damage, or interfere with the remedy or remedial infrastructure at the Site.
 - b. EPA, in concurrence with DNR, must review and approve the plan.
 - c. Provide NSP a 30-day advanced opportunity to review and comment on the plan.
6. Provide 10 day notice to NSP, EPA and DNR of any public meetings regarding the City's redevelopment plans at the Site.
7. Maintain insurance (or require contractors to maintain insurance) for any excavation or construction activities at the Site; insurance must name NSPW as an additional named insured.
8. If planning to construct a new building, a vapor intrusion assessment must be performed prior to construction; no residential structures are allowed in Kreher Park.

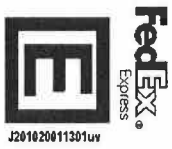
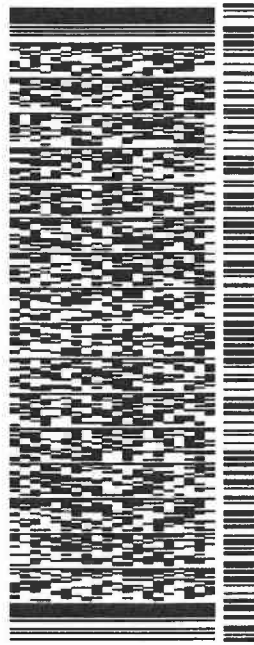
ORIGIN ID: LNRA (608) 297-3501
RENEE V. EXUM
MICHAEL BEST & FRIEDRICH LLP
1 SOUTH PICKNEY STREET
SUITE 700
MADISON, WI 53703
UNITED STATES US

SHIP DATE: 16MAR20
ACTWGT: 1.00 LB
CAD: 108763992/NET4220

BILL SENDER

TO **JOHN BUTLER**
CITY OF ASHLAND
DIRECTOR OF PUBLIC WORKS
2020 6TH STREET
ASHLAND WI 54806

REF: 070086-0206 (RVE 0617)
INV: (715) 682-7061
DEPT: PO:



56BJ264E0/FE4A

TRK# 7700 2742 7352
0201

TUE - 17 MAR 4:30P
PRIORITY OVERNIGHT

XHDLHA

WI-US
54806 MSP



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Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our ServiceGuide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

2400 Farm Road
Ashland, WI 54806

800.895.4999
xcelenergy.com



March 16, 2020

VIA FEDERAL EXPRESS

Mayor Debra Lewis
City of Ashland
601 Main Street West
Ashland, WI 54806

Mr. John Butler
Director of Public Works
City of Ashland
2020 6th Street
Ashland, WI 54806

Subject: Remedial Action Approval for Ashland NSP Lakefront Superfund Site, 300 St. Claire Street, Ashland, WI

Dear Mayor Lewis and Mr. Butler:

Northern States Power Company of Wisconsin (“NSPW”) is providing you this notification in compliance with state law and in connection with environmental work recently completed at the Ashland NSP Lakefront Superfund Site (the “Site”). The Site is located at 300 St. Claire Street, Ashland and a map is enclosed. Further information concerning the site is available here: <https://cumulis.epa.gov/supercpad/cursites/csinfo.cfm?id=0507952> or by visiting the document repository maintained at the Vaughn Public Library.

The Wisconsin Department of Natural Resources (“DNR”) recently approved a Remedial Action Plan associated with this work and the U.S. Environmental Protection Agency (EPA), in concurrence with DNR, has approved the substantial completion of that work. As part of this approval, we must notify you that your property, which is within the Site, and that you either own or lease pursuant to a June 2018 Submerged Lands Lease from the Board of Commissioners for Public Lands (the “Property”) is subject to certain continuing obligations.

State law directs parties responsible for environmental contamination to take actions to restore the environment and minimize harmful effects to the extent practicable. In the course of conducting such cleanups, the law allows some amount of residual contamination to remain in soil and groundwater provided it does not pose a threat to public health, safety, welfare or to the environment.

The DNR has recently approved of a Remedial Action Plan and NSPW has implemented that Plan to the extent required by state and federal law. Residual groundwater and soil contamination remains beneath the Property as described further below and in the *Institutional Control Implementation and Assurance Plan* (FE/JV 2020). Because that residual contamination has been determined to not pose any threat to public health, safety, welfare or to the environment, DNR has allowed that contamination to remain, subject to compliance with certain ongoing use restrictions and continuing obligations applicable to the Property.

Continuing Obligations Applicable to the Property

The Property is subject to certain use restrictions which can be found in and enforceable by the following:

- Granting reasonable access to DNR, the U.S. Environmental Protection Agency, NSPW or its contractors;
- Compliance with the property use restrictions of the *Institutional Control Implementation and Assurance Plan* (FE/JV 2020);
- Compliance with the soil management requirements of the *Soil Management Plan* (FE/JV 2020);
- Compliance with the property use restrictions of the Submerged Lands Lease;
- Compliance with the property use restrictions in various agreements with NSPW including (i) the Framework Agreement for Cooperation and Coordination Concerning Redevelopment Activities; (ii) the Remediation Easement, recorded as document number 334736 in Vol. 742, Page 901-906 of the Ashland County Register of Deeds; (iii) the Cooperation and Access Agreement, as amended.
- Avoiding actions that make the contamination worse (e.g., interfering with the performance of the remedy, demolishing or damaging a structure and causing or worsening the discharges to the environment, or exacerbating site conditions).

You are required to manage the Property in compliance with these use restrictions and continuing obligations. Further detail is provided below. Please be aware that failure to comply with the continuing obligations may result in enforcement action by the EPA and DNR. The EPA and DNR intend to conduct inspections in the future to ensure that the conditions included in this letter are met.

Residual Soil Contamination (Wis. Admin. Code ch. NR 718, chs. NR 500 to NR 555, or Wis. Stat. ch. 289)

Soil contamination remains throughout Kreher Park and in portions of the former Upper Bluff filled ravine, as depicted on Figs. 2-3, 2-5, and 2-6 of the *Institutional Control Implementation and Assurance Plan* (FE/JV 2020). At Kreher Park, an engineered cap has been constructed over impacted soil, which cap must be monitored and maintained (Braun Intertec, 2020). If soil in the specific locations described above is excavated in the future, you must comply with the requirements of the *Soil Management Plan* (FE/JV 2020). At the time of excavation, you must sample and analyze the excavated soil to determine if residual contamination remains. If sampling confirms that contamination is present, you will need to determine whether the material is considered solid or hazardous waste and ensure that any storage, treatment or disposal is in compliance with applicable standards and rules. Contaminated soil may be managed in accordance with Wis. Admin. Code ch. NR 718, with prior DNR approval.

In addition, you need to be aware that excavation of the contaminated soil may pose an inhalation or other direct contact hazard and as a result special precautions may need to be taken to prevent a direct contact health threat to humans. If you construct or reconstruct any structures

on the Property, you should evaluate site conditions in accordance with DNR publication RR-800, *Addressing Vapor Intrusion at Remediation & Redevelopment Sites in Wisconsin*, dated January 2018 (DNR, 2018), and any subsequent versions thereof.

Residual Groundwater Contamination (Wis. Admin. Code ch. NR 140, NR 812)

Due to the existence of residual contamination after completion of the remedial action approved in the Remedial Action Plan approval, this Site, which includes the Property, will be listed on the Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>. If you intend to construct or reconstruct a well on the Property, you will need to get Department approval in accordance with Wis. Admin. Code § NR 812.09 (4) (w). To obtain approval, Form 3300-254 needs to be completed and submitted to the WDNR Drinking and Groundwater program's regional water supply specialist. A well driller can help with this form. This form can be obtained online at: <https://dnr.wi.gov/files/PDF/forms/3300/3300-254.pdf>.

The attached DNR fact sheet RR-819, *Continuing Obligations for Environmental Protection*, helps explain a property owner's responsibility for continuing obligations on their property. You may obtain additional copies at <http://dnr.wi.gov/files/PDF/pubs/rr/RR819.pdf>.

You have thirty (30) days to comment on the issues addressed in this letter. You may submit any information that you believe is relevant to be considered by DNR and NSPW. You may submit that information at the address(es) provided below.

Notices


Department of Natural Resources
Attn: John Sager
1701 N. 4th Street
Superior, WI 54880
P: 715.392-7822
E: John.Sager@Wisconsin.gov

Michael BeBeau
Xcel Energy
Community Service Manager
2400 Farm Road
Ashland, WI 54806
P: 715.682.6936 F: 715.682.6921
E: michael.s.bebeau@xcelenergy.com

You should retain this document with your property records.

Questions regarding this notification may be directed to Michael Bebeau at 715-682-6936.

Sincerely,


Michael Bebeau (DK)

Attachments

Legal Description of Property

RR-819 – Continuing Obligations for Environmental Protection

RR-671 – What Landowners Should Know: Information About Using Natural Attenuation To Clean Up Contaminated Groundwater

RR-589 – When Contamination Crosses a Property Line

DNR Form 3300-254 – GIS Registry Site Well Approval Application

Decision Tree – I Want to Construct a Well or Building

Decision Tree – I Want to Excavate Soil – City

**EXHIBIT A
LEGAL DESCRIPTION**

(City of Ashland)

Parcel No. 201-01003-0000

Lots 1 - 6 inclusive, Block 25, Lots 1 - 6 inclusive, Block 26, Lots 1 - 6 inclusive, Block 27, Lots 1 - 6 inclusive, Block 28, that part of Lots 1 - 5, inclusive, Block 32, lying North of railroad right of way, Lots 13 - 24 inclusive, Block 32 and that part of Lots 17-24 inclusive, Block 33, lying North of railroad right of way, all in Ellis Division, City of Ashland, Ashland County, Wisconsin.

Parcel No. 201-01009-0000

Lots 1 - 6 inclusive, Block 29, Lots 1 - 6 inclusive, Block 30, Lots 13-24 inclusive, Block 31, Ellis Division, City of Ashland, Ashland County, Wisconsin.

Also, Lots 8 and 9, Fifield Place Subdivision, City of Ashland, Ashland County, Wisconsin.

Parcel No. 201-01012-0000

Wisconsin Central Ltd.'s 100 foot wide railroad right of way extending on, over and across Lots 1 through 12, inclusive, and Lots 13 through 16, inclusive, Block 32, Ellis Division to the City of Ashland Wisconsin, as per the recorded plat thereof, lying 50 feet on each side of Wisconsin Central Ltd.'s track centerline, as originally located and constructed.

Parcel No. 201-01028-0000

Wisconsin Central Ltd. 's 100 foot wide railroad right of way extending on, over and across Lots 1 through 4, inclusive, and Lots 13 through 24, inclusive, all in Block 33, Ellis Division to the City of Ashland Wisconsin, as per the recorded plat thereof, lying 50 feet on each side of Wisconsin Central Ltd. 's track centerline, as originally located and constructed.



Continuing Obligations for Environmental Protection Responsibilities of Wisconsin Property Owners

Wis. Stat. § 292.12

Purpose

This fact sheet is intended to help property owners understand their legal requirements under s. 292.12, Wis. Stats., regarding continuing obligations that arise due to the environmental condition of their property.

Introduction

The term “continuing obligations” refers to certain actions for which property owners are responsible following a completed environmental cleanup. They are sometimes called environmental land use controls or institutional controls. These legal obligations, such as a requirement to maintain pavement over contaminated soil, are most often found in a cleanup approval letter from the state.

Less commonly, a continuing obligation may apply where a cleanup is not yet completed but a cleanup plan has been approved, or at a property owned by a local government that is exempt from certain cleanup requirements.

What Are Continuing Obligations?

Continuing obligations are legal requirements designed to protect public health and the environment in regard to contamination that remains on a property.

Continuing obligations still apply after a property is sold. Each new owner is responsible for complying with the continuing obligations.

Background

Wisconsin, like most states, allows some contamination to remain after cleanup of soil or groundwater contamination (residual contamination). This minimizes the transportation of contamination and reduces cleanup costs while still ensuring that public health and the environment are protected.

The Department of Natural Resources (DNR), through its Remediation and Redevelopment (RR) Program, places sites or properties with residual contamination on a public database in order to provide notice to interested parties about the residual contamination and any associated continuing obligations. Please see the “Public Information” section on page 3 to learn more about the database. (Prior to June 3, 2006, the state used deed restrictions recorded at county courthouses to establish continuing obligations, and those deed restrictions have also been added into the database.)

Types of Continuing Obligations

1. Manage Contaminated Soil that is Excavated

If the property owner intends to dig up an area with contaminated soil, the owner must ensure that proper soil sampling, followed by appropriate treatment or disposal, takes place. Managing contaminated soil must be done in compliance with state law and is usually done under the guidance of a private environmental professional.

2. Manage Construction of Water Supply Wells

If there is soil or groundwater contamination and the property owner plans to construct or reconstruct a water supply well, the owner must obtain prior DNR approval to ensure that well construction is designed to protect the water supply from contamination.

Other Types of Continuing Obligations

Some continuing obligations are designed specifically for conditions on individual properties. Examples include:

- keeping clean soil and vegetation over contaminated soil;
- keeping an asphalt “cover” over contaminated soil or groundwater;
- maintaining a vapor venting system; and
- notifying the state if a structural impediment (e.g. building) that restricted the cleanup is removed. The owner may then need to conduct additional state-approved environmental work.

It is common for properties with approved cleanups to have continuing obligations because the DNR generally does not require removal of all contamination.

Property owners with the types of continuing obligations described above will find these requirements described in the state’s cleanup approval letter or cleanup plan approval, and *must*:

- comply with these property-specific requirements; and
- obtain the state’s permission before changing portions of the property where these requirements apply.

The requirements apply whether or not the person owned the property at the time that the continuing obligations were placed on the property.

Changing a Continuing Obligation

A property owner has the option to modify a continuing obligation if environmental conditions change. For example, petroleum contamination can degrade over time and property owners may collect new samples showing that residual contamination is gone. They may then request that the DNR modify or remove a continuing obligation. Fees are required for the DNR’s review of this request and for processing the change to the database (\$1050 review fee, \$300/\$350 database fee). Fees are subject to change; current fees are found in Wis. Admin. § NR 749 online at http://docs.legis.wisconsin.gov/code/admin_code/nr/700/749.

Public Information

The DNR provides public information about continuing obligations on the Internet. This information helps property owners, purchasers, lessees and lenders understand legal requirements that apply to a property. The DNR has a comprehensive database of contaminated and cleaned up sites, *BRRTS on the Web*. This database shows all contamination activities known to the DNR. Site specific documents are found under the *Documents* section. The information includes maps, deeds, contaminant data and the state’s closure letter. The closure letter states that no additional environmental cleanup is needed for past contamination and includes information on property-specific continuing obligations. If a cleanup has not been completed, the state’s approval of the remedial action plan will contain the information about

continuing obligations.

Properties with continuing obligations can generally be located in the DNR's *RR Sites Map*. RR Sites Map provides a map view of contaminated and cleaned up sites, including sites with continuing obligations, and links to BRRTS on the Web. *BRRTS on the Web* and *RR Sites Map* are part of the Wisconsin Remediation and Redevelopment Database (WRRD) at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>.

If a completed cleanup is shown in *BRRTS on the Web* but the site documents cannot be found in the documents section, the DNR's closure letter can still be obtained from a regional office. For assistance, please contact a DNR Environmental Program Associate (see the RR Program's Staff Contact web page at dnr.wi.gov/topic/Brownfields/Contact.html).

Off-Site Contamination: When Continuing Obligations Cross the Property Line

An off-site property owner is someone who owns property that has been affected by contamination that moved through soil, sediment or groundwater from another property. Wis. Stat. § 292.13 provides an exemption from environmental cleanup requirements for owners of "off-site" properties. The DNR will generally not ask off-site property owners to investigate or clean up contamination that came from a different property, as long as the property owner allows access to his or her property so that others who are responsible for the contamination may complete the cleanup.

However, off-site property owners are legally obligated to comply with continuing obligations on their property, even though they did not cause the contamination. For example, if the state approved a cleanup where the person responsible for the contamination placed clean soil over contamination on an off-site property, the owner of the off-site property must either keep that soil in place or obtain state approval before disturbing it.

Property owners and others should check the *Public Information* section above if they need to:

- determine whether and where continuing obligations exist on a property;
- review the inspection, maintenance and reporting requirements, and
- contact the DNR regarding changing that portion of the property. The person to contact is the person that approved the closure or remedial action plan.

Option for an Off-Site Liability Exemption Letter

In general, owners of off-site properties have a legal exemption from environmental cleanup requirements. This exemption does not require a state approval letter. Nonetheless, they may request a property-specific liability exemption letter from the DNR if they have enough information to show that the source of the contamination is not on their property. This letter may be helpful in real estate transactions. The fee for this letter is \$700 under Chapter NR 749, Wis. Adm. Code. For more information about this option, please see the RR Program's Liability web page at dnr.wi.gov/topic/Brownfields/Liability.html.

Legal Obligations of Off-Site Property Owners

- Allow access so the person cleaning up the contamination may work on the off-site property (unless the off-site owner completes the cleanup independently).
- Comply with any required continuing obligations on the off-site property.

Required Notifications to Off-Site Property Owners

1. The person responsible for cleaning up contamination must notify affected property owners of any proposed continuing obligations on their off-site property **before** asking the DNR to approve the cleanup. This is required by law and allows the off-site owners to provide the DNR with any technical information that may be relevant to the cleanup approval.

When circumstances are appropriate, an off-site neighbor and the person responsible for the cleanup may enter into a “legally enforceable agreement” (i.e. a contract). Under this type of private agreement, the person responsible for the contamination may also take responsibility for maintaining a continuing obligation on an off-site property. This agreement would not automatically transfer to future owners of the off-site property. The state is not a party to the agreement and cannot enforce it.

2. If a cleanup proposal that includes off-site continuing obligations is approved, the DNR will send a letter to the off-site owners detailing the continuing obligations that are required for their property. Property owners should inform anyone interested in buying their property about maintaining these continuing obligations. For residential property, this would be part of the real estate disclosure obligation.

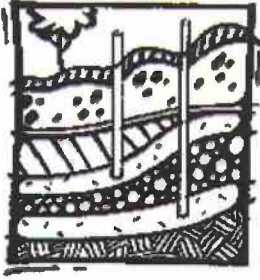
More Information

For more information, please visit the RR Program’s Continuing Obligations website at dnr.wi.gov/topic/Brownfields/Residual.html.

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The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Chief, Public Civil Rights, Office of Civil Rights, U.S. Department of the Interior, 1849 C. Street, NW, Washington, D.C. 20240.

This publication is available in alternative format (large print, Braille, etc.) upon request. Please call for more information. Note: If you need technical assistance or more information, call the Accessibility Coordinator at 608-267-7490 / TTY Access via relay - 711



Using Natural Attenuation to Clean Up Contaminated Groundwater: What Landowners Should Know

RR-671

December 2016

What Is Natural Attenuation?

Natural attenuation makes use of natural processes in soil and groundwater to contain the spread of contamination and to reduce the amount of contamination from chemical releases.

Natural attenuation is an *in-situ* treatment method. This means that contaminants are left in place while natural attenuation works on them. Natural attenuation is relied upon to clean up contamination that remains after the source of the contamination is removed. An example of a source of contamination would be a leaking underground petroleum tank.

How Does Natural Attenuation Work?

Natural attenuation processes work at many sites, but the rate and degree of effectiveness varies from property to property, depending upon the type of contaminants present and the physical, chemical and biological characteristics of the soil and groundwater.

Natural attenuation processes can be divided into two broad categories – destructive and non-destructive. Destructive processes destroy contaminants. The most common destructive process is **biodegradation**.

Non-destructive processes do not destroy the contaminant, but reduce contaminant concentrations in groundwater through **dilution, dispersion** or **adsorption**.

Biodegradation

Biodegradation is a process in which micro-organisms that naturally occur in soil and groundwater (e.g. yeast, fungi, or bacteria), break down, or degrade hazardous substances to less toxic or non-toxic substances. Microorganisms, like humans, eat and digest organic compounds for nutrition and energy (organic compounds contain carbon and hydrogen atoms).

Some types of microorganisms can digest organic substances such as fuels or solvents that are hazardous to humans. Microorganisms break down the organic contaminants into harmless products – mainly carbon dioxide and water. Once the contaminants are degraded, the microorganism populations decline because they have used their food sources. These small populations of microorganisms pose no contaminant or health risk.

Many organic contaminants, like petroleum, can be biodegraded by microorganisms in the underground environment. For example, biodegradation processes can effectively cleanse soil and groundwater of hydrocarbon fuels such as gasoline and benzene, toluene, ethylbenzene, and xylene – known as the BTEX compounds, under certain conditions.

Biodegradation can also breakdown other contaminants in groundwater such as trichloroethylene (TCE), a chlorinated solvent used in metal cleaning. However, the processes involved are harder to predict and are less effective at contaminant removal compared to petroleum-contaminated sites.



Wisconsin Department of Natural Resources
P.O. Box 7921, Madison, WI 53707
dnr.wi.gov, search "brownfield"



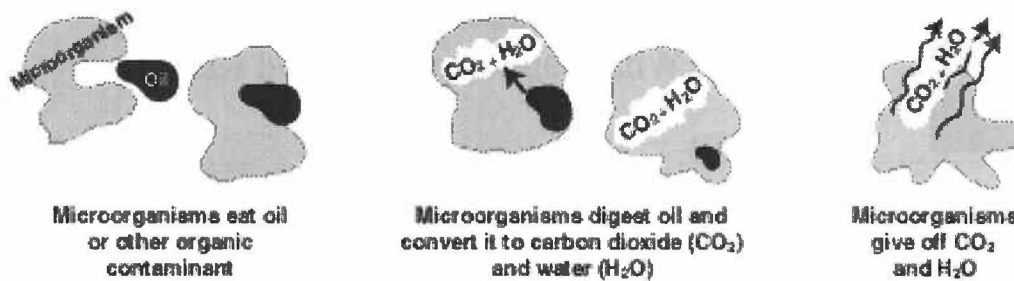


Figure 1. Schematic Diagram of Aerobic Biodegradation in Soil

Dilution and Dispersion

The effects of dilution and dispersion reduce contaminant concentrations but do not destroy contaminants. Clean water from the surface seeps underground to mix with and dilute contaminated groundwater.

Other processes that lead to reduced concentrations of contaminants include clean groundwater flowing into contaminated areas, and the dispersion of pollutants as they spread out and away from the main path of the contaminated plume.

Adsorption

Adsorption occurs when contaminants attach or “sorb” to underground particles. Most oily substances (like petroleum compounds) repel water and escape from the groundwater by attaching to organic matter and clay minerals in the subsurface.

This process holds back or retards contaminant movement and reduces the concentration of contaminants in the groundwater. However, like dilution and dispersion, adsorption does not destroy contaminants.

Why Consider Natural Attenuation To Clean Up Soil And Groundwater?

In certain situations, natural attenuation is an effective, inexpensive cleanup option and the most appropriate way to remediate some contamination problems. Natural attenuation focuses on confirming and monitoring natural remediation processes rather than relying on engineered or “active” technologies (such as pumping groundwater, treating it above ground, then disposing of the treated water).

Contaminants from petroleum are good candidates for natural attenuation because they are among the most easily destroyed by biodegradation. Natural attenuation is non-invasive, which allows treatment to go on below ground, while the surface can continue to be used.

Natural attenuation can also be less costly than active engineered treatment options, and requires no special equipment, energy source, or disposal of treated soil or groundwater.

Will Natural Attenuation Work At My Property?

Whether natural attenuation will work at a particular location is determined by investigating the soil and groundwater. These investigations determine the type of contaminants present, the levels of contamination, and the physical and chemical conditions that lead to biodegradation of the contaminants.

In order to rely on natural attenuation, responsible parties are required to confirm that natural attenuation processes are working by monitoring the soil and groundwater over a period of time to show that the contaminant concentrations are decreasing and that the contamination is no longer spreading.

Those conducting the cleanup need to know whether natural attenuation, or any proposed remedy, will reduce the contaminant concentrations in the soil and groundwater to legally acceptable limits within a reasonable period of time.

Natural attenuation may be an acceptable option for sites where active remediation has occurred and has reduced the concentration of contaminants (for instance, removing leaking underground tanks and contaminated soil).

However, natural attenuation is not an appropriate option at all sites. If the contamination has affected a drinking water well, or has entered a stream or lake, active cleanup options may be necessary to make sure people and the environment are protected from direct contact with the contamination.

The speed or rate of natural attenuation processes is typically slow. Monitoring is necessary to show that concentrations decrease at a sufficient rate to ensure that contaminants will not become a health threat in the future.

Closure Of Contaminated Sites Using Natural Attenuation As A Final Remedy

When contamination is discovered at a property (such as a gas station with leaking underground tanks), the person who is responsible for causing the contamination, and persons having possession or control of hazardous substances that have been discharged, have the responsibility to remove the source of contamination and investigate and clean up the contamination that has escaped into the soil and groundwater.

The contaminant release must be reported to the Wisconsin Department of Natural Resources (DNR) and the site investigation and cleanup are overseen by a state agency. Depending on the type of contaminant, the oversight agency could be the Department of Agriculture, Trade and Consumer Protection or Department of Natural Resources.

When the cleanup has complied with state standards, the person responsible for the contamination will ask the state agency for closure of the case. If natural attenuation is relied upon to finish cleaning up a contaminated property after closure, the responsible person will need to show that contaminant concentrations are not spreading, that contaminant concentrations are stable or decreasing, and that the concentrations will decrease in the future until state groundwater standards are met.

Because natural attenuation processes are slow, it may take many years before the properties with contamination are clean. State rules require that all owners of properties where groundwater contamination has spread must be informed of the contamination below their property.

In addition, the properties with groundwater contamination exceeding state groundwater enforcement standards must be listed on a database to notify future owners and developers of the presence of contamination. If future monitoring occurs and shows that natural attenuation processes have removed the contaminants to state-required cleanup levels, then the properties can be removed from the database.

The state agency will grant closure if the site investigation and monitoring shows that natural attenuation will clean up groundwater to state standards within a reasonable period of time. All state rules for cleanup must be met and the person who is responsible for the contamination must comply with all conditions of the state's closure approval.

Publications

The following publications provide additional information on natural attenuation. Websites where these can be downloaded free of charge are also listed.

- *A Citizen's Guide to Bioremediation*, September 2012, EPA 542-F-12-003; https://www.epa.gov/sites/production/files/2015-04/documents/a_citizens_guide_to_bioremediation.pdf
- *Commonly Asked Questions Regarding the Use of Natural Attenuation for Petroleum-Contaminated Sites at Federal Facilities*, www.clu-in.org/download/techfocus/na/na-petrol.pdf
- *Monitored Natural Attenuation of Petroleum Hydrocarbons: U.S. EPA Remedial Technology Fact Sheet*, May 1999, EPA 600-F-98-021; www.clu-in.org/download/remed/pet-hyd.pdf
- *Monitored Natural Attenuation of Chlorinated Solvents*, May 1999, EPA 600-F-98-0022; www.clu-in.org/download/remed/chl-solv.pdf
- *Guidance on Natural Attenuation for Petroleum Releases, WI DNR, Bureau for Remediation and Redevelopment*, March 2003, PUB-RR-614; dnr.wi.gov/files/PDF/pubs/rr/RR614.pdf

Contact Information

If you have questions about natural attenuation contact a [DNR Environmental Program Associate \(EPA\)](#) in your local DNR regional office. The EPA can direct you to a project manager.



Note: These are the Remediation and Redevelopment Program's designated regions. Other DNR program regional boundaries may be different.

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When Contamination Crosses a Property Line

The Off-Site Environmental Liability Exemption - Wis. Stat. §§ 292.12 and 292.13 Rights and Responsibilities of Off-site, Affected Property Owners

Purpose

This fact sheet summarizes the state’s statutory liability exemption for owners of real property affected by environmental contamination migrating from another property. It also explains how contamination from one property can impose health and safety obligations on other properties even when the liability exemption is in effect.

Background

It is relatively common to discover that substances used at an older commercial or industrial property have migrated into the soil, surface water and groundwater and have traveled onto a neighboring property. When this occurs, the party responsible for investigating and cleaning up the source of the contamination is required to take action to address health and safety concerns at both the source property and the off-site property.

When contamination from one property crosses a property boundary, Wisconsin law provides an environmental liability exemption to the affected property owner who meets the conditions in the law. The affected property owner is identified as the “off-site” owner in state law, because environmental contamination has moved beyond the source property’s boundaries.

The Wisconsin Department of Natural Resources (DNR) will generally not ask off-site, exempt property owners to investigate or remediate contamination that did not originate on their property. A few exceptions to the exemption, related to imminent health and safety threats and long term obligations, are described in the next section.

The statutory off-site exemption is self-implementing and is effective as long as an eligible party meets all the statutory conditions. Property owners and others may request a written exemption determination letter from the DNR for a fee, but this letter is not required to have the exemption protections.

Summary of an off-site property owner’s rights and responsibilities

Wisconsin law, Wis. Stat. § 292.11(3), requires anyone who causes, possesses or controls a hazardous substance discharge to the environment (i.e. land, air, water) to take action to restore the

environment to the extent practicable and minimize harmful effects. When contamination from one property migrates and affects another property, however, Wisconsin law provides an exemption for an owner (possessor) of the affected, neighboring property from the requirement to take response actions under Wis. Stat. §§ 292.11(3), (4) and (7)(b) and (c). This statutory provision is known as the “off-site liability exemption,” and is authorized by Wis. Stat. § 292.13.

Related Guidance

- [Off-site Liability Exemption Application \(Form 4400-201\)](#)
- [General Liability Clarification Letters \(RR-619\)](#)
- [Continuing Obligations for Environmental Protection \(RR-819\)](#)
- [Environmental Contamination and Your Real Estate \(RR-973\)](#)

An off-site property owner is someone who owns property affected by soil, groundwater, sediment, soil gas (vapor) or other environmental contamination that originated on another property. The property where the contamination began is known as the source property. An affected off-site property owner is eligible for an off-site liability exemption if all of the following conditions in Wis. Stat. § 292.13 are satisfied, including, but not limited to:

- The off-site property owner did not cause the original discharge of the hazardous substance;
- The off-site property owner did not, and does not, possess or control the hazardous substance that was discharged on the source property;
- The property that contains the source of the migrating contamination is not owned or controlled by the same person or entity that owns the affected off-site property;
- The off-site property owner allows reasonable access to their property, so the DNR and its contractors, along with those responsible for the contamination, can take necessary response actions to protect public health;
- The off-site property owner does not interfere with the response actions of others and does not do anything to make the contamination situation worse;
- The off-site property owner agrees to other conditions that the DNR determines are reasonable and necessary to ensure that response actions are adequate; and
- For soil and sediment contamination, when the responsible party is not responding appropriately to the contamination, the off-site property owner agrees to take actions that the DNR determines are necessary to prevent an imminent threat to human health and safety. For example, taking action to limit public access to the property, installing containment barriers, and addressing fire, explosion and vapor hazards on the property.

No Exemption from Reporting Requirements

The off-site exemption does not exempt an affected property owner from Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR.

Limitations of the Exemption

The off-site exemption is conditional, limited in scope and applies solely to legal responsibilities identified in Wis. Stat. §§ 292.11(3), (4) and (7)(b)(c). The off-site exemption does not exempt a property owner from:

- Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR;
- Wis. Stat. § 292.12, which authorizes the DNR to require continuing public health protection obligations on any property affected by environmental contamination (see page 4 of this fact sheet); and
- Limited, immediate actions, as specified in Wis. Stat. § 292.13(1m)(e). For instance, off-site property owners may be required to address an imminent threat from fire, explosion or vapors if there is not a party responsible for the cleanup who can conduct the actions.

In addition, the off-site liability exemption is not automatically transferable, nor assignable, to future owners of the off-site property. However, it is likely that a new owner could be eligible for the exemption if they meet the conditions in Wis. Stat. § 292.13, including the ability to substantiate that they do not currently, or have ever, owned the source property and did not cause the discharge.

Overview of migrating contamination

Hazardous substances that are spilled or otherwise discharged to the environment can disperse and move around underground. These substances can spread out and migrate, or travel, through the soil into groundwater and nearby lakes and rivers. Gases (vapors) emanating from underground hazardous substances can also make their way upward into houses and other buildings.

When hazardous substances (contamination) move from their starting place (source) and affect the soil, sediment, groundwater or indoor air of an adjacent or nearby property, it is important to accurately determine who is legally responsible for investigating the nature and extent of the contamination, cleaning it up, and mitigating its harmful effects.

Discovering contamination from an off-site source

When a property owner discovers soil or groundwater contamination they believe came from another property, the owner must first notify the DNR of the contamination. The DNR will then work with the owner and potentially responsible parties to ensure appropriate actions are taken to investigate and clean up the contamination to protect health and safety.

Migrating contamination and access to property

Responsible parties are required by state law to investigate and remediate, to the extent practicable, all contamination that migrates within and beyond the boundaries of a source property. If the contamination crosses a property line, the responsible party must investigate where it goes and ask owners of affected, off-site properties for permission to access their properties. Property access is needed so the environmental investigation and cleanup or mitigation work can be completed.

An off-site property owner must allow access to their property to be eligible for the off-site liability exemption. When signing an access agreement, the off-site owners may wish to negotiate with the responsible party on issues such as the work schedule, the restoration of disturbed landscaping, etc.

If the owner of an affected off-site property does not allow the responsible party's environmental consultants or the DNR onto their property, the off-site owner will not qualify for the off-site exemption and the off-site owner may assume legal responsibility for the contamination on their property.

Obtaining an off-site liability determination letter from the DNR

Off-site property owners can request a liability determination letter from the DNR, for a fee, that documents the exemption in writing.

To obtain a letter, the off-site property owner must provide information to demonstrate that there are hazardous substances impacting their property from a source on another property and that all the other conditions for the exemption have been met. The off-site property owner can use the investigation data collected by the responsible party in response to the contamination or an owner of an off-site property may collect their own data to demonstrate the contamination is coming from somewhere else.

Requesting a Determination or Clarification Letter

To obtain an off-site liability determination letter or liability clarification letter, submit the DNR's [Off-site Liability Exemption application, Form 4400-201](#) and the applicable fee. This form includes instructions and describes the information needed by the DNR for a site-specific letter.

Obtaining a liability clarification letter from the DNR

If someone does not meet all the requirements for the exemption, (e.g. a prospective purchaser) and therefore doesn't qualify for an off-site liability determination letter, anyone with an interest in a property that is or may be affected by migrating contamination can still request that the DNR review the site-specific situation and provide a written liability clarification letter for a fee. Liability clarification letters may be helpful when evaluating the potential purchase of a property or when contamination is suspected to be impacting a property.

Continuing obligations for the protection of health and safety at off-site properties

When residual contamination extends across a property line, continuing obligations may also extend onto an affected, off-site property. In these situations, owners of off-site properties may not be legally responsible for responding to the contamination, but they are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety.

Wisconsin, like most states, allows some residual contamination to remain after a cleanup of contaminated soil, vapors, sediment or groundwater has been approved by the state (see Wis. Stat. § 292.12). The removal of all contamination is generally not practicable, nor is it always necessary for the protection of public health and the environment.

When the DNR approves the completion of an interim action, or a remedial action, or issues a case closure letter at a site where residual contamination exists, the DNR may condition or qualify its case closure approval on compliance with continuing obligations at the source property and affected off-site properties to protect public health and the environment.

These continuing obligations are property-specific requirements and restrictions identified in the DNR approval or case closure letter. They are legal responsibilities associated with the source property, and apply to current and future owners of the property. If contamination has migrated off-site, there may be continuing obligations that also apply to off-site, affected properties.

Common Continuing Obligations for Source and Affected, Off-site Properties

One common continuing obligation, for the owners of the source property and affected, off-site properties, is the proper management and disposal of contaminated soil that is excavated. Other continuing obligations and requirements necessary to protect health and safety may include:

- Keeping clean soil and vegetation over contaminated soil;
- Maintaining a cover of pavement, soil, asphalt, etc. over contaminated soil or groundwater;
- Operating and maintaining a vapor mitigation system that is installed by the responsible party;
- Obtaining DNR approval prior to constructing or reconstructing a well at properties with groundwater contamination; and
- Maintaining industrial use for a property that was cleaned up to industrial standards.

Owners of off-site properties are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety, except for those continuing obligations imposed for residual sediment contamination.

Notice to Affected Off-site Property Owners of Case Closure Request and Possible Continuing Obligations

The party responsible for cleaning up contamination must notify affected, off-site property owners of a proposed continuing obligation on their property before the DNR reviews a request for case closure. State law requires this, and it allows the off-site property owners some time to provide the DNR with any technical information that may be relevant to the cleanup approval.

An off-site property owner is, of course, free to discuss responsibility for the proposed off-site continuing obligations with the responsible party. If an off-site property owner enters into a legally enforceable agreement (i.e. a private contract) with the party responsible for the contamination, under which the responsible party assumes responsibility for maintaining a continuing obligation on the off-site owner's property, that agreement must be submitted to the DNR and recorded in the database per Wis. Stat. § 292.12(5)(c).

If the DNR approves a case closure request that includes continuing obligations at an off-site property, the DNR will notify off-site owners of the continuing obligation. A property owner may request modification of a continuing obligation in the future if environmental conditions change. For example, petroleum contamination degrades over time and laboratory test results of new soil, groundwater or vapor samples may support modifying or removing a continuing obligation.

Finding information about continuing obligations

Information about property-specific continuing obligations can be found (as applicable) in the DNR interim action approval letter, the case closure letter for the source property, and in the DNR documents giving notice to off-site property owners. These letters and related documents are available in the DNR database of property cleanup activities.

This database, called [BRRTS on the Web](#), is available at dnr.wi.gov (search "BRRTS"). The documents about affected, off-site properties that are associated with a specific source property can be found in BRRTS when you search the site number or address of the property that is the source of the contamination. Property owners, local government officials, building contractors, well drillers and others may review the database to find out if there are any land-use restrictions or continuing obligations associated with a specific property before beginning work there.

For more information

Questions about the off-site environmental liability exemption and continuing obligations can be directed to the brownfields specialist in your local DNR regional office. To find a specialist in your area, go to dnr.wi.gov and search "brownfields contacts."

For additional information about off-site contamination and liability clarification letters go to dnr.wi.gov and search for "off-site contamination." For additional information about residual contamination and continuing obligations go to dnr.wi.gov and search for "continuing obligations."

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Notice: This form is authorized under ss. 280.11 and 281.11, Stats., and s. NR 812.09(4) and (4)(w), Wis. Adm. Code. Information requested is required to determine if an approval for construction or reconstruction of a well may be granted, under s. NR 812.09(4) and (4)(w), Wis. Adm. Code: "Prior department approval is required for the construction or reconstruction of a well on a property that is listed on the department's geographic information system (GIS) Registry of Closed Remediation Sites." Failure to submit this form or provide all required information may result in your application for approval being denied or your well operating in violation of ch. NR 812, Wis. Adm. Code, or both, and may result in forfeitures under s. 281.98, Stats., of not less than \$10 nor more than \$5,000 for each violation. Personally identifiable information on this form is not likely to be used for any purpose other than administration of the water supply program. However, copies of this form are available to requesters under Wisconsin's Open Records Law [ss. 19.31 - 19.39, Wis. Stats.].

Applicant Information

Last Name	First	MI	Daytime Phone Number (include area code)		
Mailing Street Address and PO Box			City	State	ZIP Code

Well Site Information

Facility or Site Name (if any)			BRRTS ID No. (if known)		
Address of well (if different than owner)			Gov't Lot #	$\frac{1}{4}$ $\frac{1}{4}$	$\frac{1}{4}$
			Section	Township	Range <input type="radio"/> E <input type="radio"/> W
				N	
<input type="radio"/> City <input type="radio"/> Town <input type="radio"/> Village of _____		State	ZIP Code	County	
Subdivision Name			Lot Number	Block Number	

Well Construction Information

If approval request is for an existing well, include the following well construction information, if known. Include copy of well report if possible.

Well Type <input type="radio"/> Drilled <input type="radio"/> Driven Point <input type="radio"/> Other _____	Casing Depth	Total Well Depth
Name of Original Well Owner	Date Well Constructed	Constructed By
		WUJWN

Approval Information

Proposed construction and location of well, i.e., to avoid the contamination.

Identify well construction reports for any existing wells, on property or adjacent property, if available.

Are there any other setback separation distance requirements in NR 812.08 that would require a variance to construct the well?

Site Drawing

- Sketch the property and location of the water supply. Include the scale of the drawing and distances to known sources of contamination (for example, contaminant plume, septic systems, gas tanks, drain tiles, animal pens, etc.)
- Show slope arrows from well and contamination sources, if lot is sloped
- Attach any extra sheets of other information, which may be useful in describing your situation

(North)

SITE DRAWING

- Department regional personnel may inspect this property to verify information provided and to determine comparable protection options. You may be contacted by phone for an appointment, or if more information is needed.
- **NO CONSTRUCTION SHALL BEGIN UNTIL THE OWNER OR CONTRACTOR HAS RECEIVED A WRITTEN APPROVAL DOCUMENT.**
- Written notification will be provided of approval or denial with 65 business days of receipt of this application, as provided by s. NR 812, Wis. Adm. Code.

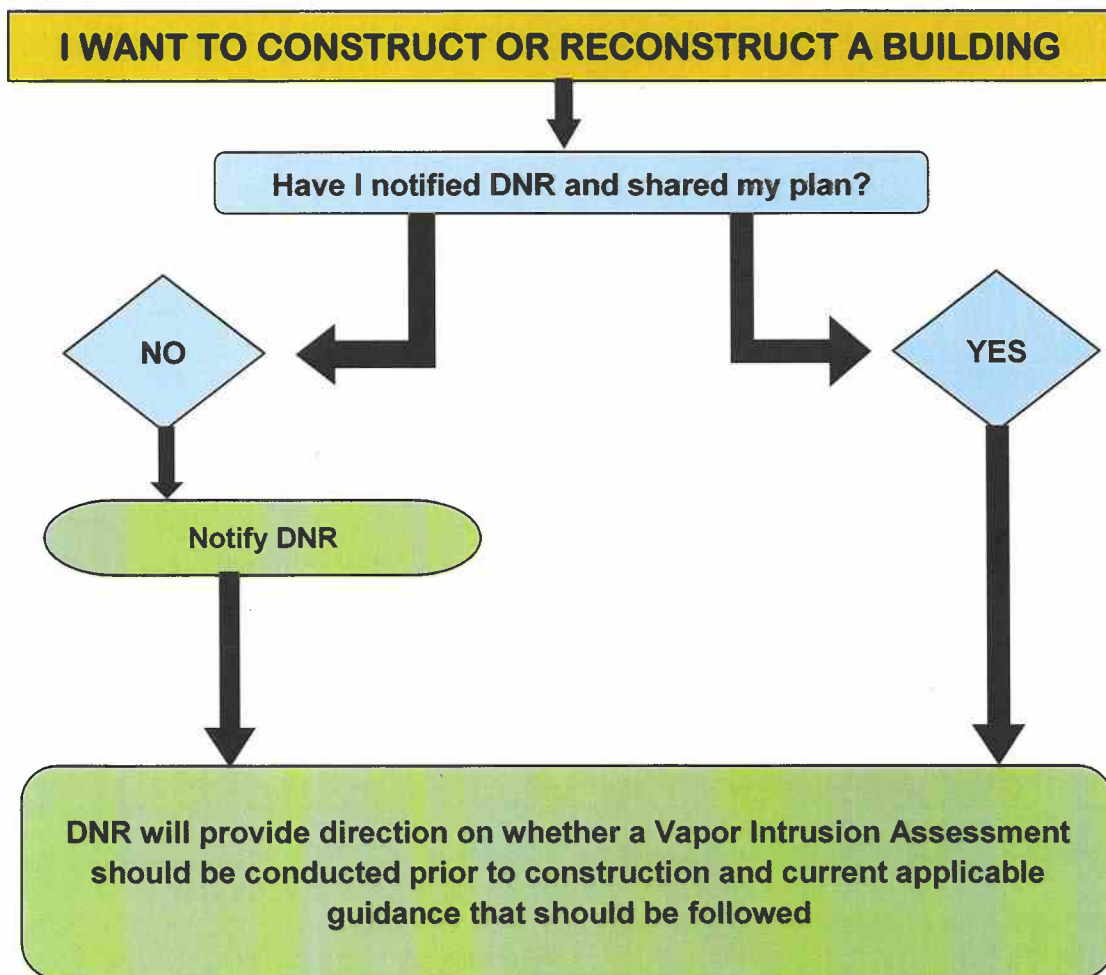
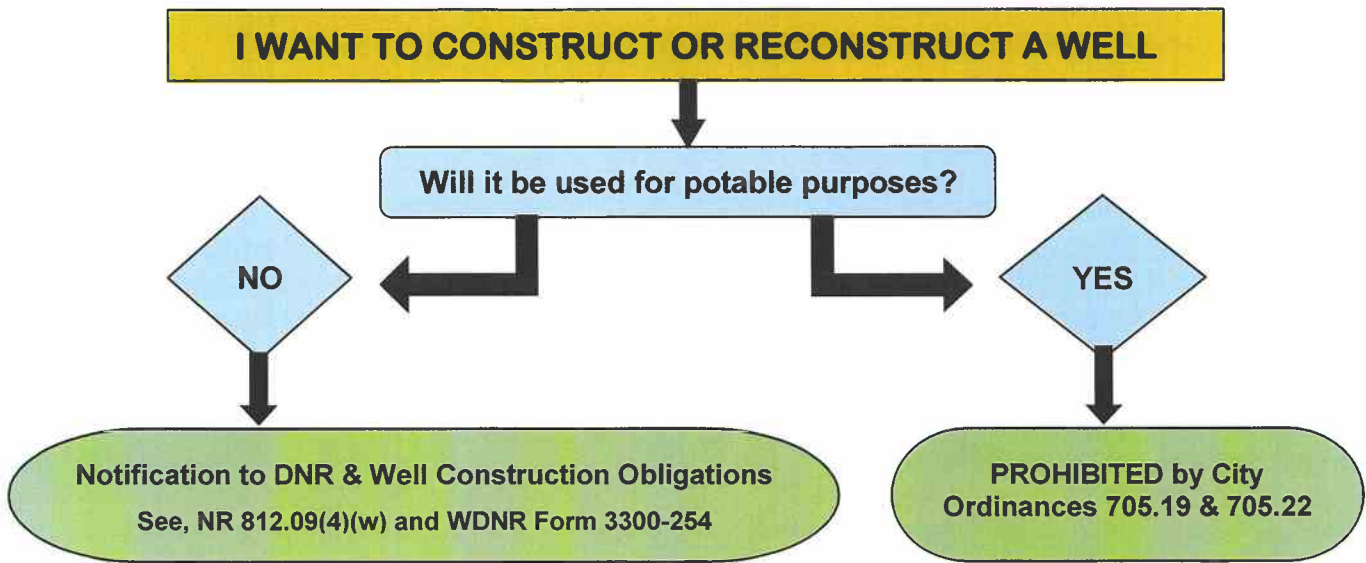
I certify to the best of my knowledge the information provided in this application is true, complete, and correct. I understand that the information I provide will be used by the Department to determine if an approval can be granted and what construction specifications will be required to provide comparable protection. I further understand that in granting an approval the Department does not guarantee acceptable water quality or quantity.

Owner's Signature

Date Signed

Name and Address of Well Driller, Well Contractor or Pump Installer, if known

MAIL THIS APPLICATION TO:



I'M THE CITY AND I WANT TO EXCAVATE SOIL

Follow the below restrictions

1. Consult SMP and follow its instructions.
2. Soil cannot be excavated from area covered by Kreher Park Cap, unless approved by DNR and EPA. (Cap to be repaired and replaced to meet as-built conditions.)
3. Soil cannot be excavated from areas within buffer zones around remedial infrastructure. Consult ICIAP for figures.
4. Do not interfere with the remedial action or remedial infrastructure at the Site.
5. Prior to performing any work at the Site or within 100 ft. of the Site, the City must:
 - a. Have the design stamped by a licensed PE certifying that the work will not damage, or interfere with the remedy or remedial infrastructure at the Site.
 - b. EPA, in concurrence with DNR, must review and approve the plan.
 - c. Provide NSP a 30-day advanced opportunity to review and comment on the plan.
6. Provide 10 day notice to NSP, EPA and DNR of any public meetings regarding the City's redevelopment plans at the Site.
7. Maintain insurance (or require contractors to maintain insurance) for any excavation or construction activities at the Site; insurance must name NSPW as an additional named insured.
8. If planning to construct a new building, a vapor intrusion assessment must be performed prior to construction; no residential structures are allowed in Kreher Park.

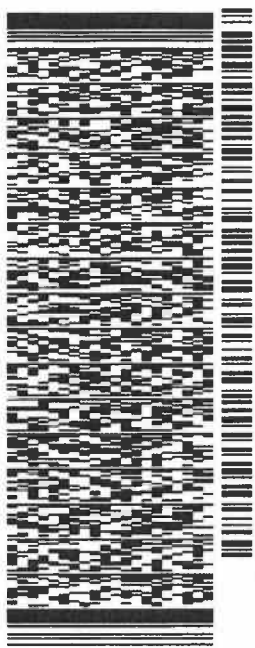
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RENEE V. EXUM
MICHAEL BEST & FRIEDRICH LLP
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MADISON, WI 53703
UNITED STATES US

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CITY OF ASHLAND
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ASHLAND WI 54806

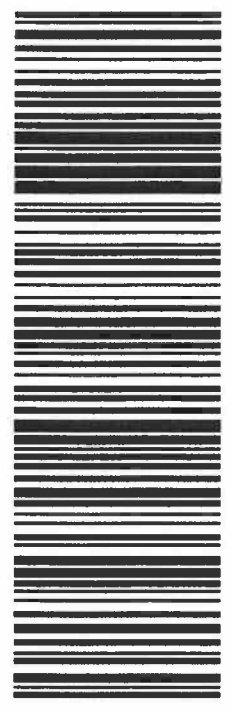
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Renee V. Exum Michael Best & Friedrich LLP MADISON, WI 53703 US	 Delivered	Mayor Debra Lewis City of Ashland 601 Main Street West ASHLAND, WI 54806 US

Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number:	770027374804
Status:	Delivered: 03/17/2020 12:40 PM Signed for By: J.BOCK
Reference:	070086-0205 (RVE 0617)
Signed for by:	J.BOCK
Delivery location:	ASHLAND, WI
Delivered to:	Receptionist/Front Desk
Service type:	FedEx Priority Overnight®
Packaging type:	FedEx® Envelope
Number of pieces:	1
Weight:	0.50 lb.
Special handling/Services:	Deliver Weekday
Standard transit:	3/17/2020 by 4:30 pm

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Thank you for your business.

2400 Farm Road
Ashland, WI 54806

800.895.4999
xcelenergy.com



March 16, 2020

VIA FEDERAL EXPRESS

Blue Lion Trust
1682 Danmore Dr.
Boise, ID 83712

Subject: Remedial Action Approval for Ashland NSP Lakefront Superfund Site
300 St. Claire Street, Ashland, Wisconsin

Dear Sir/Madam:

Northern States Power Company of Wisconsin ("NSPW") is providing you this notification in compliance with state law and in connection with environmental work recently completed at the Ashland NSP Lakefront Superfund Site (the "Site"). The Site is located at 300 St. Claire Street, Ashland and a map is enclosed. Further information concerning the site is available here: <https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0507952> or by visiting the document repository maintained at the Vaughn Public Library.

The Wisconsin Department of Natural Resources ("DNR") recently approved a Remedial Action Plan associated with this work and the U.S. Environmental Protection Agency, in concurrence with DNR, has approved the substantial completion of that work. As part of this approval, we must notify you that your property, which is within the Site, and that you own (the "Property") is subject to certain continuing obligations.

State law directs parties responsible for environmental contamination to take actions to restore the environment and minimize harmful effects to the extent practicable. In the course of conducting such cleanups, the law allows some amount of residual contamination to remain in soil and groundwater provided it does not pose a threat to public health, safety, welfare or to the environment.

The DNR has recently approved of a Remedial Action Plan and NSPW has implemented that Plan to the extent required by state and federal law. Residual groundwater contamination remains beneath the Property as described further below and in the *Institutional Control Implementation and Assurance Plan* (FE/JV 2020). Because that residual contamination has been determined to not pose any threat to public health, safety, welfare or to the environment, WDNR has allowed that contamination to remain, subject to compliance with certain ongoing use restrictions and continuing obligations applicable to the Property.

Continuing Obligations Applicable to the Property

The Property is subject to certain use restrictions which can be found in and enforceable by the following:

- Granting reasonable access to DNR, the U.S. Environmental Protection Agency, NSPW or its contractors;
- Compliance with the property use restrictions of the *Institutional Control Implementation and Assurance Plan* (FE/JV 2020);
- Avoiding actions that make the contamination worse (e.g., interfering with the performance of the remedy, demolishing or damaging a structure and causing or worsening the discharges to the environment, or exacerbating site conditions).

You are required to manage the Property in compliance with these use restrictions and continuing obligations. Further detail is provided below. Please be aware that failure to comply with the continuing obligations may result in enforcement action by the DNR. The DNR intends to conduct inspections in the future to ensure that the conditions included in this letter are met.

Residual Groundwater Contamination (Wis. Admin. Code ch. NR 140, NR 812)

Due to the existence of residual contamination after completion of the remedial action approved in the Remedial Action Plan approval, this Site, which includes the Property, will be listed on the Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>. If you intend to construct or reconstruct a well on the Property, you will need to get Department approval in accordance with Wis. Admin. Code § NR 812.09 (4) (w). To obtain approval, Form 3300-254 needs to be completed and submitted to the DNR Drinking and Groundwater program's regional water supply specialist. A well driller can help with this form. This form can be obtained online at: <https://dnr.wi.gov/files/PDF/forms/3300/3300-254.pdf>.

Additionally, if you construct or reconstruct any structures on the Property, you should evaluate site conditions in accordance with DNR publication RR-800, "*Addressing Vapor Intrusion at Remediation & Redevelopment Sites in Wisconsin*", dated January 2018 (WDNR, 2018), and any subsequent versions thereof. This fact sheet can be obtained online at: <https://dnr.wi.gov/files/PDF/pubs/rr/RR800.pdf>.

The attached DNR fact sheet RR-819, "*Continuing Obligations for Environmental Protection*", helps explain a property owner's responsibility for continuing obligations on their property. You may obtain additional copies at <http://dnr.wi.gov/files/PDF/pubs/rr/RR819.pdf>.

You have thirty (30) days to comment on the issues addressed in this letter. You may submit any information that you believe is relevant to be considered by DNR and NSPW. You may submit that information at the address(es) provided below.

Notices

Department of Natural Resources
Attn: John Sager
1701 N. 4th Street
Superior, WI 54880
P: 715.392-7822
E: John.Sager@Wisconsin.gov

Michael BeBeau
Xcel Energy
Community Service Manager
2400 Farm Road
Ashland, WI 54806
P: 715.682.6936 F: 715.682.6921
E: michael.s.bebeau@xcelenergy.com

You should retain this document with your property records.

Questions regarding this notification may be directed to Michael Bebeau at 715-682-6936.

Sincerely,


Michael Bebeau (or)

Attachments

Legal Description of Property
RR-819 – Continuing Obligations for Environmental Protection
RR-671 – What Landowners Should Know: Information About Using Natural
Attenuation To Clean Up Contaminated Groundwater
RR-589 – When Contamination Crosses a Property Line
DNR Form 3300-254 – GIS Registry Site Well Approval Application
Decision Tree – I Want to Construct a Well or Building
Decision Tree – I Want to Excavate Soil – Private Property Owner

**EXHIBIT A
LEGAL DESCRIPTION**

(Blue Lion Trust)

The North half of Lot 12, Block 33, Ellis Division, City of Ashland, Ashland County, Wisconsin.

(PIN: 201-01021-0000)



Remediation and Redevelopment Program

June 2017

**Continuing Obligations for Environmental Protection
Responsibilities of Wisconsin Property Owners
Wis. Stat. § 292.12**

Purpose

This fact sheet is intended to help property owners understand their legal requirements under s. 292.12, Wis. Stats., regarding continuing obligations that arise due to the environmental condition of their property.

Introduction

The term “continuing obligations” refers to certain actions for which property owners are responsible following a completed environmental cleanup. They are sometimes called environmental land use controls or institutional controls. These legal obligations, such as a requirement to maintain pavement over contaminated soil, are most often found in a cleanup approval letter from the state.

Less commonly, a continuing obligation may apply where a cleanup is not yet completed but a cleanup plan has been approved, or at a property owned by a local government that is exempt from certain cleanup requirements.

What Are Continuing Obligations?

Continuing obligations are legal requirements designed to protect public health and the environment in regard to contamination that remains on a property.

Continuing obligations still apply after a property is sold. Each new owner is responsible for complying with the continuing obligations.

Background

Wisconsin, like most states, allows some contamination to remain after cleanup of soil or groundwater contamination (residual contamination). This minimizes the transportation of contamination and reduces cleanup costs while still ensuring that public health and the environment are protected.

The Department of Natural Resources (DNR), through its Remediation and Redevelopment (RR) Program, places sites or properties with residual contamination on a public database in order to provide notice to interested parties about the residual contamination and any associated continuing obligations. Please see the “Public Information” section on page 3 to learn more about the database. (Prior to June 3, 2006, the state used deed restrictions recorded at county courthouses to establish continuing obligations, and those deed restrictions have also been added into the database.)

Types of Continuing Obligations

1. Manage Contaminated Soil that is Excavated

If the property owner intends to dig up an area with contaminated soil, the owner must ensure that proper soil sampling, followed by appropriate treatment or disposal, takes place. Managing contaminated soil must be done in compliance with state law and is usually done under the guidance of a private environmental professional.

2. Manage Construction of Water Supply Wells

If there is soil or groundwater contamination and the property owner plans to construct or reconstruct a water supply well, the owner must obtain prior DNR approval to ensure that well construction is designed to protect the water supply from contamination.

Other Types of Continuing Obligations

Some continuing obligations are designed specifically for conditions on individual properties. Examples include:

- keeping clean soil and vegetation over contaminated soil;
- keeping an asphalt “cover” over contaminated soil or groundwater;
- maintaining a vapor venting system; and
- notifying the state if a structural impediment (e.g. building) that restricted the cleanup is removed. The owner may then need to conduct additional state-approved environmental work.

It is common for properties with approved cleanups to have continuing obligations because the DNR generally does not require removal of all contamination.

Property owners with the types of continuing obligations described above will find these requirements described in the state’s cleanup approval letter or cleanup plan approval, and *must*:

- comply with these property-specific requirements; and
- obtain the state’s permission before changing portions of the property where these requirements apply.

The requirements apply whether or not the person owned the property at the time that the continuing obligations were placed on the property.

Changing a Continuing Obligation

A property owner has the option to modify a continuing obligation if environmental conditions change. For example, petroleum contamination can degrade over time and property owners may collect new samples showing that residual contamination is gone. They may then request that the DNR modify or remove a continuing obligation. Fees are required for the DNR’s review of this request and for processing the change to the database (\$1050 review fee, \$300/\$350 database fee). Fees are subject to change; current fees are found in Wis. Admin. § NR 749 online at http://docs.legis.wisconsin.gov/code/admin_code/nr/700/749.

Public Information

The DNR provides public information about continuing obligations on the Internet. This information helps property owners, purchasers, lessees and lenders understand legal requirements that apply to a property. The DNR has a comprehensive database of contaminated and cleaned up sites, *BRRTS on the Web*. This database shows all contamination activities known to the DNR. Site specific documents are found under the *Documents* section. The information includes maps, deeds, contaminant data and the state’s closure letter. The closure letter states that no additional environmental cleanup is needed for past contamination and includes information on property-specific continuing obligations. If a cleanup has not been completed, the state’s approval of the remedial action plan will contain the information about

continuing obligations.

Properties with continuing obligations can generally be located in the DNR's *RR Sites Map*. RR Sites Map provides a map view of contaminated and cleaned up sites, including sites with continuing obligations, and links to BRRTS on the Web. *BRRTS on the Web* and *RR Sites Map* are part of the Wisconsin Remediation and Redevelopment Database (WRRD) at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>.

If a completed cleanup is shown in *BRRTS on the Web* but the site documents cannot be found in the documents section, the DNR's closure letter can still be obtained from a regional office. For assistance, please contact a DNR Environmental Program Associate (see the RR Program's Staff Contact web page at dnr.wi.gov/topic/Brownfields/Contact.html).

Off-Site Contamination: When Continuing Obligations Cross the Property Line

An off-site property owner is someone who owns property that has been affected by contamination that moved through soil, sediment or groundwater from another property. Wis. Stat. § 292.13 provides an exemption from environmental cleanup requirements for owners of "off-site" properties. The DNR will generally not ask off-site property owners to investigate or clean up contamination that came from a different property, as long as the property owner allows access to his or her property so that others who are responsible for the contamination may complete the cleanup.

However, off-site property owners are legally obligated to comply with continuing obligations on their property, even though they did not cause the contamination. For example, if the state approved a cleanup where the person responsible for the contamination placed clean soil over contamination on an off-site property, the owner of the off-site property must either keep that soil in place or obtain state approval before disturbing it.

Property owners and others should check the *Public Information* section above if they need to:

- determine whether and where continuing obligations exist on a property;
- review the inspection, maintenance and reporting requirements, and
- contact the DNR regarding changing that portion of the property. The person to contact is the person that approved the closure or remedial action plan.

Option for an Off-Site Liability Exemption Letter

In general, owners of off-site properties have a legal exemption from environmental cleanup requirements. This exemption does not require a state approval letter. Nonetheless, they may request a property-specific liability exemption letter from the DNR if they have enough information to show that the source of the contamination is not on their property. This letter may be helpful in real estate transactions. The fee for this letter is \$700 under Chapter NR 749, Wis. Adm. Code. For more information about this option, please see the RR Program's Liability web page at dnr.wi.gov/topic/Brownfields/Liability.html.

Legal Obligations of Off-Site Property Owners

- Allow access so the person cleaning up the contamination may work on the off-site property (unless the off-site owner completes the cleanup independently).
- Comply with any required continuing obligations on the off-site property.

Required Notifications to Off-Site Property Owners

1. The person responsible for cleaning up contamination must notify affected property owners of any proposed continuing obligations on their off-site property **before** asking the DNR to approve the cleanup. This is required by law and allows the off-site owners to provide the DNR with any technical information that may be relevant to the cleanup approval.

When circumstances are appropriate, an off-site neighbor and the person responsible for the cleanup may enter into a “legally enforceable agreement” (i.e. a contract). Under this type of private agreement, the person responsible for the contamination may also take responsibility for maintaining a continuing obligation on an off-site property. This agreement would not automatically transfer to future owners of the off-site property. The state is not a party to the agreement and cannot enforce it.

2. If a cleanup proposal that includes off-site continuing obligations is approved, the DNR will send a letter to the off-site owners detailing the continuing obligations that are required for their property. Property owners should inform anyone interested in buying their property about maintaining these continuing obligations. For residential property, this would be part of the real estate disclosure obligation.

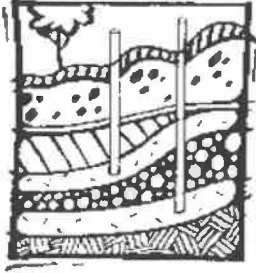
More Information

For more information, please visit the RR Program’s Continuing Obligations website at dnr.wi.gov/topic/Brownfields/Residual.html.

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Chief, Public Civil Rights, Office of Civil Rights, U.S. Department of the Interior, 1849 C. Street, NW, Washington, D.C. 20240.

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Using Natural Attenuation to Clean Up Contaminated Groundwater: What Landowners Should Know

RR-671

December 2016

What Is Natural Attenuation?

Natural attenuation makes use of natural processes in soil and groundwater to contain the spread of contamination and to reduce the amount of contamination from chemical releases.

Natural attenuation is an *in-situ* treatment method. This means that contaminants are left in place while natural attenuation works on them. Natural attenuation is relied upon to clean up contamination that remains after the source of the contamination is removed. An example of a source of contamination would be a leaking underground petroleum tank.

How Does Natural Attenuation Work?

Natural attenuation processes work at many sites, but the rate and degree of effectiveness varies from property to property, depending upon the type of contaminants present and the physical, chemical and biological characteristics of the soil and groundwater.

Natural attenuation processes can be divided into two broad categories – destructive and non-destructive. Destructive processes destroy contaminants. The most common destructive process is **biodegradation**.

Non-destructive processes do not destroy the contaminant, but reduce contaminant concentrations in groundwater through **dilution, dispersion** or **adsorption**.

Biodegradation

Biodegradation is a process in which micro-organisms that naturally occur in soil and groundwater (e.g. yeast, fungi, or bacteria), break down, or degrade hazardous substances to less toxic or non-toxic substances. Microorganisms, like humans, eat and digest organic compounds for nutrition and energy (organic compounds contain carbon and hydrogen atoms).

Some types of microorganisms can digest organic substances such as fuels or solvents that are hazardous to humans. Microorganisms break down the organic contaminants into harmless products – mainly carbon dioxide and water. Once the contaminants are degraded, the microorganism populations decline because they have used their food sources. These small populations of microorganisms pose no contaminant or health risk.

Many organic contaminants, like petroleum, can be biodegraded by microorganisms in the underground environment. For example, biodegradation processes can effectively cleanse soil and groundwater of hydrocarbon fuels such as gasoline and benzene, toluene, ethylbenzene, and xylene – known as the BTEX compounds, under certain conditions.

Biodegradation can also breakdown other contaminants in groundwater such as trichloroethylene (TCE), a chlorinated solvent used in metal cleaning. However, the processes involved are harder to predict and are less effective at contaminant removal compared to petroleum-contaminated sites.



Wisconsin Department of Natural Resources
P.O. Box 7921, Madison, WI 53707
dnr.wi.gov, search "brownfield"



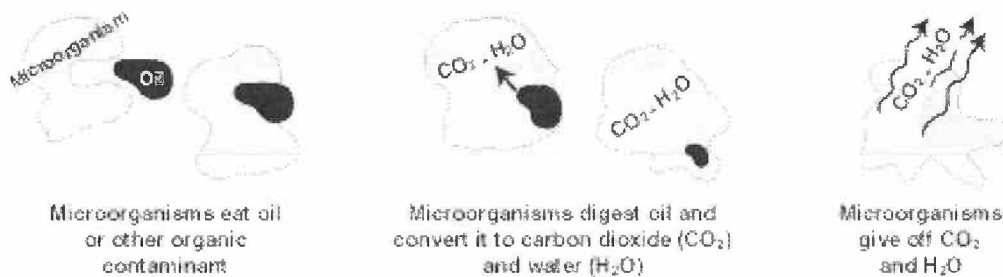


Figure 1. Schematic Diagram of Aerobic Biodegradation in Soil

Dilution and Dispersion

The effects of dilution and dispersion reduce contaminant concentrations but do not destroy contaminants. Clean water from the surface seeps underground to mix with and dilute contaminated groundwater.

Other processes that lead to reduced concentrations of contaminants include clean groundwater flowing into contaminated areas, and the dispersion of pollutants as they spread out and away from the main path of the contaminated plume.

Adsorption

Adsorption occurs when contaminants attach or “sorb” to underground particles. Most oily substances (like petroleum compounds) repel water and escape from the groundwater by attaching to organic matter and clay minerals in the subsurface.

This process holds back or retards contaminant movement and reduces the concentration of contaminants in the groundwater. However, like dilution and dispersion, adsorption does not destroy contaminants.

Why Consider Natural Attenuation To Clean Up Soil And Groundwater?

In certain situations, natural attenuation is an effective, inexpensive cleanup option and the most appropriate way to remediate some contamination problems. Natural attenuation focuses on confirming and monitoring natural remediation processes rather than relying on engineered or “active” technologies (such as pumping groundwater, treating it above ground, then disposing of the treated water).

Contaminants from petroleum are good candidates for natural attenuation because they are among the most easily destroyed by biodegradation. Natural attenuation is non-invasive, which allows treatment to go on below ground, while the surface can continue to be used.

Natural attenuation can also be less costly than active engineered treatment options, and requires no special equipment, energy source, or disposal of treated soil or groundwater.

Will Natural Attenuation Work At My Property?

Whether natural attenuation will work at a particular location is determined by investigating the soil and groundwater. These investigations determine the type of contaminants present, the levels of contamination, and the physical and chemical conditions that lead to biodegradation of the contaminants.

In order to rely on natural attenuation, responsible parties are required to confirm that natural attenuation processes are working by monitoring the soil and groundwater over a period of time to show that the contaminant concentrations are decreasing and that the contamination is no longer spreading.

Those conducting the cleanup need to know whether natural attenuation, or any proposed remedy, will reduce the contaminant concentrations in the soil and groundwater to legally acceptable limits within a reasonable period of time.

Natural attenuation may be an acceptable option for sites where active remediation has occurred and has reduced the concentration of contaminants (for instance, removing leaking underground tanks and contaminated soil).

However, natural attenuation is not an appropriate option at all sites. If the contamination has affected a drinking water well, or has entered a stream or lake, active cleanup options may be necessary to make sure people and the environment are protected from direct contact with the contamination.

The speed or rate of natural attenuation processes is typically slow. Monitoring is necessary to show that concentrations decrease at a sufficient rate to ensure that contaminants will not become a health threat in the future.

Closure Of Contaminated Sites Using Natural Attenuation As A Final Remedy

When contamination is discovered at a property (such as a gas station with leaking underground tanks), the person who is responsible for causing the contamination, and persons having possession or control of hazardous substances that have been discharged, have the responsibility to remove the source of contamination and investigate and clean up the contamination that has escaped into the soil and groundwater.

The contaminant release must be reported to the Wisconsin Department of Natural Resources (DNR) and the site investigation and cleanup are overseen by a state agency. Depending on the type of contaminant, the oversight agency could be the Department of Agriculture, Trade and Consumer Protection or Department of Natural Resources.

When the cleanup has complied with state standards, the person responsible for the contamination will ask the state agency for closure of the case. If natural attenuation is relied upon to finish cleaning up a contaminated property after closure, the responsible person will need to show that contaminant concentrations are not spreading, that contaminant concentrations are stable or decreasing, and that the concentrations will decrease in the future until state groundwater standards are met.

Because natural attenuation processes are slow, it may take many years before the properties with contamination are clean. State rules require that all owners of properties where groundwater contamination has spread must be informed of the contamination below their property.

In addition, the properties with groundwater contamination exceeding state groundwater enforcement standards must be listed on a database to notify future owners and developers of the presence of contamination. If future monitoring occurs and shows that natural attenuation processes have removed the contaminants to state-required cleanup levels, then the properties can be removed from the database.

The state agency will grant closure if the site investigation and monitoring shows that natural attenuation will clean up groundwater to state standards within a reasonable period of time. All state rules for cleanup must be met and the person who is responsible for the contamination must comply with all conditions of the state's closure approval.

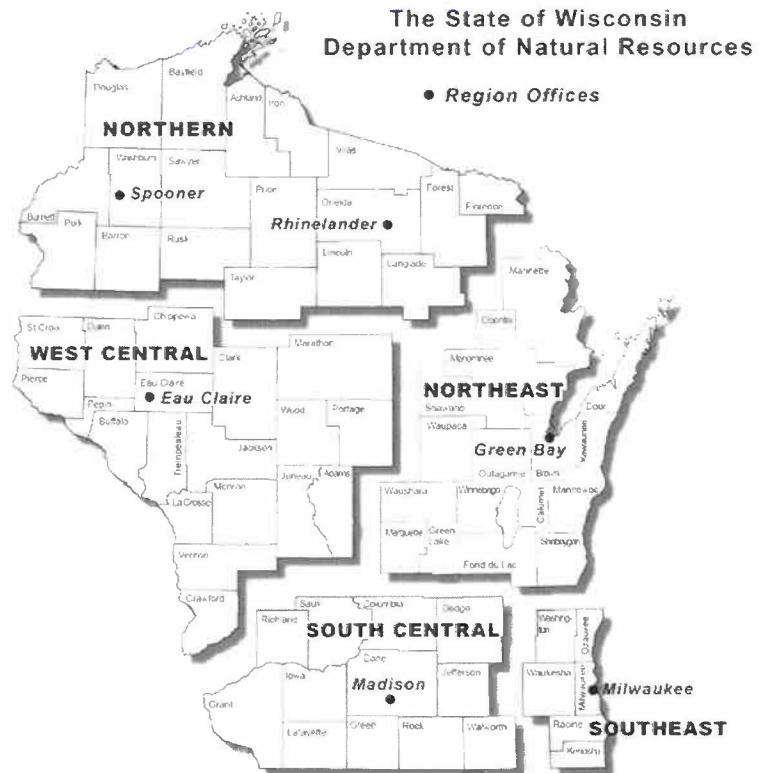
Publications

The following publications provide additional information on natural attenuation. Websites where these can be downloaded free of charge are also listed.

- *A Citizen's Guide to Bioremediation*, September 2012, EPA 542-F-12-003; https://www.epa.gov/sites/production/files/2015-04/documents/a_citizens_guide_to_bioremediation.pdf
- *Commonly Asked Questions Regarding the Use of Natural Attenuation for Petroleum-Contaminated Sites at Federal Facilities*, www.clu-in.org/download/techfocus/na/na-petrol.pdf
- *Monitored Natural Attenuation of Petroleum Hydrocarbons: U.S. EPA Remedial Technology Fact Sheet*, May 1999, EPA 600-F-98-021; www.clu-in.org/download/remed/pet-hyd.pdf
- *Monitored Natural Attenuation of Chlorinated Solvents*, May 1999, EPA 600-F-98-0022; www.clu-in.org/download/remed/chl-solv.pdf
- *Guidance on Natural Attenuation for Petroleum Releases, WI DNR, Bureau for Remediation and Redevelopment*, March 2003, PUB-RR-614; dnr.wi.gov/files/PDF/pubs/rr/RR614.pdf

Contact Information

If you have questions about natural attenuation contact a [DNR Environmental Program Associate \(EPA\)](#) in your local DNR regional office. The EPA can direct you to a project manager.



Note: These are the Remediation and Redevelopment Program's designated regions. Other DNR program regional boundaries may be different.

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.



When Contamination Crosses a Property Line

The Off-Site Environmental Liability Exemption - Wis. Stat. §§ 292.12 and 292.13 Rights and Responsibilities of Off-site, Affected Property Owners

Purpose

This fact sheet summarizes the state's statutory liability exemption for owners of real property affected by environmental contamination migrating from another property. It also explains how contamination from one property can impose health and safety obligations on other properties even when the liability exemption is in effect.

Background

It is relatively common to discover that substances used at an older commercial or industrial property have migrated into the soil, surface water and groundwater and have traveled onto a neighboring property. When this occurs, the party responsible for investigating and cleaning up the source of the contamination is required to take action to address health and safety concerns at both the source property and the off-site property.

When contamination from one property crosses a property boundary, Wisconsin law provides an environmental liability exemption to the affected property owner who meets the conditions in the law. The affected property owner is identified as the "off-site" owner in state law, because environmental contamination has moved beyond the source property's boundaries.

The Wisconsin Department of Natural Resources (DNR) will generally not ask off-site, exempt property owners to investigate or remediate contamination that did not originate on their property. A few exceptions to the exemption, related to imminent health and safety threats and long term obligations, are described in the next section.

The statutory off-site exemption is self-implementing and is effective as long as an eligible party meets all the statutory conditions. Property owners and others may request a written exemption determination letter from the DNR for a fee, but this letter is not required to have the exemption protections.

Summary of an off-site property owner's rights and responsibilities

Wisconsin law, Wis. Stat. § 292.11(3), requires anyone who causes, possesses or controls a hazardous substance discharge to the environment (i.e. land, air, water) to take action to restore the

environment to the extent practicable and minimize harmful effects. When contamination from one property migrates and affects another property, however, Wisconsin law provides an exemption for an owner (possessor) of the affected, neighboring property from the requirement to take response actions under Wis. Stat. §§ 292.11(3), (4) and (7)(b) and (c). This statutory provision is known as the "off-site liability exemption," and is authorized by Wis. Stat. § 292.13.

Related Guidance

- [Off-site Liability Exemption Application \(Form 4400-201\)](#)
- [General Liability Clarification Letters \(RR-619\)](#)
- [Continuing Obligations for Environmental Protection \(RR-819\)](#)
- [Environmental Contamination and Your Real Estate \(RR-973\)](#)

An off-site property owner is someone who owns property affected by soil, groundwater, sediment, soil gas (vapor) or other environmental contamination that originated on another property. The property where the contamination began is known as the source property. An affected off-site property owner is eligible for an off-site liability exemption if all of the following conditions in Wis. Stat. § 292.13 are satisfied, including, but not limited to:

- The off-site property owner did not cause the original discharge of the hazardous substance;
- The off-site property owner did not, and does not, possess or control the hazardous substance that was discharged on the source property;
- The property that contains the source of the migrating contamination is not owned or controlled by the same person or entity that owns the affected off-site property;
- The off-site property owner allows reasonable access to their property, so the DNR and its contractors, along with those responsible for the contamination, can take necessary response actions to protect public health;
- The off-site property owner does not interfere with the response actions of others and does not do anything to make the contamination situation worse;
- The off-site property owner agrees to other conditions that the DNR determines are reasonable and necessary to ensure that response actions are adequate; and
- For soil and sediment contamination, when the responsible party is not responding appropriately to the contamination, the off-site property owner agrees to take actions that the DNR determines are necessary to prevent an imminent threat to human health and safety. For example, taking action to limit public access to the property, installing containment barriers, and addressing fire, explosion and vapor hazards on the property.

No Exemption from Reporting Requirements

The off-site exemption does not exempt an affected property owner from Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR.

Limitations of the Exemption

The off-site exemption is conditional, limited in scope and applies solely to legal responsibilities identified in Wis. Stat. §§ 292.11(3), (4) and (7)(b)(c). The off-site exemption does not exempt a property owner from:

- Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR;
- Wis. Stat. § 292.12, which authorizes the DNR to require continuing public health protection obligations on any property affected by environmental contamination (see page 4 of this fact sheet); and
- Limited, immediate actions, as specified in Wis. Stat. § 292.13(1m)(e). For instance, off-site property owners may be required to address an imminent threat from fire, explosion or vapors if there is not a party responsible for the cleanup who can conduct the actions.

In addition, the off-site liability exemption is not automatically transferable, nor assignable, to future owners of the off-site property. However, it is likely that a new owner could be eligible for the exemption if they meet the conditions in Wis. Stat. § 292.13, including the ability to substantiate that they do not currently, or have ever, owned the source property and did not cause the discharge.

Overview of migrating contamination

Hazardous substances that are spilled or otherwise discharged to the environment can disperse and move around underground. These substances can spread out and migrate, or travel, through the soil into groundwater and nearby lakes and rivers. Gases (vapors) emanating from underground hazardous substances can also make their way upward into houses and other buildings.

When hazardous substances (contamination) move from their starting place (source) and affect the soil, sediment, groundwater or indoor air of an adjacent or nearby property, it is important to accurately determine who is legally responsible for investigating the nature and extent of the contamination, cleaning it up, and mitigating its harmful effects.

Discovering contamination from an off-site source

When a property owner discovers soil or groundwater contamination they believe came from another property, the owner must first notify the DNR of the contamination. The DNR will then work with the owner and potentially responsible parties to ensure appropriate actions are taken to investigate and clean up the contamination to protect health and safety.

Migrating contamination and access to property

Responsible parties are required by state law to investigate and remediate, to the extent practicable, all contamination that migrates within and beyond the boundaries of a source property. If the contamination crosses a property line, the responsible party must investigate where it goes and ask owners of affected, off-site properties for permission to access their properties. Property access is needed so the environmental investigation and cleanup or mitigation work can be completed.

An off-site property owner must allow access to their property to be eligible for the off-site liability exemption. When signing an access agreement, the off-site owners may wish to negotiate with the responsible party on issues such as the work schedule, the restoration of disturbed landscaping, etc.

If the owner of an affected off-site property does not allow the responsible party's environmental consultants or the DNR onto their property, the off-site owner will not qualify for the off-site exemption and the off-site owner may assume legal responsibility for the contamination on their property.

Obtaining an off-site liability determination letter from the DNR

Off-site property owners can request a liability determination letter from the DNR, for a fee, that documents the exemption in writing.

To obtain a letter, the off-site property owner must provide information to demonstrate that there are hazardous substances impacting their property from a source on another property and that all the other conditions for the exemption have been met. The off-site property owner can use the investigation data collected by the responsible party in response to the contamination or an owner of an off-site property may collect their own data to demonstrate the contamination is coming from somewhere else.

Requesting a Determination or Clarification Letter

To obtain an off-site liability determination letter or liability clarification letter, submit the DNR's Off-site Liability Exemption application, Form 4400-201 and the applicable fee. This form includes instructions and describes the information needed by the DNR for a site-specific letter.

Obtaining a liability clarification letter from the DNR

If someone does not meet all the requirements for the exemption, (e.g. a prospective purchaser) and therefore doesn't qualify for an off-site liability determination letter, anyone with an interest in a property that is or may be affected by migrating contamination can still request that the DNR review the site-specific situation and provide a written liability clarification letter for a fee. Liability clarification letters may be helpful when evaluating the potential purchase of a property or when contamination is suspected to be impacting a property.

Continuing obligations for the protection of health and safety at off-site properties

When residual contamination extends across a property line, continuing obligations may also extend onto an affected, off-site property. In these situations, owners of off-site properties may not be legally responsible for responding to the contamination, but they are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety.

Wisconsin, like most states, allows some residual contamination to remain after a cleanup of contaminated soil, vapors, sediment or groundwater has been approved by the state (see Wis. Stat. § 292.12). The removal of all contamination is generally not practicable, nor is it always necessary for the protection of public health and the environment.

When the DNR approves the completion of an interim action, or a remedial action, or issues a case closure letter at a site where residual contamination exists, the DNR may condition or qualify its case closure approval on compliance with continuing obligations at the source property and affected off-site properties to protect public health and the environment.

These continuing obligations are property-specific requirements and restrictions identified in the DNR approval or case closure letter. They are legal responsibilities associated with the source property, and apply to current and future owners of the property. If contamination has migrated off-site, there may be continuing obligations that also apply to off-site, affected properties.

Common Continuing Obligations for Source and Affected, Off-site Properties

One common continuing obligation, for the owners of the source property and affected, off-site properties, is the proper management and disposal of contaminated soil that is excavated. Other continuing obligations and requirements necessary to protect health and safety may include:

- Keeping clean soil and vegetation over contaminated soil;
- Maintaining a cover of pavement, soil, asphalt, etc. over contaminated soil or groundwater;
- Operating and maintaining a vapor mitigation system that is installed by the responsible party;
- Obtaining DNR approval prior to constructing or reconstructing a well at properties with groundwater contamination; and
- Maintaining industrial use for a property that was cleaned up to industrial standards.

Owners of off-site properties are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety, except for those continuing obligations imposed for residual sediment contamination.

Notice to Affected Off-site Property Owners of Case Closure Request and Possible Continuing Obligations

The party responsible for cleaning up contamination must notify affected, off-site property owners of a proposed continuing obligation on their property before the DNR reviews a request for case closure. State law requires this, and it allows the off-site property owners some time to provide the DNR with any technical information that may be relevant to the cleanup approval.

An off-site property owner is, of course, free to discuss responsibility for the proposed off-site continuing obligations with the responsible party. If an off-site property owner enters into a legally enforceable agreement (i.e. a private contract) with the party responsible for the contamination, under which the responsible party assumes responsibility for maintaining a continuing obligation on the off-site owner's property, that agreement must be submitted to the DNR and recorded in the database per Wis. Stat. § 292.12(5)(c).

If the DNR approves a case closure request that includes continuing obligations at an off-site property, the DNR will notify off-site owners of the continuing obligation. A property owner may request modification of a continuing obligation in the future if environmental conditions change. For example, petroleum contamination degrades over time and laboratory test results of new soil, groundwater or vapor samples may support modifying or removing a continuing obligation.

Finding information about continuing obligations

Information about property-specific continuing obligations can be found (as applicable) in the DNR interim action approval letter, the case closure letter for the source property, and in the DNR documents giving notice to off-site property owners. These letters and related documents are available in the DNR database of property cleanup activities.

This database, called BRRTS on the Web, is available at dnr.wi.gov (search "BRRTS"). The documents about affected, off-site properties that are associated with a specific source property can be found in BRRTS when you search the site number or address of the property that is the source of the contamination. Property owners, local government officials, building contractors, well drillers and others may review the database to find out if there are any land-use restrictions or continuing obligations associated with a specific property before beginning work there.

For more information

Questions about the off-site environmental liability exemption and continuing obligations can be directed to the brownfields specialist in your local DNR regional office. To find a specialist in your area, go to dnr.wi.gov and search "brownfields contacts."

For additional information about off-site contamination and liability clarification letters go to dnr.wi.gov and search for "off-site contamination." For additional information about residual contamination and continuing obligations go to dnr.wi.gov and search for "continuing obligations."

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Chief, Public Civil Rights, Office of Civil Rights, U.S. Department of the Interior, 1849 C Street, NW, Washington, D.C. 20240. This publication is available in alternative format (large print, Braille, etc.) upon request. Please call for more information. Note: If you need technical assistance or more information, call the Accessibility Coordinator at 608-267-7490 / TTY Access via relay - 711

Notice: This form is authorized under ss. 280.11 and 281.11, Stats., and s. NR 812.09(4) and (4)(w), Wis. Adm. Code. Information requested is required to determine if an approval for construction or reconstruction of a well may be granted, under s. NR 812.09(4) and (4)(w), Wis. Adm. Code: "Prior department approval is required for the construction or reconstruction of a well on a property that is listed on the department's geographic information system (GIS) Registry of Closed Remediation Sites." Failure to submit this form or provide all required information may result in your application for approval being denied or your well operating in violation of ch. NR 812, Wis. Adm. Code, or both, and may result in forfeitures under s. 281.98, Stats., of not less than \$10 nor more than \$5,000 for each violation. Personally identifiable information on this form is not likely to be used for any purpose other than administration of the water supply program. However, copies of this form are available to requesters under Wisconsin's Open Records Law [ss. 19.31 - 19.39, Wis. Stats.].

Applicant Information				
Last Name	First	MI	Daytime Phone Number (include area code)	
Mailing Street Address and PO Box		City	State	ZIP Code

Well Site Information										
Facility or Site Name (if any)				BRRTS ID No. (if known)						
Address of well (if different than owner)				Gov't Lot #	¼	¼	Section	Township	Range	<input type="radio"/> E
									N	<input type="radio"/> W
<input type="radio"/> City <input type="radio"/> Town <input type="radio"/> Village of _____			State	ZIP Code	County					
Subdivision Name				Lot Number		Block Number				

Well Construction Information				
If approval request is for an existing well, include the following well construction information, if known. Include copy of well report if possible.				
Well Type		Casing Depth		Total Well Depth
<input type="radio"/> Drilled <input type="radio"/> Driven Point <input type="radio"/> Other _____				
Name of Original Well Owner		Date Well Constructed	Constructed By	WUWN

Approval Information
Proposed construction and location of well, i.e., to avoid the contamination.

Identify well construction reports for any existing wells, on property or adjacent property, if available.

Are there any other setback separation distance requirements in NR 812.08 that would require a variance to construct the well?

GIS Registry Site Well Approval Application

Form 3300-254 (R 8/01)

Page 2 of 2

Site Drawing

- Sketch the property and location of the water supply. Include the scale of the drawing and distances to known sources of contamination (for example, contaminant plume, septic systems, gas tanks, drain tiles, animal pens, etc.)
- Show slope arrows from well and contamination sources, if lot is sloped
- Attach any extra sheets of other information, which may be useful in describing your situation

(North)

SITE DRAWING

- Department regional personnel may inspect this property to verify information provided and to determine comparable protection options. You may be contacted by phone for an appointment, or if more information is needed.
- **NO CONSTRUCTION SHALL BEGIN UNTIL THE OWNER OR CONTRACTOR HAS RECEIVED A WRITTEN APPROVAL DOCUMENT.**
- Written notification will be provided of approval or denial with 65 business days of receipt of this application, as provided by s. NR 812, Wis. Adm. Code.

I certify to the best of my knowledge the information provided in this application is true, complete, and correct. I understand that the information I provide will be used by the Department to determine if an approval can be granted and what construction specifications will be required to provide comparable protection. I further understand that in granting an approval the Department does not guarantee acceptable water quality or quantity.

Owner's Signature

Date Signed

Name and Address of Well Driller, Well Contractor or Pump Installer, if known

MAIL THIS APPLICATION TO:

I WANT TO CONSTRUCT OR RECONSTRUCT A WELL

Will it be used for potable purposes?

NO

YES

Notification to DNR & Well Construction Obligations
See, NR 812.09(4)(w) and WDNR Form 3300-254

PROHIBITED by City
Ordinances 705.19 & 705.22

I WANT TO CONSTRUCT OR RECONSTRUCT A BUILDING

Have I notified DNR and shared my plan?

NO

YES

Notify DNR

DNR will provide direction on whether a Vapor Intrusion Assessment
should be conducted prior to construction and current applicable
guidance that should be followed

**I'M A PRIVATE PROPERTY OWNER
AND I WANT TO EXCAVATE SOIL**



Is there a Monitoring Well on my Property?



NO



YES



**No Restrictions
Manage excavated soil
consistent with state law.**

Do not excavate within 5 ft. of the Well

ORIGIN ID:LNRA (008) 257-3501
RENEE V. EXUM
MICHAEL BEST & FRIEDRICH LLP
1 SOUTH PICKNEY STREET
SUITE 700
MADISON, WI 53703
UNITED STATES US

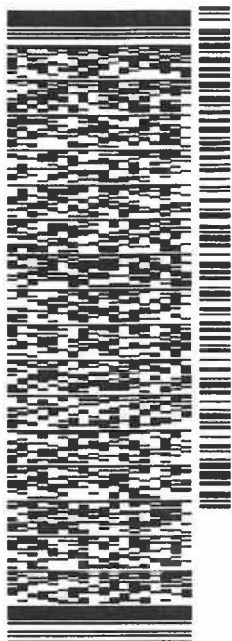
SHIP DATE: 16MAR20
ACTWGT: 1.00LB
CAD: 108763992/NET4220
BILL SENDER

TO

BLUE LION TRUST
1682 DANMORE DRIVE

BOISE ID 83712

(008) 257-3501 REF: 070086-0205 (RVE 0617)
INV: PO: DEPT:

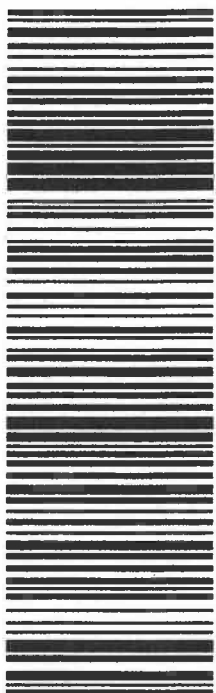


TRK# 7700 2720 0236
0201

TUE - 17 MAR 10:30A
PRIORITY OVERNIGHT

XX BOIA

ID-US 83712
BOI



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After printing this label:

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2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

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2400 Farm Road
Ashland, WI 54806

800.895.4999
xcelenergy.com



March 16, 2020

VIA FEDERAL EXPRESS

Our Lady of the Lake Catholic Church
106 2nd Ave. East
Ashland, WI 54806

Subject: Remedial Action Approval for Ashland NSP Lakefront Superfund Site
300 St. Claire Street, Ashland, Wisconsin

Dear Sir/Madam:

Northern States Power Company of Wisconsin ("NSPW") is providing you this notification in compliance with state law and in connection with environmental work recently completed at the Ashland NSP Lakefront Superfund Site (the "Site"). The Site is located at 300 St. Claire Street, Ashland and a map is enclosed. Further information concerning the site is available here: <https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0507952> or by visiting the document repository maintained at the Vaughn Public Library.

The Wisconsin Department of Natural Resources ("DNR") recently approved a Remedial Action Plan associated with this work and the U.S. Environmental Protection Agency, in concurrence with DNR, has approved the substantial completion of that work. As part of this approval, we must notify you that your property, which is within the Site, and that you own (the "Property") is subject to certain continuing obligations.

State law directs parties responsible for environmental contamination to take actions to restore the environment and minimize harmful effects to the extent practicable. In the course of conducting such cleanups, the law allows some amount of residual contamination to remain in soil and groundwater provided it does not pose a threat to public health, safety, welfare or to the environment.

The DNR has recently approved of a Remedial Action Plan and NSPW has implemented that Plan to the extent required by state and federal law. Residual groundwater contamination remains beneath the Property as described further below and in the *Institutional Control Implementation and Assurance Plan* (FE/JV 2020). Because that residual contamination has been determined to not pose any threat to public health, safety, welfare or to the environment, WDNR has allowed that contamination to remain, subject to compliance with certain ongoing use restrictions and continuing obligations applicable to the Property.

Continuing Obligations Applicable to the Property

The Property is subject to certain use restrictions which can be found in and enforceable by the following:

- Granting reasonable access to DNR, the U.S. Environmental Protection Agency, NSPW or its contractors;
- Compliance with the property use restrictions of the *Institutional Control Implementation and Assurance Plan* (FE/JV 2020);
- Avoiding actions that make the contamination worse (e.g., interfering with the performance of the remedy, demolishing or damaging a structure and causing or worsening the discharges to the environment, or exacerbating site conditions).

You are required to manage the Property in compliance with these use restrictions and continuing obligations. Further detail is provided below. Please be aware that failure to comply with the continuing obligations may result in enforcement action by the DNR. The DNR intends to conduct inspections in the future to ensure that the conditions included in this letter are met.

Residual Groundwater Contamination (Wis. Admin. Code ch. NR 140, NR 812)

Due to the existence of residual contamination after completion of the remedial action approved in the Remedial Action Plan approval, this Site, which includes the Property, will be listed on the Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>. If you intend to construct or reconstruct a well on the Property, you will need to get Department approval in accordance with Wis. Admin. Code § NR 812.09 (4) (w). To obtain approval, Form 3300-254 needs to be completed and submitted to the DNR Drinking and Groundwater program's regional water supply specialist. A well driller can help with this form. This form can be obtained online at: <https://dnr.wi.gov/files/PDF/forms/3300/3300-254.pdf>.

Additionally, if you construct or reconstruct any structures on the Property, you should evaluate site conditions in accordance with DNR publication RR-800, "*Addressing Vapor Intrusion at Remediation & Redevelopment Sites in Wisconsin*", dated January 2018 (WDNR, 2018), and any subsequent versions thereof. This fact sheet can be obtained online at: <https://dnr.wi.gov/files/PDF/pubs/rr/RR800.pdf>.

The attached DNR fact sheet RR-819, "*Continuing Obligations for Environmental Protection*", helps explain a property owner's responsibility for continuing obligations on their property. You may obtain additional copies at <http://dnr.wi.gov/files/PDF/pubs/rr/RR819.pdf>.

You have thirty (30) days to comment on the issues addressed in this letter. You may submit any information that you believe is relevant to be considered by DNR and NSPW. You may submit that information at the address(es) provided below.

Notices

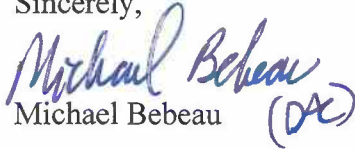
Department of Natural Resources
Attn: John Sager
1701 N. 4th Street
Superior, WI 54880
P: 715.392-7822
E: John.Sager@Wisconsin.gov

Michael BeBeau
Xcel Energy
Community Service Manager
2400 Farm Road
Ashland, WI 54806
P: 715.682.6936 F: 715.682.6921
E: michael.s.bebeau@xcelenergy.com

You should retain this document with your property records.

Questions regarding this notification may be directed to Michael Bebeau at 715-682-6936.

Sincerely,


Michael Bebeau (DNR)

Attachments

Legal Description of Property
RR-819 – Continuing Obligations for Environmental Protection
RR-671 – What Landowners Should Know: Information About Using Natural
Attenuation To Clean Up Contaminated Groundwater
RR-589 – When Contamination Crosses a Property Line
DNR Form 3300-254 – GIS Registry Site Well Approval Application
Decision Tree – I Want to Construct a Well or Building
Decision Tree – I Want to Excavate Soil – Private Property Owner

**EXHIBIT A
LEGAL DESCRIPTION**

(Our Lady of the Lake Catholic Church)

Lots 1 - 24 inclusive, Block 65, Ellis Division, together with half of vacated St. Claire Street adjacent to said Block 65, City of Ashland, Ashland County, Wisconsin.

That part of Lots 6-12 inclusive, Block 32, Ellis Division lying South of the right of way of Wisconsin Central Railway Company and North of that part of St. Claire Street, vacated, City of Ashland, Ashland County, Wisconsin.

(PIN: 201-01281-0000)



Continuing Obligations for Environmental Protection Responsibilities of Wisconsin Property Owners Wis. Stat. § 292.12

Purpose

This fact sheet is intended to help property owners understand their legal requirements under s. 292.12, Wis. Stats., regarding continuing obligations that arise due to the environmental condition of their property.

Introduction

The term “continuing obligations” refers to certain actions for which property owners are responsible following a completed environmental cleanup. They are sometimes called environmental land use controls or institutional controls. These legal obligations, such as a requirement to maintain pavement over contaminated soil, are most often found in a cleanup approval letter from the state.

Less commonly, a continuing obligation may apply where a cleanup is not yet completed but a cleanup plan has been approved, or at a property owned by a local government that is exempt from certain cleanup requirements.

What Are Continuing Obligations?

Continuing obligations are legal requirements designed to protect public health and the environment in regard to contamination that remains on a property.

Continuing obligations still apply after a property is sold. Each new owner is responsible for complying with the continuing obligations.

Background

Wisconsin, like most states, allows some contamination to remain after cleanup of soil or groundwater contamination (residual contamination). This minimizes the transportation of contamination and reduces cleanup costs while still ensuring that public health and the environment are protected.

The Department of Natural Resources (DNR), through its Remediation and Redevelopment (RR) Program, places sites or properties with residual contamination on a public database in order to provide notice to interested parties about the residual contamination and any associated continuing obligations. Please see the “Public Information” section on page 3 to learn more about the database. (Prior to June 3, 2006, the state used deed restrictions recorded at county courthouses to establish continuing obligations, and those deed restrictions have also been added into the database.)

Types of Continuing Obligations

1. Manage Contaminated Soil that is Excavated

If the property owner intends to dig up an area with contaminated soil, the owner must ensure that proper soil sampling, followed by appropriate treatment or disposal, takes place. Managing contaminated soil must be done in compliance with state law and is usually done under the guidance of a private environmental professional.

2. Manage Construction of Water Supply Wells

If there is soil or groundwater contamination and the property owner plans to construct or reconstruct a water supply well, the owner must obtain prior DNR approval to ensure that well construction is designed to protect the water supply from contamination.

Other Types of Continuing Obligations

Some continuing obligations are designed specifically for conditions on individual properties. Examples include:

- keeping clean soil and vegetation over contaminated soil;
- keeping an asphalt “cover” over contaminated soil or groundwater;
- maintaining a vapor venting system; and
- notifying the state if a structural impediment (e.g. building) that restricted the cleanup is removed. The owner may then need to conduct additional state-approved environmental work.

It is common for properties with approved cleanups to have continuing obligations because the DNR generally does not require removal of all contamination.

Property owners with the types of continuing obligations described above will find these requirements described in the state’s cleanup approval letter or cleanup plan approval, and *must*:

- comply with these property-specific requirements; and
- obtain the state’s permission before changing portions of the property where these requirements apply.

The requirements apply whether or not the person owned the property at the time that the continuing obligations were placed on the property.

Changing a Continuing Obligation

A property owner has the option to modify a continuing obligation if environmental conditions change. For example, petroleum contamination can degrade over time and property owners may collect new samples showing that residual contamination is gone. They may then request that the DNR modify or remove a continuing obligation. Fees are required for the DNR’s review of this request and for processing the change to the database (\$1050 review fee, \$300/\$350 database fee). Fees are subject to change; current fees are found in Wis. Admin. § NR 749 online at http://docs.legis.wisconsin.gov/code/admin_code/nr/700/749.

Public Information

The DNR provides public information about continuing obligations on the Internet. This information helps property owners, purchasers, lessees and lenders understand legal requirements that apply to a property. The DNR has a comprehensive database of contaminated and cleaned up sites, *BRRTS on the Web*. This database shows all contamination activities known to the DNR. Site specific documents are found under the *Documents* section. The information includes maps, deeds, contaminant data and the state’s closure letter. The closure letter states that no additional environmental cleanup is needed for past contamination and includes information on property-specific continuing obligations. If a cleanup has not been completed, the state’s approval of the remedial action plan will contain the information about

continuing obligations.

Properties with continuing obligations can generally be located in the DNR's *RR Sites Map*. RR Sites Map provides a map view of contaminated and cleaned up sites, including sites with continuing obligations, and links to BRRTS on the Web. *BRRTS on the Web* and *RR Sites Map* are part of the Wisconsin Remediation and Redevelopment Database (WRRD) at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>.

If a completed cleanup is shown in *BRRTS on the Web* but the site documents cannot be found in the documents section, the DNR's closure letter can still be obtained from a regional office. For assistance, please contact a DNR Environmental Program Associate (see the RR Program's Staff Contact web page at dnr.wi.gov/topic/Brownfields/Contact.html).

Off-Site Contamination: When Continuing Obligations Cross the Property Line

An off-site property owner is someone who owns property that has been affected by contamination that moved through soil, sediment or groundwater from another property. Wis. Stat. § 292.13 provides an exemption from environmental cleanup requirements for owners of "off-site" properties. The DNR will generally not ask off-site property owners to investigate or clean up contamination that came from a different property, as long as the property owner allows access to his or her property so that others who are responsible for the contamination may complete the cleanup.

However, off-site property owners are legally obligated to comply with continuing obligations on their property, even though they did not cause the contamination. For example, if the state approved a cleanup where the person responsible for the contamination placed clean soil over contamination on an off-site property, the owner of the off-site property must either keep that soil in place or obtain state approval before disturbing it.

Property owners and others should check the *Public Information* section above if they need to:

- determine whether and where continuing obligations exist on a property;
- review the inspection, maintenance and reporting requirements, and
- contact the DNR regarding changing that portion of the property. The person to contact is the person that approved the closure or remedial action plan.

Option for an Off-Site Liability Exemption Letter

In general, owners of off-site properties have a legal exemption from environmental cleanup requirements. This exemption does not require a state approval letter. Nonetheless, they may request a property-specific liability exemption letter from the DNR if they have enough information to show that the source of the contamination is not on their property. This letter may be helpful in real estate transactions. The fee for this letter is \$700 under Chapter NR 749, Wis. Adm. Code. For more information about this option, please see the RR Program's Liability web page at dnr.wi.gov/topic/Brownfields/Liability.html.

Legal Obligations of Off-Site Property Owners

- Allow access so the person cleaning up the contamination may work on the off-site property (unless the off-site owner completes the cleanup independently).
- Comply with any required continuing obligations on the off-site property.

Required Notifications to Off-Site Property Owners

1. The person responsible for cleaning up contamination must notify affected property owners of any proposed continuing obligations on their off-site property **before** asking the DNR to approve the cleanup. This is required by law and allows the off-site owners to provide the DNR with any technical information that may be relevant to the cleanup approval.

When circumstances are appropriate, an off-site neighbor and the person responsible for the cleanup may enter into a “legally enforceable agreement” (i.e. a contract). Under this type of private agreement, the person responsible for the contamination may also take responsibility for maintaining a continuing obligation on an off-site property. This agreement would not automatically transfer to future owners of the off-site property. The state is not a party to the agreement and cannot enforce it.

2. If a cleanup proposal that includes off-site continuing obligations is approved, the DNR will send a letter to the off-site owners detailing the continuing obligations that are required for their property. Property owners should inform anyone interested in buying their property about maintaining these continuing obligations. For residential property, this would be part of the real estate disclosure obligation.

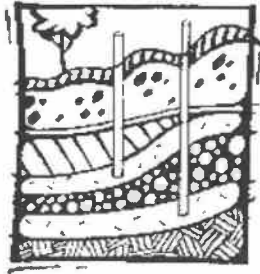
More Information

For more information, please visit the RR Program’s Continuing Obligations website at dnr.wi.gov/topic/Brownfields/Residual.html.

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The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Chief, Public Civil Rights, Office of Civil Rights, U.S. Department of the Interior, 1849 C. Street, NW, Washington, D.C. 20240.

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Using Natural Attenuation to Clean Up Contaminated Groundwater: What Landowners Should Know

RR-671

December 2016

What Is Natural Attenuation?

Natural attenuation makes use of natural processes in soil and groundwater to contain the spread of contamination and to reduce the amount of contamination from chemical releases.

Natural attenuation is an *in-situ* treatment method. This means that contaminants are left in place while natural attenuation works on them. Natural attenuation is relied upon to clean up contamination that remains after the source of the contamination is removed. An example of a source of contamination would be a leaking underground petroleum tank.

How Does Natural Attenuation Work?

Natural attenuation processes work at many sites, but the rate and degree of effectiveness varies from property to property, depending upon the type of contaminants present and the physical, chemical and biological characteristics of the soil and groundwater.

Natural attenuation processes can be divided into two broad categories – destructive and non-destructive. Destructive processes destroy contaminants. The most common destructive process is **biodegradation**.

Non-destructive processes do not destroy the contaminant, but reduce contaminant concentrations in groundwater through **dilution, dispersion or adsorption**.

Biodegradation

Biodegradation is a process in which micro-organisms that naturally occur in soil and groundwater (e.g. yeast, fungi, or bacteria), break down, or degrade hazardous substances to less toxic or non-toxic substances. Microorganisms, like humans, eat and digest organic compounds for nutrition and energy (organic compounds contain carbon and hydrogen atoms).

Some types of microorganisms can digest organic substances such as fuels or solvents that are hazardous to humans. Microorganisms break down the organic contaminants into harmless products – mainly carbon dioxide and water. Once the contaminants are degraded, the microorganism populations decline because they have used their food sources. These small populations of microorganisms pose no contaminant or health risk.

Many organic contaminants, like petroleum, can be biodegraded by microorganisms in the underground environment. For example, biodegradation processes can effectively cleanse soil and groundwater of hydrocarbon fuels such as gasoline and benzene, toluene, ethylbenzene, and xylene – known as the BTEX compounds, under certain conditions.

Biodegradation can also breakdown other contaminants in groundwater such as trichloroethylene (TCE), a chlorinated solvent used in metal cleaning. However, the processes involved are harder to predict and are less effective at contaminant removal compared to petroleum-contaminated sites.



Wisconsin Department of Natural Resources
P.O. Box 7921, Madison, WI 53707
dnr.wi.gov, search "brownfield"



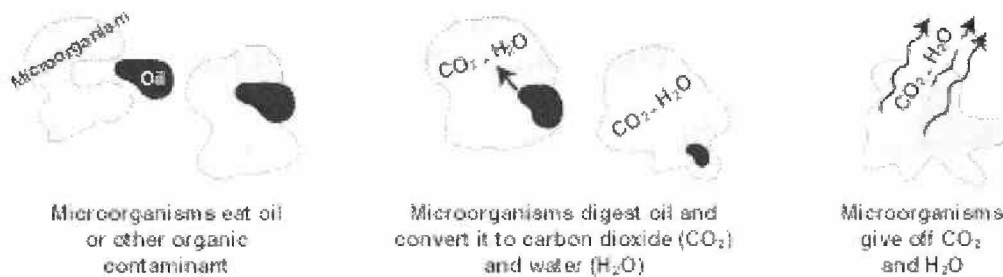


Figure 1. Schematic Diagram of Aerobic Biodegradation in Soil

Dilution and Dispersion

The effects of dilution and dispersion reduce contaminant concentrations but do not destroy contaminants. Clean water from the surface seeps underground to mix with and dilute contaminated groundwater.

Other processes that lead to reduced concentrations of contaminants include clean groundwater flowing into contaminated areas, and the dispersion of pollutants as they spread out and away from the main path of the contaminated plume.

Adsorption

Adsorption occurs when contaminants attach or “sorb” to underground particles. Most oily substances (like petroleum compounds) repel water and escape from the groundwater by attaching to organic matter and clay minerals in the subsurface.

This process holds back or retards contaminant movement and reduces the concentration of contaminants in the groundwater. However, like dilution and dispersion, adsorption does not destroy contaminants.

Why Consider Natural Attenuation To Clean Up Soil And Groundwater?

In certain situations, natural attenuation is an effective, inexpensive cleanup option and the most appropriate way to remediate some contamination problems. Natural attenuation focuses on confirming and monitoring natural remediation processes rather than relying on engineered or “active” technologies (such as pumping groundwater, treating it above ground, then disposing of the treated water).

Contaminants from petroleum are good candidates for natural attenuation because they are among the most easily destroyed by biodegradation. Natural attenuation is non-invasive, which allows treatment to go on below ground, while the surface can continue to be used.

Natural attenuation can also be less costly than active engineered treatment options, and requires no special equipment, energy source, or disposal of treated soil or groundwater.

Will Natural Attenuation Work At My Property?

Whether natural attenuation will work at a particular location is determined by investigating the soil and groundwater. These investigations determine the type of contaminants present, the levels of contamination, and the physical and chemical conditions that lead to biodegradation of the contaminants.

In order to rely on natural attenuation, responsible parties are required to confirm that natural attenuation processes are working by monitoring the soil and groundwater over a period of time to show that the contaminant concentrations are decreasing and that the contamination is no longer spreading.

Those conducting the cleanup need to know whether natural attenuation, or any proposed remedy, will reduce the contaminant concentrations in the soil and groundwater to legally acceptable limits within a reasonable period of time.

Natural attenuation may be an acceptable option for sites where active remediation has occurred and has reduced the concentration of contaminants (for instance, removing leaking underground tanks and contaminated soil).

However, natural attenuation is not an appropriate option at all sites. If the contamination has affected a drinking water well, or has entered a stream or lake, active cleanup options may be necessary to make sure people and the environment are protected from direct contact with the contamination.

The speed or rate of natural attenuation processes is typically slow. Monitoring is necessary to show that concentrations decrease at a sufficient rate to ensure that contaminants will not become a health threat in the future.

Closure Of Contaminated Sites Using Natural Attenuation As A Final Remedy

When contamination is discovered at a property (such as a gas station with leaking underground tanks), the person who is responsible for causing the contamination, and persons having possession or control of hazardous substances that have been discharged, have the responsibility to remove the source of contamination and investigate and clean up the contamination that has escaped into the soil and groundwater.

The contaminant release must be reported to the Wisconsin Department of Natural Resources (DNR) and the site investigation and cleanup are overseen by a state agency. Depending on the type of contaminant, the oversight agency could be the Department of Agriculture, Trade and Consumer Protection or Department of Natural Resources.

When the cleanup has complied with state standards, the person responsible for the contamination will ask the state agency for closure of the case. If natural attenuation is relied upon to finish cleaning up a contaminated property after closure, the responsible person will need to show that contaminant concentrations are not spreading, that contaminant concentrations are stable or decreasing, and that the concentrations will decrease in the future until state groundwater standards are met.

Because natural attenuation processes are slow, it may take many years before the properties with contamination are clean. State rules require that all owners of properties where groundwater contamination has spread must be informed of the contamination below their property.

In addition, the properties with groundwater contamination exceeding state groundwater enforcement standards must be listed on a database to notify future owners and developers of the presence of contamination. If future monitoring occurs and shows that natural attenuation processes have removed the contaminants to state-required cleanup levels, then the properties can be removed from the database.

The state agency will grant closure if the site investigation and monitoring shows that natural attenuation will clean up groundwater to state standards within a reasonable period of time. All state rules for cleanup must be met and the person who is responsible for the contamination must comply with all conditions of the state's closure approval.

Publications

The following publications provide additional information on natural attenuation. Websites where these can be downloaded free of charge are also listed.

- *A Citizen's Guide to Bioremediation*, September 2012, EPA 542-F-12-003; https://www.epa.gov/sites/production/files/2015-04/documents/a_citizens_guide_to_bioremediation.pdf
- *Commonly Asked Questions Regarding the Use of Natural Attenuation for Petroleum-Contaminated Sites at Federal Facilities*, www.clu-in.org/download/techfocus/na/na-petrol.pdf
- *Monitored Natural Attenuation of Petroleum Hydrocarbons: U.S. EPA Remedial Technology Fact Sheet*, May 1999, EPA 600-F-98-021; www.clu-in.org/download/remed/pet-hyd.pdf
- *Monitored Natural Attenuation of Chlorinated Solvents*, May 1999, EPA 600-F-98-0022; www.clu-in.org/download/remed/chl-solv.pdf
- *Guidance on Natural Attenuation for Petroleum Releases, WI DNR, Bureau for Remediation and Redevelopment*, March 2003, PUB-RR-614; dnr.wi.gov/files/PDF/pubs/rr/RR614.pdf

Contact Information

If you have questions about natural attenuation contact a [DNR Environmental Program Associate \(EPA\)](#) in your local DNR regional office. The EPA can direct you to a project manager.



Note: These are the Remediation and Redevelopment Program's designated regions. Other DNR program regional boundaries may be different.

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When Contamination Crosses a Property Line

The Off-Site Environmental Liability Exemption - Wis. Stat. §§ 292.12 and 292.13 Rights and Responsibilities of Off-site, Affected Property Owners

Purpose

This fact sheet summarizes the state's statutory liability exemption for owners of real property affected by environmental contamination migrating from another property. It also explains how contamination from one property can impose health and safety obligations on other properties even when the liability exemption is in effect.

Background

It is relatively common to discover that substances used at an older commercial or industrial property have migrated into the soil, surface water and groundwater and have traveled onto a neighboring property. When this occurs, the party responsible for investigating and cleaning up the source of the contamination is required to take action to address health and safety concerns at both the source property and the off-site property.

When contamination from one property crosses a property boundary, Wisconsin law provides an environmental liability exemption to the affected property owner who meets the conditions in the law. The affected property owner is identified as the "off-site" owner in state law, because environmental contamination has moved beyond the source property's boundaries.

Related Guidance

- [Off-site Liability Exemption Application \(Form 4400-201\)](#)
- [General Liability Clarification Letters \(RR-619\)](#)
- [Continuing Obligations for Environmental Protection \(RR-819\)](#)
- [Environmental Contamination and Your Real Estate \(RR-973\)](#)

The Wisconsin Department of Natural Resources (DNR) will generally not ask off-site, exempt property owners to investigate or remediate contamination that did not originate on their property. A few exceptions to the exemption, related to imminent health and safety threats and long term obligations, are described in the next section.

The statutory off-site exemption is self-implementing and is effective as long as an eligible party meets all the statutory conditions. Property owners and others may request a written exemption determination letter from the DNR for a fee, but this letter is not required to have the exemption protections.

Summary of an off-site property owner's rights and responsibilities

Wisconsin law, Wis. Stat. § 292.11(3), requires anyone who causes, possesses or controls a hazardous substance discharge to the environment (i.e. land, air, water) to take action to restore the

environment to the extent practicable and minimize harmful effects. When contamination from one property migrates and affects another property, however, Wisconsin law provides an exemption for an owner (possessor) of the affected, neighboring property from the requirement to take response actions under Wis. Stat. §§ 292.11(3), (4) and (7)(b) and (c). This statutory provision is known as the "off-site liability exemption," and is authorized by Wis. Stat. § 292.13.

An off-site property owner is someone who owns property affected by soil, groundwater, sediment, soil gas (vapor) or other environmental contamination that originated on another property. The property where the contamination began is known as the source property. An affected off-site property owner is eligible for an off-site liability exemption if all of the following conditions in Wis. Stat. § 292.13 are satisfied, including, but not limited to:

- The off-site property owner did not cause the original discharge of the hazardous substance;
- The off-site property owner did not, and does not, possess or control the hazardous substance that was discharged on the source property;
- The property that contains the source of the migrating contamination is not owned or controlled by the same person or entity that owns the affected off-site property;
- The off-site property owner allows reasonable access to their property, so the DNR and its contractors, along with those responsible for the contamination, can take necessary response actions to protect public health;
- The off-site property owner does not interfere with the response actions of others and does not do anything to make the contamination situation worse;
- The off-site property owner agrees to other conditions that the DNR determines are reasonable and necessary to ensure that response actions are adequate; and
- For soil and sediment contamination, when the responsible party is not responding appropriately to the contamination, the off-site property owner agrees to take actions that the DNR determines are necessary to prevent an imminent threat to human health and safety. For example, taking action to limit public access to the property, installing containment barriers, and addressing fire, explosion and vapor hazards on the property.

No Exemption from Reporting Requirements

The off-site exemption does not exempt an affected property owner from Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR.

Limitations of the Exemption

The off-site exemption is conditional, limited in scope and applies solely to legal responsibilities identified in Wis. Stat. §§ 292.11(3), (4) and (7)(b)(c). The off-site exemption does not exempt a property owner from:

- Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR;
- Wis. Stat. § 292.12, which authorizes the DNR to require continuing public health protection obligations on any property affected by environmental contamination (see page 4 of this fact sheet); and
- Limited, immediate actions, as specified in Wis. Stat. § 292.13(1m)(e). For instance, off-site property owners may be required to address an imminent threat from fire, explosion or vapors if there is not a party responsible for the cleanup who can conduct the actions.

In addition, the off-site liability exemption is not automatically transferable, nor assignable, to future owners of the off-site property. However, it is likely that a new owner could be eligible for the exemption if they meet the conditions in Wis. Stat. § 292.13, including the ability to substantiate that they do not currently, or have ever, owned the source property and did not cause the discharge.

Overview of migrating contamination

Hazardous substances that are spilled or otherwise discharged to the environment can disperse and move around underground. These substances can spread out and migrate, or travel, through the soil into groundwater and nearby lakes and rivers. Gases (vapors) emanating from underground hazardous substances can also make their way upward into houses and other buildings.

When hazardous substances (contamination) move from their starting place (source) and affect the soil, sediment, groundwater or indoor air of an adjacent or nearby property, it is important to accurately determine who is legally responsible for investigating the nature and extent of the contamination, cleaning it up, and mitigating its harmful effects.

Discovering contamination from an off-site source

When a property owner discovers soil or groundwater contamination they believe came from another property, the owner must first notify the DNR of the contamination. The DNR will then work with the owner and potentially responsible parties to ensure appropriate actions are taken to investigate and clean up the contamination to protect health and safety.

Migrating contamination and access to property

Responsible parties are required by state law to investigate and remediate, to the extent practicable, all contamination that migrates within and beyond the boundaries of a source property. If the contamination crosses a property line, the responsible party must investigate where it goes and ask owners of affected, off-site properties for permission to access their properties. Property access is needed so the environmental investigation and cleanup or mitigation work can be completed.

An off-site property owner must allow access to their property to be eligible for the off-site liability exemption. When signing an access agreement, the off-site owners may wish to negotiate with the responsible party on issues such as the work schedule, the restoration of disturbed landscaping, etc.

If the owner of an affected off-site property does not allow the responsible party's environmental consultants or the DNR onto their property, the off-site owner will not qualify for the off-site exemption and the off-site owner may assume legal responsibility for the contamination on their property.

Obtaining an off-site liability determination letter from the DNR

Off-site property owners can request a liability determination letter from the DNR, for a fee, that documents the exemption in writing.

To obtain a letter, the off-site property owner must provide information to demonstrate that there are hazardous substances impacting their property from a source on another property and that all the other conditions for the exemption have been met. The off-site property owner can use the investigation data collected by the responsible party in response to the contamination or an owner of an off-site property may collect their own data to demonstrate the contamination is coming from somewhere else.

Requesting a Determination or Clarification Letter

To obtain an off-site liability determination letter or liability clarification letter, submit the DNR's Off-site Liability Exemption application, Form 4400-201 and the applicable fee. This form includes instructions and describes the information needed by the DNR for a site-specific letter.

Obtaining a liability clarification letter from the DNR

If someone does not meet all the requirements for the exemption, (e.g. a prospective purchaser) and therefore doesn't qualify for an off-site liability determination letter, anyone with an interest in a property that is or may be affected by migrating contamination can still request that the DNR review the site-specific situation and provide a written liability clarification letter for a fee. Liability clarification letters may be helpful when evaluating the potential purchase of a property or when contamination is suspected to be impacting a property.

Continuing obligations for the protection of health and safety at off-site properties

When residual contamination extends across a property line, continuing obligations may also extend onto an affected, off-site property. In these situations, owners of off-site properties may not be legally responsible for responding to the contamination, but they are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety.

Wisconsin, like most states, allows some residual contamination to remain after a cleanup of contaminated soil, vapors, sediment or groundwater has been approved by the state (see Wis. Stat. § 292.12). The removal of all contamination is generally not practicable, nor is it always necessary for the protection of public health and the environment.

When the DNR approves the completion of an interim action, or a remedial action, or issues a case closure letter at a site where residual contamination exists, the DNR may condition or qualify its case closure approval on compliance with continuing obligations at the source property and affected off-site properties to protect public health and the environment.

These continuing obligations are property-specific requirements and restrictions identified in the DNR approval or case closure letter. They are legal responsibilities associated with the source property, and apply to current and future owners of the property. If contamination has migrated off-site, there may be continuing obligations that also apply to off-site, affected properties.

Common Continuing Obligations for Source and Affected, Off-site Properties

One common continuing obligation, for the owners of the source property and affected, off-site properties, is the proper management and disposal of contaminated soil that is excavated. Other continuing obligations and requirements necessary to protect health and safety may include:

- Keeping clean soil and vegetation over contaminated soil;
- Maintaining a cover of pavement, soil, asphalt, etc. over contaminated soil or groundwater;
- Operating and maintaining a vapor mitigation system that is installed by the responsible party;
- Obtaining DNR approval prior to constructing or reconstructing a well at properties with groundwater contamination; and
- Maintaining industrial use for a property that was cleaned up to industrial standards.

Owners of off-site properties are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety, except for those continuing obligations imposed for residual sediment contamination.

Notice to Affected Off-site Property Owners of Case Closure Request and Possible Continuing Obligations

The party responsible for cleaning up contamination must notify affected, off-site property owners of a proposed continuing obligation on their property before the DNR reviews a request for case closure. State law requires this, and it allows the off-site property owners some time to provide the DNR with any technical information that may be relevant to the cleanup approval.

An off-site property owner is, of course, free to discuss responsibility for the proposed off-site continuing obligations with the responsible party. If an off-site property owner enters into a legally enforceable agreement (i.e. a private contract) with the party responsible for the contamination, under which the responsible party assumes responsibility for maintaining a continuing obligation on the off-site owner's property, that agreement must be submitted to the DNR and recorded in the database per Wis. Stat. § 292.12(5)(c).

If the DNR approves a case closure request that includes continuing obligations at an off-site property, the DNR will notify off-site owners of the continuing obligation. A property owner may request modification of a continuing obligation in the future if environmental conditions change. For example, petroleum contamination degrades over time and laboratory test results of new soil, groundwater or vapor samples may support modifying or removing a continuing obligation.

Finding information about continuing obligations

Information about property-specific continuing obligations can be found (as applicable) in the DNR interim action approval letter, the case closure letter for the source property, and in the DNR documents giving notice to off-site property owners. These letters and related documents are available in the DNR database of property cleanup activities.

This database, called BRRTS on the Web, is available at dnr.wi.gov (search "BRRTS"). The documents about affected, off-site properties that are associated with a specific source property can be found in BRRTS when you search the site number or address of the property that is the source of the contamination. Property owners, local government officials, building contractors, well drillers and others may review the database to find out if there are any land-use restrictions or continuing obligations associated with a specific property before beginning work there.

For more information

Questions about the off-site environmental liability exemption and continuing obligations can be directed to the brownfields specialist in your local DNR regional office. To find a specialist in your area, go to dnr.wi.gov and search "brownfields contacts."

For additional information about off-site contamination and liability clarification letters go to dnr.wi.gov and search for "off-site contamination." For additional information about residual contamination and continuing obligations go to dnr.wi.gov and search for "continuing obligations."

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Notice: This form is authorized under ss. 280.11 and 281.11, Stats., and s. NR 812.09(4) and (4)(w), Wis. Adm. Code. Information requested is required to determine if an approval for construction or reconstruction of a well may be granted, under s. NR 812.09(4) and (4)(w), Wis. Adm. Code: "Prior department approval is required for the construction or reconstruction of a well on a property that is listed on the department's geographic information system (GIS) Registry of Closed Remediation Sites." Failure to submit this form or provide all required information may result in your application for approval being denied or your well operating in violation of ch. NR 812, Wis. Adm. Code, or both, and may result in forfeitures under s. 281.98, Stats., of not less than \$10 nor more than \$5,000 for each violation. Personally identifiable information on this form is not likely to be used for any purpose other than administration of the water supply program. However, copies of this form are available to requesters under Wisconsin's Open Records Law [ss. 19.31 - 19.39, Wis. Stats.].

Applicant Information			
Last Name	First	MI	Daytime Phone Number (include area code)
Mailing Street Address and PO Box		City	State ZIP Code

Well Site Information						
Facility or Site Name (if any)				BRRTS ID No. (if known)		
Address of well (if different than owner)				Gov't Lot #	$\frac{1}{4}$ $\frac{1}{4}$	$\frac{1}{4}$
<input type="radio"/> City <input type="radio"/> Town <input type="radio"/> Village of _____				State	ZIP Code	County
Subdivision Name				Lot Number	Block Number	
					Section	Township
						Range <input type="radio"/> E <input type="radio"/> W
						N

Well Construction Information			
If approval request is for an existing well, include the following well construction information, if known. Include copy of well report if possible.			
Well Type <input type="radio"/> Drilled <input type="radio"/> Driven Point <input type="radio"/> Other _____		Casing Depth	Total Well Depth
Name of Original Well Owner		Date Well Constructed	Constructed By
			WUWN

Approval Information
Proposed construction and location of well, i.e., to avoid the contamination.

Identify well construction reports for any existing wells, on property or adjacent property, if available.

Are there any other setback separation distance requirements in NR 812.08 that would require a variance to construct the well?

Site Drawing

- Sketch the property and location of the water supply. Include the scale of the drawing and distances to known sources of contamination (for example, contaminant plume, septic systems, gas tanks, drain tiles, animal pens, etc.)
- Show slope arrows from well and contamination sources, if lot is sloped
- Attach any extra sheets of other information, which may be useful in describing your situation

(North)

SITE DRAWING

- Department regional personnel may inspect this property to verify information provided and to determine comparable protection options. You may be contacted by phone for an appointment, or if more information is needed.
- **NO CONSTRUCTION SHALL BEGIN UNTIL THE OWNER OR CONTRACTOR HAS RECEIVED A WRITTEN APPROVAL DOCUMENT.**
- Written notification will be provided of approval or denial with 65 business days of receipt of this application, as provided by s. NR 812, Wis. Adm. Code.

I certify to the best of my knowledge the information provided in this application is true, complete, and correct. I understand that the information I provide will be used by the Department to determine if an approval can be granted and what construction specifications will be required to provide comparable protection. I further understand that in granting an approval the Department does not guarantee acceptable water quality or quantity.

Owner's Signature

Date Signed

Name and Address of Well Driller, Well Contractor or Pump Installer, if known

MAIL THIS APPLICATION TO:

I WANT TO CONSTRUCT OR RECONSTRUCT A WELL

Will it be used for potable purposes?

NO

YES

Notification to DNR & Well Construction Obligations
See, NR 812.09(4)(w) and WDNR Form 3300-254

PROHIBITED by City
Ordinances 705.19 & 705.22

I WANT TO CONSTRUCT OR RECONSTRUCT A BUILDING

Have I notified DNR and shared my plan?

NO

YES

Notify DNR

DNR will provide direction on whether a Vapor Intrusion Assessment should be conducted prior to construction and current applicable guidance that should be followed

**I'M A PRIVATE PROPERTY OWNER
AND I WANT TO EXCAVATE SOIL**

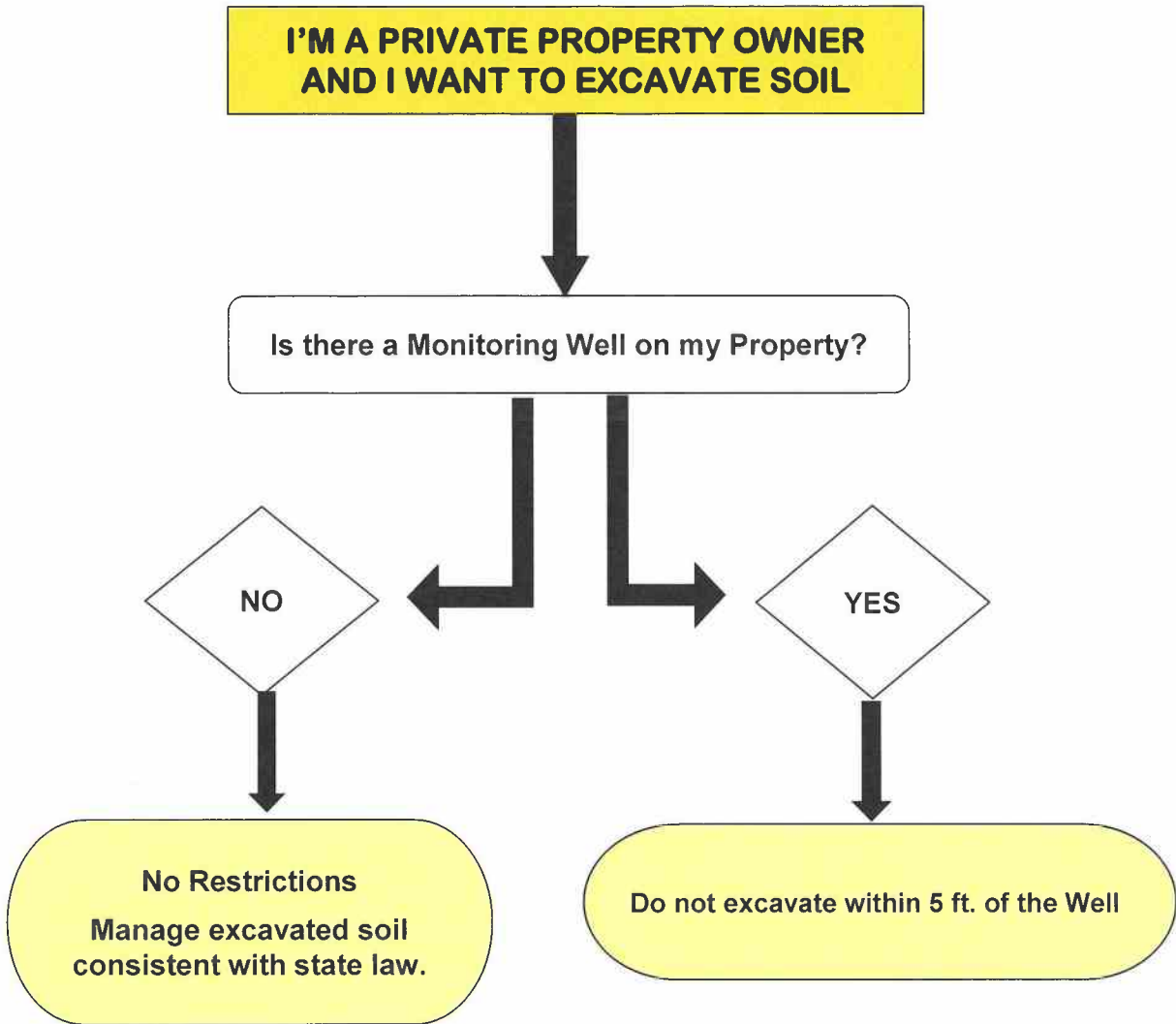
Is there a Monitoring Well on my Property?

NO

**No Restrictions
Manage excavated soil
consistent with state law.**

YES

Do not excavate within 5 ft. of the Well



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RENEE V. EXUM
MICHAEL BEST & FRIEDRICH LLP
1 SOUTH PICKNEY STREET
SUITE 700
MADISON, WI 53703
UNITED STATES US

SHIP DATE: 16MAR20
ACTWGT: 1.00 LB
CAD: 108763992/NET4220

BILL SENDER

OUR LADY OF THE LAKE CATHOLIC CHURC
106 2ND AVENUE EAST

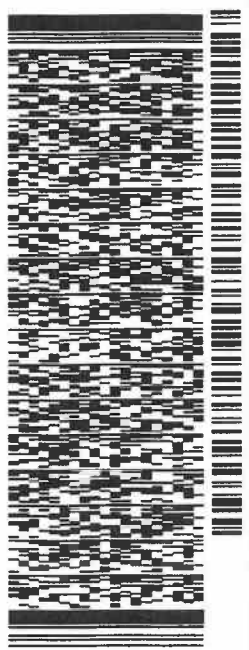
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(715) 682-7620

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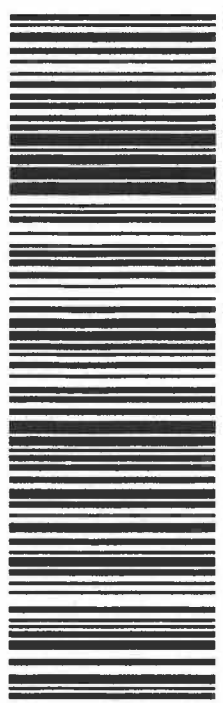


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Dawson, Deborah D (21693)

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Sent: Tuesday, March 17, 2020 2:22 PM
To: Dawson, Deborah D (21693)
Subject: FedEx Shipment 770027292774 Delivered

Your package has been delivered

Tracking # 770027292774

Ship date:
Mon, 3/16/2020

Renee V. Exum
Michael Best & Friedrich LLP
MADISON, WI 53703
US



Delivery date:
Tue, 3/17/2020 2:16 pm

**Our Lady of the Lake Catholic
Churc**
106 2nd Avenue East
ASHLAND, WI 54806
US



Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number:	770027292774
Status:	Delivered: 03/17/2020 2:16 PM Signed for By: K.WOLFGRAM
Reference:	070086-0205 (RVE 0617)
Signed for by:	K.WOLFGRAM
Delivery location:	ASHLAND, WI
Delivered to:	Receptionist/Front Desk
Service type:	FedEx Priority Overnight®
Packaging type:	FedEx® Envelope
Number of pieces:	1
Weight:	0.50 lb.
Special handling/Services:	Deliver Weekday
Standard transit:	3/17/2020 by 4:30 pm

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March 16, 2020

VIA FEDERAL EXPRESS

Mr. Gary A. Kabasa
215 N. Prentice Ave.
Ashland, WI 54806

Subject: Remedial Action Approval for Ashland NSP Lakefront Superfund Site
300 St. Claire Street, Ashland, Wisconsin

Dear Mr. Kabasa:

Northern States Power Company of Wisconsin ("NSPW") is providing you this notification in compliance with state law and in connection with environmental work recently completed at the Ashland NSP Lakefront Superfund Site (the "Site"). The Site is located at 300 St. Claire Street, Ashland and a map is enclosed. Further information concerning the site is available here: <https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0507952> or by visiting the document repository maintained at the Vaughn Public Library.

The Wisconsin Department of Natural Resources ("DNR") recently approved a Remedial Action Plan associated with this work and the U.S. Environmental Protection Agency, in concurrence with DNR, has approved the substantial completion of that work. As part of this approval, we must notify you that your property, which is within the Site, and that you own (the "Property") is subject to certain continuing obligations.

State law directs parties responsible for environmental contamination to take actions to restore the environment and minimize harmful effects to the extent practicable. In the course of conducting such cleanups, the law allows some amount of residual contamination to remain in soil and groundwater provided it does not pose a threat to public health, safety, welfare or to the environment.

The DNR has recently approved of a Remedial Action Plan and NSPW has implemented that Plan to the extent required by state and federal law. Residual groundwater contamination remains beneath the Property as described further below and in the *Institutional Control Implementation and Assurance Plan* (FE/JV 2020). Because that residual contamination has been determined to not pose any threat to public health, safety, welfare or to the environment, WDNR has allowed that contamination to remain, subject to compliance with certain ongoing use restrictions and continuing obligations applicable to the Property.

Continuing Obligations Applicable to the Property

The Property is subject to certain use restrictions which can be found in and enforceable by the following:

- Granting reasonable access to DNR, the U.S. Environmental Protection Agency, NSPW or its contractors;
- Compliance with the property use restrictions of the *Institutional Control Implementation and Assurance Plan* (FE/JV 2020);
- Avoiding actions that make the contamination worse (e.g., interfering with the performance of the remedy, demolishing or damaging a structure and causing or worsening the discharges to the environment, or exacerbating site conditions).

You are required to manage the Property in compliance with these use restrictions and continuing obligations. Further detail is provided below. Please be aware that failure to comply with the continuing obligations may result in enforcement action by the DNR. The DNR intends to conduct inspections in the future to ensure that the conditions included in this letter are met.

Residual Groundwater Contamination (Wis. Admin. Code ch. NR 140, NR 812)

Due to the existence of residual contamination after completion of the remedial action approved in the Remedial Action Plan approval, this Site, which includes the Property, will be listed on the Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>. If you intend to construct or reconstruct a well on the Property, you will need to get Department approval in accordance with Wis. Admin. Code § NR 812.09 (4) (w). To obtain approval, Form 3300-254 needs to be completed and submitted to the DNR Drinking and Groundwater program's regional water supply specialist. A well driller can help with this form. This form can be obtained online at: <https://dnr.wi.gov/files/PDF/forms/3300/3300-254.pdf>.

Additionally, if you construct or reconstruct any structures on the Property, you should evaluate site conditions in accordance with DNR publication RR-800, "*Addressing Vapor Intrusion at Remediation & Redevelopment Sites in Wisconsin*", dated January 2018 (WDNR, 2018), and any subsequent versions thereof. This fact sheet can be obtained online at: <https://dnr.wi.gov/files/PDF/pubs/rr/RR800.pdf>.

The attached DNR fact sheet RR-819, "*Continuing Obligations for Environmental Protection*", helps explain a property owner's responsibility for continuing obligations on their property. You may obtain additional copies at <http://dnr.wi.gov/files/PDF/pubs/rr/RR819.pdf>.

You have thirty (30) days to comment on the issues addressed in this letter. You may submit any information that you believe is relevant to be considered by DNR and NSPW. You may submit that information at the address(es) provided below.

Notices

Department of Natural Resources
Attn: John Sager
1701 N. 4th Street
Superior, WI 54880
P: 715.392-7822
E: John.Sager@Wisconsin.gov

Michael BeBeau
Xcel Energy
Community Service Manager
2400 Farm Road
Ashland, WI 54806
P: 715.682.6936 F: 715.682.6921
E: michael.s.bebeau@xcelenergy.com

You should retain this document with your property records.

Questions regarding this notification may be directed to Michael Bebeau at 715-682-6936.

Sincerely,


Michael Bebeau (MC)

Attachments

- Legal Description of Property
- RR-819 – Continuing Obligations for Environmental Protection
- RR-671 – What Landowners Should Know: Information About Using Natural Attenuation To Clean Up Contaminated Groundwater
- RR-589 – When Contamination Crosses a Property Line
- DNR Form 3300-254 – GIS Registry Site Well Approval Application
- Decision Tree – I Want to Construct a Well or Building
- Decision Tree – I Want to Excavate Soil – Private Property Owner

**EXHIBIT A
LEGAL DESCRIPTION**

(Gary Kabasa)

Lots 8 and 9, Block 33, Ellis Division, City of Ashland, Ashland County, Wisconsin.

(PIN: 201-01017-0000)

Lot 11, Block 33, Ellis Division, City of Ashland, Ashland County, Wisconsin.

(PIN: 201-01020-0000)

Lots 13 - 16 North of Railroad Right-of-way, Block 33, Ellis Division, City of Ashland, Ashland County, Wisconsin.

(PIN: 201-0123-0000 and 201-01024-0000)

Lots 17 and 18, Block 33, Ellis Division, South of the Railroad right-of-way, City of Ashland, Ashland County, Wisconsin.

(PIN: 201-01025-0000)



Continuing Obligations for Environmental Protection Responsibilities of Wisconsin Property Owners Wis. Stat. § 292.12

Purpose

This fact sheet is intended to help property owners understand their legal requirements under s. 292.12, Wis. Stats., regarding continuing obligations that arise due to the environmental condition of their property.

Introduction

The term “continuing obligations” refers to certain actions for which property owners are responsible following a completed environmental cleanup. They are sometimes called environmental land use controls or institutional controls. These legal obligations, such as a requirement to maintain pavement over contaminated soil, are most often found in a cleanup approval letter from the state.

Less commonly, a continuing obligation may apply where a cleanup is not yet completed but a cleanup plan has been approved, or at a property owned by a local government that is exempt from certain cleanup requirements.

What Are Continuing Obligations?

Continuing obligations are legal requirements designed to protect public health and the environment in regard to contamination that remains on a property.

Continuing obligations still apply after a property is sold. Each new owner is responsible for complying with the continuing obligations.

Background

Wisconsin, like most states, allows some contamination to remain after cleanup of soil or groundwater contamination (residual contamination). This minimizes the transportation of contamination and reduces cleanup costs while still ensuring that public health and the environment are protected.

The Department of Natural Resources (DNR), through its Remediation and Redevelopment (RR) Program, places sites or properties with residual contamination on a public database in order to provide notice to interested parties about the residual contamination and any associated continuing obligations. Please see the “Public Information” section on page 3 to learn more about the database. (Prior to June 3, 2006, the state used deed restrictions recorded at county courthouses to establish continuing obligations, and those deed restrictions have also been added into the database.)

Types of Continuing Obligations

1. Manage Contaminated Soil that is Excavated

If the property owner intends to dig up an area with contaminated soil, the owner must ensure that proper soil sampling, followed by appropriate treatment or disposal, takes place. Managing contaminated soil must be done in compliance with state law and is usually done under the guidance of a private environmental professional.

2. Manage Construction of Water Supply Wells

If there is soil or groundwater contamination and the property owner plans to construct or reconstruct a water supply well, the owner must obtain prior DNR approval to ensure that well construction is designed to protect the water supply from contamination.

Other Types of Continuing Obligations

Some continuing obligations are designed specifically for conditions on individual properties. Examples include:

- keeping clean soil and vegetation over contaminated soil;
- keeping an asphalt “cover” over contaminated soil or groundwater;
- maintaining a vapor venting system; and
- notifying the state if a structural impediment (e.g. building) that restricted the cleanup is removed. The owner may then need to conduct additional state-approved environmental work.

It is common for properties with approved cleanups to have continuing obligations because the DNR generally does not require removal of all contamination.

Property owners with the types of continuing obligations described above will find these requirements described in the state’s cleanup approval letter or cleanup plan approval, and *must*:

- comply with these property-specific requirements; and
- obtain the state’s permission before changing portions of the property where these requirements apply.

The requirements apply whether or not the person owned the property at the time that the continuing obligations were placed on the property.

Changing a Continuing Obligation

A property owner has the option to modify a continuing obligation if environmental conditions change. For example, petroleum contamination can degrade over time and property owners may collect new samples showing that residual contamination is gone. They may then request that the DNR modify or remove a continuing obligation. Fees are required for the DNR’s review of this request and for processing the change to the database (\$1050 review fee, \$300/\$350 database fee). Fees are subject to change; current fees are found in Wis. Admin. § NR 749 online at http://docs.legis.wisconsin.gov/code/admin_code/nr/700/749.

Public Information

The DNR provides public information about continuing obligations on the Internet. This information helps property owners, purchasers, lessees and lenders understand legal requirements that apply to a property. The DNR has a comprehensive database of contaminated and cleaned up sites, *BRRTS on the Web*. This database shows all contamination activities known to the DNR. Site specific documents are found under the *Documents* section. The information includes maps, deeds, contaminant data and the state’s closure letter. The closure letter states that no additional environmental cleanup is needed for past contamination and includes information on property-specific continuing obligations. If a cleanup has not been completed, the state’s approval of the remedial action plan will contain the information about

continuing obligations.

Properties with continuing obligations can generally be located in the DNR's *RR Sites Map*. RR Sites Map provides a map view of contaminated and cleaned up sites, including sites with continuing obligations, and links to BRRTS on the Web. *BRRTS on the Web* and *RR Sites Map* are part of the Wisconsin Remediation and Redevelopment Database (WRRD) at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>.

If a completed cleanup is shown in *BRRTS on the Web* but the site documents cannot be found in the documents section, the DNR's closure letter can still be obtained from a regional office. For assistance, please contact a DNR Environmental Program Associate (see the RR Program's Staff Contact web page at dnr.wi.gov/topic/Brownfields/Contact.html).

Off-Site Contamination: When Continuing Obligations Cross the Property Line

An off-site property owner is someone who owns property that has been affected by contamination that moved through soil, sediment or groundwater from another property. Wis. Stat. § 292.13 provides an exemption from environmental cleanup requirements for owners of "off-site" properties. The DNR will generally not ask off-site property owners to investigate or clean up contamination that came from a different property, as long as the property owner allows access to his or her property so that others who are responsible for the contamination may complete the cleanup.

However, off-site property owners are legally obligated to comply with continuing obligations on their property, even though they did not cause the contamination. For example, if the state approved a cleanup where the person responsible for the contamination placed clean soil over contamination on an off-site property, the owner of the off-site property must either keep that soil in place or obtain state approval before disturbing it.

Property owners and others should check the *Public Information* section above if they need to:

- determine whether and where continuing obligations exist on a property;
- review the inspection, maintenance and reporting requirements, and
- contact the DNR regarding changing that portion of the property. The person to contact is the person that approved the closure or remedial action plan.

Option for an Off-Site Liability Exemption Letter

In general, owners of off-site properties have a legal exemption from environmental cleanup requirements. This exemption does not require a state approval letter. Nonetheless, they may request a property-specific liability exemption letter from the DNR if they have enough information to show that the source of the contamination is not on their property. This letter may be helpful in real estate transactions. The fee for this letter is \$700 under Chapter NR 749, Wis. Adm. Code. For more information about this option, please see the RR Program's Liability web page at dnr.wi.gov/topic/Brownfields/Liability.html.

Legal Obligations of Off-Site Property Owners

- Allow access so the person cleaning up the contamination may work on the off-site property (unless the off-site owner completes the cleanup independently).
- Comply with any required continuing obligations on the off-site property.

Required Notifications to Off-Site Property Owners

1. The person responsible for cleaning up contamination must notify affected property owners of any proposed continuing obligations on their off-site property **before** asking the DNR to approve the cleanup. This is required by law and allows the off-site owners to provide the DNR with any technical information that may be relevant to the cleanup approval.

When circumstances are appropriate, an off-site neighbor and the person responsible for the cleanup may enter into a “legally enforceable agreement” (i.e. a contract). Under this type of private agreement, the person responsible for the contamination may also take responsibility for maintaining a continuing obligation on an off-site property. This agreement would not automatically transfer to future owners of the off-site property. The state is not a party to the agreement and cannot enforce it.

2. If a cleanup proposal that includes off-site continuing obligations is approved, the DNR will send a letter to the off-site owners detailing the continuing obligations that are required for their property. Property owners should inform anyone interested in buying their property about maintaining these continuing obligations. For residential property, this would be part of the real estate disclosure obligation.

More Information

For more information, please visit the RR Program’s Continuing Obligations website at dnr.wi.gov/topic/Brownfields/Residual.html.

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Chief, Public Civil Rights, Office of Civil Rights, U.S. Department of the Interior, 1849 C. Street, NW, Washington, D.C. 20240.

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Using Natural Attenuation to Clean Up Contaminated Groundwater: What Landowners Should Know

RR-671

December 2016

What Is Natural Attenuation?

Natural attenuation makes use of natural processes in soil and groundwater to contain the spread of contamination and to reduce the amount of contamination from chemical releases.

Natural attenuation is an *in-situ* treatment method. This means that contaminants are left in place while natural attenuation works on them. Natural attenuation is relied upon to clean up contamination that remains after the source of the contamination is removed. An example of a source of contamination would be a leaking underground petroleum tank.

How Does Natural Attenuation Work?

Natural attenuation processes work at many sites, but the rate and degree of effectiveness varies from property to property, depending upon the type of contaminants present and the physical, chemical and biological characteristics of the soil and groundwater.

Natural attenuation processes can be divided into two broad categories – destructive and non-destructive. Destructive processes destroy contaminants. The most common destructive process is **biodegradation**.

Non-destructive processes do not destroy the contaminant, but reduce contaminant concentrations in groundwater through **dilution, dispersion or adsorption**.

Biodegradation

Biodegradation is a process in which micro-organisms that naturally occur in soil and groundwater (e.g. yeast, fungi, or bacteria), break down, or degrade hazardous substances to less toxic or non-toxic substances. Microorganisms, like humans, eat and digest organic compounds for nutrition and energy (organic compounds contain carbon and hydrogen atoms).

Some types of microorganisms can digest organic substances such as fuels or solvents that are hazardous to humans. Microorganisms break down the organic contaminants into harmless products – mainly carbon dioxide and water. Once the contaminants are degraded, the microorganism populations decline because they have used their food sources. These small populations of microorganisms pose no contaminant or health risk.

Many organic contaminants, like petroleum, can be biodegraded by microorganisms in the underground environment. For example, biodegradation processes can effectively cleanse soil and groundwater of hydrocarbon fuels such as gasoline and benzene, toluene, ethylbenzene, and xylene – known as the BTEX compounds, under certain conditions.

Biodegradation can also breakdown other contaminants in groundwater such as trichloroethylene (TCE), a chlorinated solvent used in metal cleaning. However, the processes involved are harder to predict and are less effective at contaminant removal compared to petroleum-contaminated sites.



Wisconsin Department of Natural Resources
P.O. Box 7921, Madison, WI 53707
dnr.wi.gov, search "brownfield"



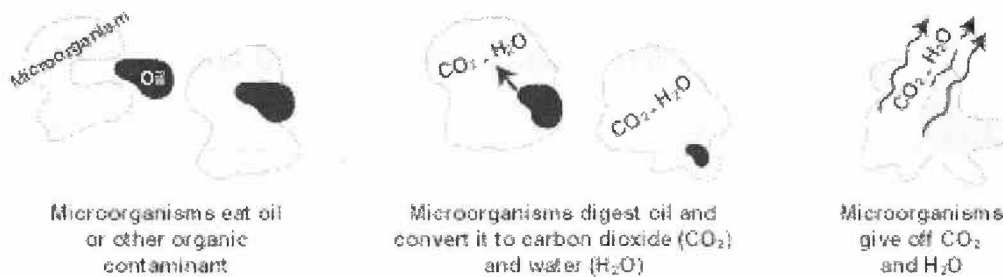


Figure 1. Schematic Diagram of Aerobic Biodegradation in Soil

Dilution and Dispersion

The effects of dilution and dispersion reduce contaminant concentrations but do not destroy contaminants. Clean water from the surface seeps underground to mix with and dilute contaminated groundwater.

Other processes that lead to reduced concentrations of contaminants include clean groundwater flowing into contaminated areas, and the dispersion of pollutants as they spread out and away from the main path of the contaminated plume.

Adsorption

Adsorption occurs when contaminants attach or “sorb” to underground particles. Most oily substances (like petroleum compounds) repel water and escape from the groundwater by attaching to organic matter and clay minerals in the subsurface.

This process holds back or retards contaminant movement and reduces the concentration of contaminants in the groundwater. However, like dilution and dispersion, adsorption does not destroy contaminants.

Why Consider Natural Attenuation To Clean Up Soil And Groundwater?

In certain situations, natural attenuation is an effective, inexpensive cleanup option and the most appropriate way to remediate some contamination problems. Natural attenuation focuses on confirming and monitoring natural remediation processes rather than relying on engineered or “active” technologies (such as pumping groundwater, treating it above ground, then disposing of the treated water).

Contaminants from petroleum are good candidates for natural attenuation because they are among the most easily destroyed by biodegradation. Natural attenuation is non-invasive, which allows treatment to go on below ground, while the surface can continue to be used.

Natural attenuation can also be less costly than active engineered treatment options, and requires no special equipment, energy source, or disposal of treated soil or groundwater.

Will Natural Attenuation Work At My Property?

Whether natural attenuation will work at a particular location is determined by investigating the soil and groundwater. These investigations determine the type of contaminants present, the levels of contamination, and the physical and chemical conditions that lead to biodegradation of the contaminants.

In order to rely on natural attenuation, responsible parties are required to confirm that natural attenuation processes are working by monitoring the soil and groundwater over a period of time to show that the contaminant concentrations are decreasing and that the contamination is no longer spreading.

Those conducting the cleanup need to know whether natural attenuation, or any proposed remedy, will reduce the contaminant concentrations in the soil and groundwater to legally acceptable limits within a reasonable period of time.

Natural attenuation may be an acceptable option for sites where active remediation has occurred and has reduced the concentration of contaminants (for instance, removing leaking underground tanks and contaminated soil).

However, natural attenuation is not an appropriate option at all sites. If the contamination has affected a drinking water well, or has entered a stream or lake, active cleanup options may be necessary to make sure people and the environment are protected from direct contact with the contamination.

The speed or rate of natural attenuation processes is typically slow. Monitoring is necessary to show that concentrations decrease at a sufficient rate to ensure that contaminants will not become a health threat in the future.

Closure Of Contaminated Sites Using Natural Attenuation As A Final Remedy

When contamination is discovered at a property (such as a gas station with leaking underground tanks), the person who is responsible for causing the contamination, and persons having possession or control of hazardous substances that have been discharged, have the responsibility to remove the source of contamination and investigate and clean up the contamination that has escaped into the soil and groundwater.

The contaminant release must be reported to the Wisconsin Department of Natural Resources (DNR) and the site investigation and cleanup are overseen by a state agency. Depending on the type of contaminant, the oversight agency could be the Department of Agriculture, Trade and Consumer Protection or Department of Natural Resources.

When the cleanup has complied with state standards, the person responsible for the contamination will ask the state agency for closure of the case. If natural attenuation is relied upon to finish cleaning up a contaminated property after closure, the responsible person will need to show that contaminant concentrations are not spreading, that contaminant concentrations are stable or decreasing, and that the concentrations will decrease in the future until state groundwater standards are met.

Because natural attenuation processes are slow, it may take many years before the properties with contamination are clean. State rules require that all owners of properties where groundwater contamination has spread must be informed of the contamination below their property.

In addition, the properties with groundwater contamination exceeding state groundwater enforcement standards must be listed on a database to notify future owners and developers of the presence of contamination. If future monitoring occurs and shows that natural attenuation processes have removed the contaminants to state-required cleanup levels, then the properties can be removed from the database.

The state agency will grant closure if the site investigation and monitoring shows that natural attenuation will clean up groundwater to state standards within a reasonable period of time. All state rules for cleanup must be met and the person who is responsible for the contamination must comply with all conditions of the state's closure approval.

Publications

The following publications provide additional information on natural attenuation. Websites where these can be downloaded free of charge are also listed.

- *A Citizen's Guide to Bioremediation*, September 2012, EPA 542-F-12-003; https://www.epa.gov/sites/production/files/2015-04/documents/a_citizens_guide_to_bioremediation.pdf
- *Commonly Asked Questions Regarding the Use of Natural Attenuation for Petroleum-Contaminated Sites at Federal Facilities*, www.clu-in.org/download/techfocus/na/na-petrol.pdf
- *Monitored Natural Attenuation of Petroleum Hydrocarbons: U.S. EPA Remedial Technology Fact Sheet*, May 1999, EPA 600-F-98-021; www.clu-in.org/download/remed/pet-hyd.pdf
- *Monitored Natural Attenuation of Chlorinated Solvents*, May 1999, EPA 600-F-98-0022; www.clu-in.org/download/remed/chl-solv.pdf
- *Guidance on Natural Attenuation for Petroleum Releases, WI DNR, Bureau for Remediation and Redevelopment*, March 2003, PUB-RR-614; dnr.wi.gov/files/PDF/pubs/rr/RR614.pdf

Contact Information

If you have questions about natural attenuation contact a [DNR Environmental Program Associate \(EPA\)](#) in your local DNR regional office. The EPA can direct you to a project manager.



Note: These are the Remediation and Redevelopment Program's designated regions. Other DNR program regional boundaries may be different.

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.



When Contamination Crosses a Property Line

The Off-Site Environmental Liability Exemption - Wis. Stat. §§ 292.12 and 292.13 Rights and Responsibilities of Off-site, Affected Property Owners

Purpose

This fact sheet summarizes the state's statutory liability exemption for owners of real property affected by environmental contamination migrating from another property. It also explains how contamination from one property can impose health and safety obligations on other properties even when the liability exemption is in effect.

Background

It is relatively common to discover that substances used at an older commercial or industrial property have migrated into the soil, surface water and groundwater and have traveled onto a neighboring property. When this occurs, the party responsible for investigating and cleaning up the source of the contamination is required to take action to address health and safety concerns at both the source property and the off-site property.

When contamination from one property crosses a property boundary, Wisconsin law provides an environmental liability exemption to the affected property owner who meets the conditions in the law. The affected property owner is identified as the "off-site" owner in state law, because environmental contamination has moved beyond the source property's boundaries.

Related Guidance

- [Off-site Liability Exemption Application \(Form 4400-201\)](#)
- [General Liability Clarification Letters \(RR-619\)](#)
- [Continuing Obligations for Environmental Protection \(RR-819\)](#)
- [Environmental Contamination and Your Real Estate \(RR-973\)](#)

The Wisconsin Department of Natural Resources (DNR) will generally not ask off-site, exempt property owners to investigate or remediate contamination that did not originate on their property. A few exceptions to the exemption, related to imminent health and safety threats and long term obligations, are described in the next section.

The statutory off-site exemption is self-implementing and is effective as long as an eligible party meets all the statutory conditions. Property owners and others may request a written exemption determination letter from the DNR for a fee, but this letter is not required to have the exemption protections.

Summary of an off-site property owner's rights and responsibilities

Wisconsin law, Wis. Stat. § 292.11(3), requires anyone who causes, possesses or controls a hazardous substance discharge to the environment (i.e. land, air, water) to take action to restore the

environment to the extent practicable and minimize harmful effects. When contamination from one property migrates and affects another property, however, Wisconsin law provides an exemption for an owner (possessor) of the affected, neighboring property from the requirement to take response actions under Wis. Stat. §§ 292.11(3), (4) and (7)(b) and (c). This statutory provision is known as the "off-site liability exemption," and is authorized by Wis. Stat. § 292.13.

An off-site property owner is someone who owns property affected by soil, groundwater, sediment, soil gas (vapor) or other environmental contamination that originated on another property. The property where the contamination began is known as the source property. An affected off-site property owner is eligible for an off-site liability exemption if all of the following conditions in Wis. Stat. § 292.13 are satisfied, including, but not limited to:

- The off-site property owner did not cause the original discharge of the hazardous substance;
- The off-site property owner did not, and does not, possess or control the hazardous substance that was discharged on the source property;
- The property that contains the source of the migrating contamination is not owned or controlled by the same person or entity that owns the affected off-site property;
- The off-site property owner allows reasonable access to their property, so the DNR and its contractors, along with those responsible for the contamination, can take necessary response actions to protect public health;
- The off-site property owner does not interfere with the response actions of others and does not do anything to make the contamination situation worse;
- The off-site property owner agrees to other conditions that the DNR determines are reasonable and necessary to ensure that response actions are adequate; and
- For soil and sediment contamination, when the responsible party is not responding appropriately to the contamination, the off-site property owner agrees to take actions that the DNR determines are necessary to prevent an imminent threat to human health and safety. For example, taking action to limit public access to the property, installing containment barriers, and addressing fire, explosion and vapor hazards on the property.

No Exemption from Reporting Requirements

The off-site exemption does not exempt an affected property owner from Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR.

Limitations of the Exemption

The off-site exemption is conditional, limited in scope and applies solely to legal responsibilities identified in Wis. Stat. §§ 292.11(3), (4) and (7)(b)(c). The off-site exemption does not exempt a property owner from:

- Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR;
- Wis. Stat. § 292.12, which authorizes the DNR to require continuing public health protection obligations on any property affected by environmental contamination (see page 4 of this fact sheet); and
- Limited, immediate actions, as specified in Wis. Stat. § 292.13(1m)(e). For instance, off-site property owners may be required to address an imminent threat from fire, explosion or vapors if there is not a party responsible for the cleanup who can conduct the actions.

In addition, the off-site liability exemption is not automatically transferable, nor assignable, to future owners of the off-site property. However, it is likely that a new owner could be eligible for the exemption if they meet the conditions in Wis. Stat. § 292.13, including the ability to substantiate that they do not currently, or have ever, owned the source property and did not cause the discharge.

Overview of migrating contamination

Hazardous substances that are spilled or otherwise discharged to the environment can disperse and move around underground. These substances can spread out and migrate, or travel, through the soil into groundwater and nearby lakes and rivers. Gases (vapors) emanating from underground hazardous substances can also make their way upward into houses and other buildings.

When hazardous substances (contamination) move from their starting place (source) and affect the soil, sediment, groundwater or indoor air of an adjacent or nearby property, it is important to accurately determine who is legally responsible for investigating the nature and extent of the contamination, cleaning it up, and mitigating its harmful effects.

Discovering contamination from an off-site source

When a property owner discovers soil or groundwater contamination they believe came from another property, the owner must first notify the DNR of the contamination. The DNR will then work with the owner and potentially responsible parties to ensure appropriate actions are taken to investigate and clean up the contamination to protect health and safety.

Migrating contamination and access to property

Responsible parties are required by state law to investigate and remediate, to the extent practicable, all contamination that migrates within and beyond the boundaries of a source property. If the contamination crosses a property line, the responsible party must investigate where it goes and ask owners of affected, off-site properties for permission to access their properties. Property access is needed so the environmental investigation and cleanup or mitigation work can be completed.

An off-site property owner must allow access to their property to be eligible for the off-site liability exemption. When signing an access agreement, the off-site owners may wish to negotiate with the responsible party on issues such as the work schedule, the restoration of disturbed landscaping, etc.

If the owner of an affected off-site property does not allow the responsible party's environmental consultants or the DNR onto their property, the off-site owner will not qualify for the off-site exemption and the off-site owner may assume legal responsibility for the contamination on their property.

Obtaining an off-site liability determination letter from the DNR

Off-site property owners can request a liability determination letter from the DNR, for a fee, that documents the exemption in writing.

To obtain a letter, the off-site property owner must provide information to demonstrate that there are hazardous substances impacting their property from a source on another property and that all the other conditions for the exemption have been met. The off-site property owner can use the investigation data collected by the responsible party in response to the contamination or an owner of an off-site property may collect their own data to demonstrate the contamination is coming from somewhere else.

Requesting a Determination or Clarification Letter

To obtain an off-site liability determination letter or liability clarification letter, submit the DNR's Off-site Liability Exemption application, Form 4400-201 and the applicable fee. This form includes instructions and describes the information needed by the DNR for a site-specific letter.

Obtaining a liability clarification letter from the DNR

If someone does not meet all the requirements for the exemption, (e.g. a prospective purchaser) and therefore doesn't qualify for an off-site liability determination letter, anyone with an interest in a property that is or may be affected by migrating contamination can still request that the DNR review the site-specific situation and provide a written liability clarification letter for a fee. Liability clarification letters may be helpful when evaluating the potential purchase of a property or when contamination is suspected to be impacting a property.

Continuing obligations for the protection of health and safety at off-site properties

When residual contamination extends across a property line, continuing obligations may also extend onto an affected, off-site property. In these situations, owners of off-site properties may not be legally responsible for responding to the contamination, but they are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety.

Wisconsin, like most states, allows some residual contamination to remain after a cleanup of contaminated soil, vapors, sediment or groundwater has been approved by the state (see Wis. Stat. § 292.12). The removal of all contamination is generally not practicable, nor is it always necessary for the protection of public health and the environment.

When the DNR approves the completion of an interim action, or a remedial action, or issues a case closure letter at a site where residual contamination exists, the DNR may condition or qualify its case closure approval on compliance with continuing obligations at the source property and affected off-site properties to protect public health and the environment.

These continuing obligations are property-specific requirements and restrictions identified in the DNR approval or case closure letter. They are legal responsibilities associated with the source property, and apply to current and future owners of the property. If contamination has migrated off-site, there may be continuing obligations that also apply to off-site, affected properties.

Common Continuing Obligations for Source and Affected, Off-site Properties

One common continuing obligation, for the owners of the source property and affected, off-site properties, is the proper management and disposal of contaminated soil that is excavated. Other continuing obligations and requirements necessary to protect health and safety may include:

- Keeping clean soil and vegetation over contaminated soil;
- Maintaining a cover of pavement, soil, asphalt, etc. over contaminated soil or groundwater;
- Operating and maintaining a vapor mitigation system that is installed by the responsible party;
- Obtaining DNR approval prior to constructing or reconstructing a well at properties with groundwater contamination; and
- Maintaining industrial use for a property that was cleaned up to industrial standards.

Owners of off-site properties are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety, except for those continuing obligations imposed for residual sediment contamination.

Notice to Affected Off-site Property Owners of Case Closure Request and Possible Continuing Obligations

The party responsible for cleaning up contamination must notify affected, off-site property owners of a proposed continuing obligation on their property before the DNR reviews a request for case closure. State law requires this, and it allows the off-site property owners some time to provide the DNR with any technical information that may be relevant to the cleanup approval.

An off-site property owner is, of course, free to discuss responsibility for the proposed off-site continuing obligations with the responsible party. If an off-site property owner enters into a legally enforceable agreement (i.e. a private contract) with the party responsible for the contamination, under which the responsible party assumes responsibility for maintaining a continuing obligation on the off-site owner's property, that agreement must be submitted to the DNR and recorded in the database per Wis. Stat. § 292.12(5)(c).

If the DNR approves a case closure request that includes continuing obligations at an off-site property, the DNR will notify off-site owners of the continuing obligation. A property owner may request modification of a continuing obligation in the future if environmental conditions change. For example, petroleum contamination degrades over time and laboratory test results of new soil, groundwater or vapor samples may support modifying or removing a continuing obligation.

Finding information about continuing obligations

Information about property-specific continuing obligations can be found (as applicable) in the DNR interim action approval letter, the case closure letter for the source property, and in the DNR documents giving notice to off-site property owners. These letters and related documents are available in the DNR database of property cleanup activities.

This database, called BRRTS on the Web, is available at dnr.wi.gov (search "BRRTS"). The documents about affected, off-site properties that are associated with a specific source property can be found in BRRTS when you search the site number or address of the property that is the source of the contamination. Property owners, local government officials, building contractors, well drillers and others may review the database to find out if there are any land-use restrictions or continuing obligations associated with a specific property before beginning work there.

For more information

Questions about the off-site environmental liability exemption and continuing obligations can be directed to the brownfields specialist in your local DNR regional office. To find a specialist in your area, go to dnr.wi.gov and search "brownfields contacts."

For additional information about off-site contamination and liability clarification letters go to dnr.wi.gov and search for "off-site contamination." For additional information about residual contamination and continuing obligations go to dnr.wi.gov and search for "continuing obligations."

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Chief, Public Civil Rights, Office of Civil Rights, U.S. Department of the Interior, 1849 C Street, NW, Washington, D.C. 20240. This publication is available in alternative format (large print, Braille, etc.) upon request. Please call for more information. Note: If you need technical assistance or more information, call the Accessibility Coordinator at 608-267-7490 / TTY Access via relay - 711

Notice: This form is authorized under ss. 280.11 and 281.11, Stats., and s. NR 812.09(4) and (4)(w), Wis. Adm. Code. Information requested is required to determine if an approval for construction or reconstruction of a well may be granted, under s. NR 812.09(4) and (4)(w), Wis. Adm. Code. "Prior department approval is required for the construction or reconstruction of a well on a property that is listed on the department's geographic information system (GIS) Registry of Closed Remediation Sites." Failure to submit this form or provide all required information may result in your application for approval being denied or your well operating in violation of ch. NR 812, Wis. Adm. Code, or both, and may result in forfeitures under s. 281.98, Stats., of not less than \$10 nor more than \$5,000 for each violation. Personally identifiable information on this form is not likely to be used for any purpose other than administration of the water supply program. However, copies of this form are available to requesters under Wisconsin's Open Records Law [ss. 19.31 - 19.39, Wis. Stats.].

Applicant Information

Last Name		First	MI	Daytime Phone Number (include area code)		
Mailing Street Address and PO Box				City	State	ZIP Code

Well Site Information

Facility or Site Name (if any)				BRRTS ID No. (if known)						
Address of well (if different than owner)				Gov't Lot #	1/4	1/4	Section	Township	Range	<input type="radio"/> E
								N	<input type="radio"/> W	
<input type="radio"/> City <input type="radio"/> Town <input type="radio"/> Village of _____			State	ZIP Code	County					
Subdivision Name				Lot Number			Block Number			

Well Construction Information

If approval request is for an existing well, include the following well construction information, if known. Include copy of well report if possible.

Well Type <input type="radio"/> Drilled <input type="radio"/> Driven Point <input type="radio"/> Other _____		Casing Depth	Total Well Depth		
Name of Original Well Owner		Date Well Constructed	Constructed By		WUWN

Approval Information

Proposed construction and location of well, i.e., to avoid the contamination.

Identify well construction reports for any existing wells, on property or adjacent property, if available.

Are there any other setback separation distance requirements in NR 812.08 that would require a variance to construct the well?

GIS Registry Site Well Approval Application

Form 3300-254 (R 8/01)

Page 2 of 2

Site Drawing

- Sketch the property and location of the water supply. Include the scale of the drawing and distances to known sources of contamination (for example, contaminant plume, septic systems, gas tanks, drain tiles, animal pens, etc.)
- Show slope arrows from well and contamination sources, if lot is sloped
- Attach any extra sheets of other information, which may be useful in describing your situation

(North)

SITE DRAWING

- Department regional personnel may inspect this property to verify information provided and to determine comparable protection options. You may be contacted by phone for an appointment, or if more information is needed.
- NO CONSTRUCTION SHALL BEGIN UNTIL THE OWNER OR CONTRACTOR HAS RECEIVED A WRITTEN APPROVAL DOCUMENT.
- Written notification will be provided of approval or denial with 65 business days of receipt of this application, as provided by s. NR 812, Wis. Adm. Code.

I certify to the best of my knowledge the information provided in this application is true, complete, and correct. I understand that the information I provide will be used by the Department to determine if an approval can be granted and what construction specifications will be required to provide comparable protection. I further understand that in granting an approval the Department does not guarantee acceptable water quality or quantity.

Owner's Signature

Date Signed

Name and Address of Well Driller, Well Contractor or Pump Installer, if known

MAIL THIS APPLICATION TO:

I WANT TO CONSTRUCT OR RECONSTRUCT A WELL

Will it be used for potable purposes?

NO

YES

Notification to DNR & Well Construction Obligations
See, NR 812.09(4)(w) and WDNR Form 3300-254

PROHIBITED by City
Ordinances 705.19 & 705.22

I WANT TO CONSTRUCT OR RECONSTRUCT A BUILDING

Have I notified DNR and shared my plan?

NO

YES

Notify DNR

DNR will provide direction on whether a Vapor Intrusion Assessment
should be conducted prior to construction and current applicable
guidance that should be followed

**I'M A PRIVATE PROPERTY OWNER
AND I WANT TO EXCAVATE SOIL**

Is there a Monitoring Well on my Property?

NO

**No Restrictions
Manage excavated soil
consistent with state law.**

YES

Do not excavate within 5 ft. of the Well

Dawson, Deborah D (21693)

From: TrackingUpdates@fedex.com
Sent: Tuesday, March 17, 2020 2:19 PM
To: Dawson, Deborah D (21693)
Subject: FedEx Shipment 770026565143 Delivered

Your package has been delivered

Tracking # 770026565143

Ship date:
Mon, 3/16/2020

Renee V. Exum
MADISON, WI 53703
US



Delivery date:
Tue, 3/17/2020 2:12 pm

Gary A. Kabasa
215 N. Prentice Avenue
ASHLAND, WI 54806
US



Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number:	770026565143
Status:	Delivered: 03/17/2020 2:12 PM Signed for By: Signature not required
Reference:	070086-0205 (RVE 0617)
Signed for by:	Signature not required
Delivery location:	ASHLAND, WI
Delivered to:	Residence
Service type:	FedEx Priority Overnight®
Packaging type:	FedEx® Envelope
Number of pieces:	1
Weight:	0.50 lb.
Special handling/Services:	Deliver Weekday Residential Delivery
Standard transit:	3/17/2020 by 4:30 pm

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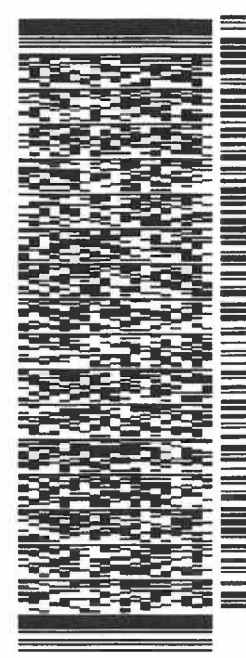
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1 SOUTH PICKNEY STREET
SUITE 700
MADISON, WI 53703
UNITED STATES US

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ACTWGT: 1.00 LB
CAD: 108763992/NET4220
BILL SENDER

TO GARY A. KABASA
215 N. PRENTICE AVENUE

ASHLAND WI 54806
(715) 292-3743
REF: 070096-0205 (RVE 0617)
PO: DEPT:

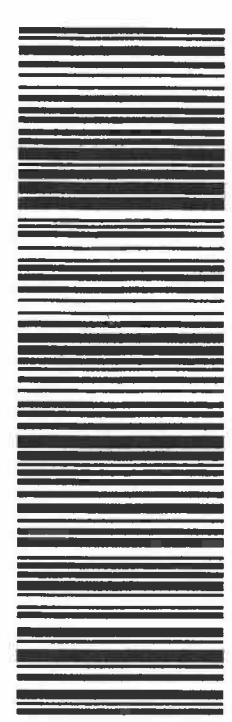


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2400 Farm Road
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800.895.4999
xcelenergy.com



March 16, 2020

VIA FEDERAL EXPRESS

Mr. Joseph J. O'Brien
2975 W. Princeton Ave.
Eau Claire, WI 54703

Subject: Remedial Action Approval for Ashland NSP Lakefront Superfund Site
300 St. Claire Street, Ashland, Wisconsin

Dear Mr. O'Brien:

Northern States Power Company of Wisconsin ("NSPW") is providing you this notification in compliance with state law and in connection with environmental work recently completed at the Ashland NSP Lakefront Superfund Site (the "Site"). The Site is located at 300 St. Claire Street, Ashland and a map is enclosed. Further information concerning the site is available here: <https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0507952> or by visiting the document repository maintained at the Vaughn Public Library.

The Wisconsin Department of Natural Resources ("DNR") recently approved a Remedial Action Plan associated with this work and the U.S. Environmental Protection Agency, in concurrence with DNR, has approved the substantial completion of that work. As part of this approval, we must notify you that your property, which is within the Site, and that you own (the "Property") is subject to certain continuing obligations.

State law directs parties responsible for environmental contamination to take actions to restore the environment and minimize harmful effects to the extent practicable. In the course of conducting such cleanups, the law allows some amount of residual contamination to remain in soil and groundwater provided it does not pose a threat to public health, safety, welfare or to the environment.

The DNR has recently approved of a Remedial Action Plan and NSPW has implemented that Plan to the extent required by state and federal law. Residual groundwater contamination remains beneath the Property as described further below and in the *Institutional Control Implementation and Assurance Plan* (FE/JV 2020). Because that residual contamination has been determined to not pose any threat to public health, safety, welfare or to the environment, WDNR has allowed that contamination to remain, subject to compliance with certain ongoing use restrictions and continuing obligations applicable to the Property.

Continuing Obligations Applicable to the Property

The Property is subject to certain use restrictions which can be found in and enforceable by the following:

- Granting reasonable access to DNR, the U.S. Environmental Protection Agency, NSPW or its contractors;
- Compliance with the property use restrictions of the *Institutional Control Implementation and Assurance Plan* (FE/JV 2020);
- Avoiding actions that make the contamination worse (e.g., interfering with the performance of the remedy, demolishing or damaging a structure and causing or worsening the discharges to the environment, or exacerbating site conditions).

You are required to manage the Property in compliance with these use restrictions and continuing obligations. Further detail is provided below. Please be aware that failure to comply with the continuing obligations may result in enforcement action by the DNR. The DNR intends to conduct inspections in the future to ensure that the conditions included in this letter are met.

Residual Groundwater Contamination (Wis. Admin. Code ch. NR 140, NR 812)

Due to the existence of residual contamination after completion of the remedial action approved in the Remedial Action Plan approval, this Site, which includes the Property, will be listed on the Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>. If you intend to construct or reconstruct a well on the Property, you will need to get Department approval in accordance with Wis. Admin. Code § NR 812.09 (4) (w). To obtain approval, Form 3300-254 needs to be completed and submitted to the DNR Drinking and Groundwater program's regional water supply specialist. A well driller can help with this form. This form can be obtained online at: <https://dnr.wi.gov/files/PDF/forms/3300/3300-254.pdf>.

Additionally, if you construct or reconstruct any structures on the Property, you should evaluate site conditions in accordance with DNR publication RR-800, "*Addressing Vapor Intrusion at Remediation & Redevelopment Sites in Wisconsin*", dated January 2018 (WDNR, 2018), and any subsequent versions thereof. This fact sheet can be obtained online at: <https://dnr.wi.gov/files/PDF/pubs/rr/RR800.pdf>.

The attached DNR fact sheet RR-819, "*Continuing Obligations for Environmental Protection*", helps explain a property owner's responsibility for continuing obligations on their property. You may obtain additional copies at <http://dnr.wi.gov/files/PDF/pubs/rr/RR819.pdf>.

You have thirty (30) days to comment on the issues addressed in this letter. You may submit any information that you believe is relevant to be considered by DNR and NSPW. You may submit that information at the address(es) provided below.

Notices

Department of Natural Resources
Attn: John Sager
1701 N. 4th Street
Superior, WI 54880
P: 715.392-7822
E: John.Sager@Wisconsin.gov

Michael BeBeau
Xcel Energy
Community Service Manager
2400 Farm Road
Ashland, WI 54806
P: 715.682.6936 F: 715.682.6921
E: michael.s.bebeau@xcelenergy.com

You should retain this document with your property records.

Questions regarding this notification may be directed to Michael Bebeau at 715-682-6936.

Sincerely,


Michael Bebeau (D&E)

Attachments

- Legal Description of Property
- RR-819 – Continuing Obligations for Environmental Protection
- RR-671 – What Landowners Should Know: Information About Using Natural Attenuation To Clean Up Contaminated Groundwater
- RR-589 – When Contamination Crosses a Property Line
- DNR Form 3300-254 – GIS Registry Site Well Approval Application
- Decision Tree – I Want to Construct a Well or Building
- Decision Tree – I Want to Excavate Soil – Private Property Owner

**EXHIBIT A
LEGAL DESCRIPTION**

(O'Brien)

Lot 10, Block 33, Ellis Division, City of Ashland, Ashland County, Wisconsin.

(PIN: 201-01019-0000)



Continuing Obligations for Environmental Protection Responsibilities of Wisconsin Property Owners Wis. Stat. § 292.12

Purpose

This fact sheet is intended to help property owners understand their legal requirements under s. 292.12, Wis. Stats., regarding continuing obligations that arise due to the environmental condition of their property.

Introduction

The term “continuing obligations” refers to certain actions for which property owners are responsible following a completed environmental cleanup. They are sometimes called environmental land use controls or institutional controls. These legal obligations, such as a requirement to maintain pavement over contaminated soil, are most often found in a cleanup approval letter from the state.

Less commonly, a continuing obligation may apply where a cleanup is not yet completed but a cleanup plan has been approved, or at a property owned by a local government that is exempt from certain cleanup requirements.

What Are Continuing Obligations?

Continuing obligations are legal requirements designed to protect public health and the environment in regard to contamination that remains on a property.

Continuing obligations still apply after a property is sold. Each new owner is responsible for complying with the continuing obligations.

Background

Wisconsin, like most states, allows some contamination to remain after cleanup of soil or groundwater contamination (residual contamination). This minimizes the transportation of contamination and reduces cleanup costs while still ensuring that public health and the environment are protected.

The Department of Natural Resources (DNR), through its Remediation and Redevelopment (RR) Program, places sites or properties with residual contamination on a public database in order to provide notice to interested parties about the residual contamination and any associated continuing obligations. Please see the “Public Information” section on page 3 to learn more about the database. (Prior to June 3, 2006, the state used deed restrictions recorded at county courthouses to establish continuing obligations, and those deed restrictions have also been added into the database.)

Types of Continuing Obligations

1. Manage Contaminated Soil that is Excavated

If the property owner intends to dig up an area with contaminated soil, the owner must ensure that proper soil sampling, followed by appropriate treatment or disposal, takes place. Managing contaminated soil must be done in compliance with state law and is usually done under the guidance of a private environmental professional.

2. Manage Construction of Water Supply Wells

If there is soil or groundwater contamination and the property owner plans to construct or reconstruct a water supply well, the owner must obtain prior DNR approval to ensure that well construction is designed to protect the water supply from contamination.

Other Types of Continuing Obligations

Some continuing obligations are designed specifically for conditions on individual properties. Examples include:

- keeping clean soil and vegetation over contaminated soil;
- keeping an asphalt “cover” over contaminated soil or groundwater;
- maintaining a vapor venting system; and
- notifying the state if a structural impediment (e.g. building) that restricted the cleanup is removed. The owner may then need to conduct additional state-approved environmental work.

It is common for properties with approved cleanups to have continuing obligations because the DNR generally does not require removal of all contamination.

Property owners with the types of continuing obligations described above will find these requirements described in the state’s cleanup approval letter or cleanup plan approval, and *must*:

- comply with these property-specific requirements; and
- obtain the state’s permission before changing portions of the property where these requirements apply.

The requirements apply whether or not the person owned the property at the time that the continuing obligations were placed on the property.

Changing a Continuing Obligation

A property owner has the option to modify a continuing obligation if environmental conditions change. For example, petroleum contamination can degrade over time and property owners may collect new samples showing that residual contamination is gone. They may then request that the DNR modify or remove a continuing obligation. Fees are required for the DNR’s review of this request and for processing the change to the database (\$1050 review fee, \$300/\$350 database fee). Fees are subject to change; current fees are found in Wis. Admin. § NR 749 online at http://docs.legis.wisconsin.gov/code/admin_code/nr/700/749.

Public Information

The DNR provides public information about continuing obligations on the Internet. This information helps property owners, purchasers, lessees and lenders understand legal requirements that apply to a property. The DNR has a comprehensive database of contaminated and cleaned up sites, *BRRTS on the Web*. This database shows all contamination activities known to the DNR. Site specific documents are found under the *Documents* section. The information includes maps, deeds, contaminant data and the state’s closure letter. The closure letter states that no additional environmental cleanup is needed for past contamination and includes information on property-specific continuing obligations. If a cleanup has not been completed, the state’s approval of the remedial action plan will contain the information about

continuing obligations.

Properties with continuing obligations can generally be located in the DNR's *RR Sites Map*. RR Sites Map provides a map view of contaminated and cleaned up sites, including sites with continuing obligations, and links to BRRTS on the Web. *BRRTS on the Web* and *RR Sites Map* are part of the Wisconsin Remediation and Redevelopment Database (WRRD) at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>.

If a completed cleanup is shown in *BRRTS on the Web* but the site documents cannot be found in the documents section, the DNR's closure letter can still be obtained from a regional office. For assistance, please contact a DNR Environmental Program Associate (see the RR Program's Staff Contact web page at dnr.wi.gov/topic/Brownfields/Contact.html).

Off-Site Contamination: When Continuing Obligations Cross the Property Line

An off-site property owner is someone who owns property that has been affected by contamination that moved through soil, sediment or groundwater from another property. Wis. Stat. § 292.13 provides an exemption from environmental cleanup requirements for owners of "off-site" properties. The DNR will generally not ask off-site property owners to investigate or clean up contamination that came from a different property, as long as the property owner allows access to his or her property so that others who are responsible for the contamination may complete the cleanup.

However, off-site property owners are legally obligated to comply with continuing obligations on their property, even though they did not cause the contamination. For example, if the state approved a cleanup where the person responsible for the contamination placed clean soil over contamination on an off-site property, the owner of the off-site property must either keep that soil in place or obtain state approval before disturbing it.

Property owners and others should check the *Public Information* section above if they need to:

- determine whether and where continuing obligations exist on a property;
- review the inspection, maintenance and reporting requirements, and
- contact the DNR regarding changing that portion of the property. The person to contact is the person that approved the closure or remedial action plan.

Option for an Off-Site Liability Exemption Letter

In general, owners of off-site properties have a legal exemption from environmental cleanup requirements. This exemption does not require a state approval letter. Nonetheless, they may request a property-specific liability exemption letter from the DNR if they have enough information to show that the source of the contamination is not on their property. This letter may be helpful in real estate transactions. The fee for this letter is \$700 under Chapter NR 749, Wis. Adm. Code. For more information about this option, please see the RR Program's Liability web page at dnr.wi.gov/topic/Brownfields/Liability.html.

Legal Obligations of Off-Site Property Owners

- Allow access so the person cleaning up the contamination may work on the off-site property (unless the off-site owner completes the cleanup independently).
- Comply with any required continuing obligations on the off-site property.

Required Notifications to Off-Site Property Owners

1. The person responsible for cleaning up contamination must notify affected property owners of any proposed continuing obligations on their off-site property **before** asking the DNR to approve the cleanup. This is required by law and allows the off-site owners to provide the DNR with any technical information that may be relevant to the cleanup approval.

When circumstances are appropriate, an off-site neighbor and the person responsible for the cleanup may enter into a “legally enforceable agreement” (i.e. a contract). Under this type of private agreement, the person responsible for the contamination may also take responsibility for maintaining a continuing obligation on an off-site property. This agreement would not automatically transfer to future owners of the off-site property. The state is not a party to the agreement and cannot enforce it.

2. If a cleanup proposal that includes off-site continuing obligations is approved, the DNR will send a letter to the off-site owners detailing the continuing obligations that are required for their property. Property owners should inform anyone interested in buying their property about maintaining these continuing obligations. For residential property, this would be part of the real estate disclosure obligation.

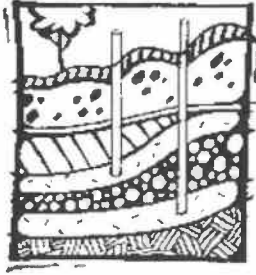
More Information

For more information, please visit the RR Program’s Continuing Obligations website at dnr.wi.gov/topic/Brownfields/Residual.html.

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The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Chief, Public Civil Rights, Office of Civil Rights, U.S. Department of the Interior, 1849 C. Street, NW, Washington, D.C. 20240.

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Using Natural Attenuation to Clean Up Contaminated Groundwater: What Landowners Should Know

RR-671

December 2016

What Is Natural Attenuation?

Natural attenuation makes use of natural processes in soil and groundwater to contain the spread of contamination and to reduce the amount of contamination from chemical releases.

Natural attenuation is an *in-situ* treatment method. This means that contaminants are left in place while natural attenuation works on them. Natural attenuation is relied upon to clean up contamination that remains after the source of the contamination is removed. An example of a source of contamination would be a leaking underground petroleum tank.

How Does Natural Attenuation Work?

Natural attenuation processes work at many sites, but the rate and degree of effectiveness varies from property to property, depending upon the type of contaminants present and the physical, chemical and biological characteristics of the soil and groundwater.

Natural attenuation processes can be divided into two broad categories – destructive and non-destructive. Destructive processes destroy contaminants. The most common destructive process is **biodegradation**.

Non-destructive processes do not destroy the contaminant, but reduce contaminant concentrations in groundwater through **dilution, dispersion or adsorption**.

Biodegradation

Biodegradation is a process in which micro-organisms that naturally occur in soil and groundwater (e.g. yeast, fungi, or bacteria), break down, or degrade hazardous substances to less toxic or non-toxic substances. Microorganisms, like humans, eat and digest organic compounds for nutrition and energy (organic compounds contain carbon and hydrogen atoms).

Some types of microorganisms can digest organic substances such as fuels or solvents that are hazardous to humans. Microorganisms break down the organic contaminants into harmless products – mainly carbon dioxide and water. Once the contaminants are degraded, the microorganism populations decline because they have used their food sources. These small populations of microorganisms pose no contaminant or health risk.

Many organic contaminants, like petroleum, can be biodegraded by microorganisms in the underground environment. For example, biodegradation processes can effectively cleanse soil and groundwater of hydrocarbon fuels such as gasoline and benzene, toluene, ethylbenzene, and xylene – known as the BTEX compounds, under certain conditions.

Biodegradation can also breakdown other contaminants in groundwater such as trichloroethylene (TCE), a chlorinated solvent used in metal cleaning. However, the processes involved are harder to predict and are less effective at contaminant removal compared to petroleum-contaminated sites.



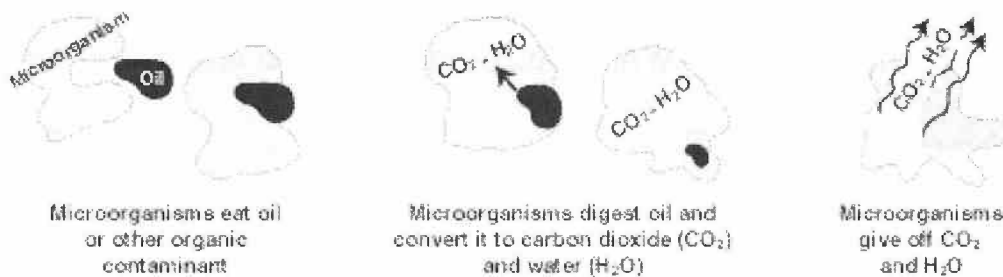


Figure 1. Schematic Diagram of Aerobic Biodegradation in Soil

Dilution and Dispersion

The effects of dilution and dispersion reduce contaminant concentrations but do not destroy contaminants. Clean water from the surface seeps underground to mix with and dilute contaminated groundwater.

Other processes that lead to reduced concentrations of contaminants include clean groundwater flowing into contaminated areas, and the dispersion of pollutants as they spread out and away from the main path of the contaminated plume.

Adsorption

Adsorption occurs when contaminants attach or “sorb” to underground particles. Most oily substances (like petroleum compounds) repel water and escape from the groundwater by attaching to organic matter and clay minerals in the subsurface.

This process holds back or retards contaminant movement and reduces the concentration of contaminants in the groundwater. However, like dilution and dispersion, adsorption does not destroy contaminants.

Why Consider Natural Attenuation To Clean Up Soil And Groundwater?

In certain situations, natural attenuation is an effective, inexpensive cleanup option and the most appropriate way to remediate some contamination problems. Natural attenuation focuses on confirming and monitoring natural remediation processes rather than relying on engineered or “active” technologies (such as pumping groundwater, treating it above ground, then disposing of the treated water).

Contaminants from petroleum are good candidates for natural attenuation because they are among the most easily destroyed by biodegradation. Natural attenuation is non-invasive, which allows treatment to go on below ground, while the surface can continue to be used.

Natural attenuation can also be less costly than active engineered treatment options, and requires no special equipment, energy source, or disposal of treated soil or groundwater.

Will Natural Attenuation Work At My Property?

Whether natural attenuation will work at a particular location is determined by investigating the soil and groundwater. These investigations determine the type of contaminants present, the levels of contamination, and the physical and chemical conditions that lead to biodegradation of the contaminants.

In order to rely on natural attenuation, responsible parties are required to confirm that natural attenuation processes are working by monitoring the soil and groundwater over a period of time to show that the contaminant concentrations are decreasing and that the contamination is no longer spreading.

Those conducting the cleanup need to know whether natural attenuation, or any proposed remedy, will reduce the contaminant concentrations in the soil and groundwater to legally acceptable limits within a reasonable period of time.

Natural attenuation may be an acceptable option for sites where active remediation has occurred and has reduced the concentration of contaminants (for instance, removing leaking underground tanks and contaminated soil).

However, natural attenuation is not an appropriate option at all sites. If the contamination has affected a drinking water well, or has entered a stream or lake, active cleanup options may be necessary to make sure people and the environment are protected from direct contact with the contamination.

The speed or rate of natural attenuation processes is typically slow. Monitoring is necessary to show that concentrations decrease at a sufficient rate to ensure that contaminants will not become a health threat in the future.

Closure Of Contaminated Sites Using Natural Attenuation As A Final Remedy

When contamination is discovered at a property (such as a gas station with leaking underground tanks), the person who is responsible for causing the contamination, and persons having possession or control of hazardous substances that have been discharged, have the responsibility to remove the source of contamination and investigate and clean up the contamination that has escaped into the soil and groundwater.

The contaminant release must be reported to the Wisconsin Department of Natural Resources (DNR) and the site investigation and cleanup are overseen by a state agency. Depending on the type of contaminant, the oversight agency could be the Department of Agriculture, Trade and Consumer Protection or Department of Natural Resources.

When the cleanup has complied with state standards, the person responsible for the contamination will ask the state agency for closure of the case. If natural attenuation is relied upon to finish cleaning up a contaminated property after closure, the responsible person will need to show that contaminant concentrations are not spreading, that contaminant concentrations are stable or decreasing, and that the concentrations will decrease in the future until state groundwater standards are met.

Because natural attenuation processes are slow, it may take many years before the properties with contamination are clean. State rules require that all owners of properties where groundwater contamination has spread must be informed of the contamination below their property.

In addition, the properties with groundwater contamination exceeding state groundwater enforcement standards must be listed on a database to notify future owners and developers of the presence of contamination. If future monitoring occurs and shows that natural attenuation processes have removed the contaminants to state-required cleanup levels, then the properties can be removed from the database.

The state agency will grant closure if the site investigation and monitoring shows that natural attenuation will clean up groundwater to state standards within a reasonable period of time. All state rules for cleanup must be met and the person who is responsible for the contamination must comply with all conditions of the state's closure approval.

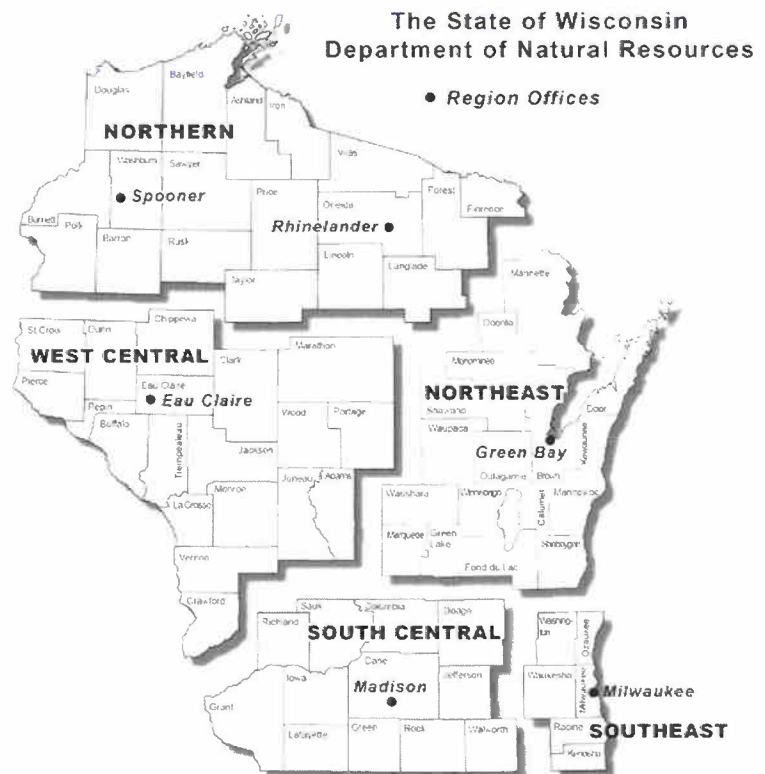
Publications

The following publications provide additional information on natural attenuation. Websites where these can be downloaded free of charge are also listed.

- *A Citizen's Guide to Bioremediation*, September 2012, EPA 542-F-12-003; https://www.epa.gov/sites/production/files/2015-04/documents/a_citizens_guide_to_bioremediation.pdf
- *Commonly Asked Questions Regarding the Use of Natural Attenuation for Petroleum-Contaminated Sites at Federal Facilities*, www.clu-in.org/download/techfocus/na/na-petrol.pdf
- *Monitored Natural Attenuation of Petroleum Hydrocarbons: U.S. EPA Remedial Technology Fact Sheet*, May 1999, EPA 600-F-98-021; www.clu-in.org/download/remed/pet-hyd.pdf
- *Monitored Natural Attenuation of Chlorinated Solvents*, May 1999, EPA 600-F-98-0022; www.clu-in.org/download/remed/chl-solv.pdf
- *Guidance on Natural Attenuation for Petroleum Releases, WI DNR, Bureau for Remediation and Redevelopment*, March 2003, PUB-RR-614; dnr.wi.gov/files/PDF/pubs/rr/RR614.pdf

Contact Information

If you have questions about natural attenuation contact a [DNR Environmental Program Associate \(EPA\)](#) in your local DNR regional office. The EPA can direct you to a project manager.



Note: These are the Remediation and Redevelopment Program's designated regions. Other DNR program regional boundaries may be different.

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When Contamination Crosses a Property Line

The Off-Site Environmental Liability Exemption - Wis. Stat. §§ 292.12 and 292.13 Rights and Responsibilities of Off-site, Affected Property Owners

Purpose

This fact sheet summarizes the state's statutory liability exemption for owners of real property affected by environmental contamination migrating from another property. It also explains how contamination from one property can impose health and safety obligations on other properties even when the liability exemption is in effect.

Background

It is relatively common to discover that substances used at an older commercial or industrial property have migrated into the soil, surface water and groundwater and have traveled onto a neighboring property. When this occurs, the party responsible for investigating and cleaning up the source of the contamination is required to take action to address health and safety concerns at both the source property and the off-site property.

When contamination from one property crosses a property boundary, Wisconsin law provides an environmental liability exemption to the affected property owner who meets the conditions in the law. The affected property owner is identified as the "off-site" owner in state law, because environmental contamination has moved beyond the source property's boundaries.

The Wisconsin Department of Natural Resources (DNR) will generally not ask off-site, exempt property owners to investigate or remediate contamination that did not originate on their property. A few exceptions to the exemption, related to imminent health and safety threats and long term obligations, are described in the next section.

The statutory off-site exemption is self-implementing and is effective as long as an eligible party meets all the statutory conditions. Property owners and others may request a written exemption determination letter from the DNR for a fee, but this letter is not required to have the exemption protections.

Summary of an off-site property owner's rights and responsibilities

Wisconsin law, Wis. Stat. § 292.11(3), requires anyone who causes, possesses or controls a hazardous substance discharge to the environment (i.e. land, air, water) to take action to restore the

environment to the extent practicable and minimize harmful effects. When contamination from one property migrates and affects another property, however, Wisconsin law provides an exemption for an owner (possessor) of the affected, neighboring property from the requirement to take response actions under Wis. Stat. §§ 292.11(3), (4) and (7)(b) and (c). This statutory provision is known as the "off-site liability exemption," and is authorized by Wis. Stat. § 292.13.

Related Guidance

- [Off-site Liability Exemption Application \(Form 4400-201\)](#)
- [General Liability Clarification Letters \(RR-619\)](#)
- [Continuing Obligations for Environmental Protection \(RR-819\)](#)
- [Environmental Contamination and Your Real Estate \(RR-973\)](#)

An off-site property owner is someone who owns property affected by soil, groundwater, sediment, soil gas (vapor) or other environmental contamination that originated on another property. The property where the contamination began is known as the source property. An affected off-site property owner is eligible for an off-site liability exemption if all of the following conditions in Wis. Stat. § 292.13 are satisfied, including, but not limited to:

- The off-site property owner did not cause the original discharge of the hazardous substance;
- The off-site property owner did not, and does not, possess or control the hazardous substance that was discharged on the source property;
- The property that contains the source of the migrating contamination is not owned or controlled by the same person or entity that owns the affected off-site property;
- The off-site property owner allows reasonable access to their property, so the DNR and its contractors, along with those responsible for the contamination, can take necessary response actions to protect public health;
- The off-site property owner does not interfere with the response actions of others and does not do anything to make the contamination situation worse;
- The off-site property owner agrees to other conditions that the DNR determines are reasonable and necessary to ensure that response actions are adequate; and
- For soil and sediment contamination, when the responsible party is not responding appropriately to the contamination, the off-site property owner agrees to take actions that the DNR determines are necessary to prevent an imminent threat to human health and safety. For example, taking action to limit public access to the property, installing containment barriers, and addressing fire, explosion and vapor hazards on the property.

No Exemption from Reporting Requirements

The off-site exemption does not exempt an affected property owner from Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR.

Limitations of the Exemption

The off-site exemption is conditional, limited in scope and applies solely to legal responsibilities identified in Wis. Stat. §§ 292.11(3), (4) and (7)(b)(c). The off-site exemption does not exempt a property owner from:

- Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR;
- Wis. Stat. § 292.12, which authorizes the DNR to require continuing public health protection obligations on any property affected by environmental contamination (see page 4 of this fact sheet); and
- Limited, immediate actions, as specified in Wis. Stat. § 292.13(1m)(e). For instance, off-site property owners may be required to address an imminent threat from fire, explosion or vapors if there is not a party responsible for the cleanup who can conduct the actions.

In addition, the off-site liability exemption is not automatically transferable, nor assignable, to future owners of the off-site property. However, it is likely that a new owner could be eligible for the exemption if they meet the conditions in Wis. Stat. § 292.13, including the ability to substantiate that they do not currently, or have ever, owned the source property and did not cause the discharge.

Overview of migrating contamination

Hazardous substances that are spilled or otherwise discharged to the environment can disperse and move around underground. These substances can spread out and migrate, or travel, through the soil into groundwater and nearby lakes and rivers. Gases (vapors) emanating from underground hazardous substances can also make their way upward into houses and other buildings.

When hazardous substances (contamination) move from their starting place (source) and affect the soil, sediment, groundwater or indoor air of an adjacent or nearby property, it is important to accurately determine who is legally responsible for investigating the nature and extent of the contamination, cleaning it up, and mitigating its harmful effects.

Discovering contamination from an off-site source

When a property owner discovers soil or groundwater contamination they believe came from another property, the owner must first notify the DNR of the contamination. The DNR will then work with the owner and potentially responsible parties to ensure appropriate actions are taken to investigate and clean up the contamination to protect health and safety.

Migrating contamination and access to property

Responsible parties are required by state law to investigate and remediate, to the extent practicable, all contamination that migrates within and beyond the boundaries of a source property. If the contamination crosses a property line, the responsible party must investigate where it goes and ask owners of affected, off-site properties for permission to access their properties. Property access is needed so the environmental investigation and cleanup or mitigation work can be completed.

An off-site property owner must allow access to their property to be eligible for the off-site liability exemption. When signing an access agreement, the off-site owners may wish to negotiate with the responsible party on issues such as the work schedule, the restoration of disturbed landscaping, etc.

If the owner of an affected off-site property does not allow the responsible party's environmental consultants or the DNR onto their property, the off-site owner will not qualify for the off-site exemption and the off-site owner may assume legal responsibility for the contamination on their property.

Obtaining an off-site liability determination letter from the DNR

Off-site property owners can request a liability determination letter from the DNR, for a fee, that documents the exemption in writing.

To obtain a letter, the off-site property owner must provide information to demonstrate that there are hazardous substances impacting their property from a source on another property and that all the other conditions for the exemption have been met. The off-site property owner can use the investigation data collected by the responsible party in response to the contamination or an owner of an off-site property may collect their own data to demonstrate the contamination is coming from somewhere else.

Requesting a Determination or Clarification Letter

To obtain an off-site liability determination letter or liability clarification letter, submit the DNR's Off-site Liability Exemption application, Form 4400-201 and the applicable fee. This form includes instructions and describes the information needed by the DNR for a site-specific letter.

Obtaining a liability clarification letter from the DNR

If someone does not meet all the requirements for the exemption, (e.g. a prospective purchaser) and therefore doesn't qualify for an off-site liability determination letter, anyone with an interest in a property that is or may be affected by migrating contamination can still request that the DNR review the site-specific situation and provide a written liability clarification letter for a fee. Liability clarification letters may be helpful when evaluating the potential purchase of a property or when contamination is suspected to be impacting a property.

Continuing obligations for the protection of health and safety at off-site properties

When residual contamination extends across a property line, continuing obligations may also extend onto an affected, off-site property. In these situations, owners of off-site properties may not be legally responsible for responding to the contamination, but they are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety.

Wisconsin, like most states, allows some residual contamination to remain after a cleanup of contaminated soil, vapors, sediment or groundwater has been approved by the state (see Wis. Stat. § 292.12). The removal of all contamination is generally not practicable, nor is it always necessary for the protection of public health and the environment.

When the DNR approves the completion of an interim action, or a remedial action, or issues a case closure letter at a site where residual contamination exists, the DNR may condition or qualify its case closure approval on compliance with continuing obligations at the source property and affected off-site properties to protect public health and the environment.

These continuing obligations are property-specific requirements and restrictions identified in the DNR approval or case closure letter. They are legal responsibilities associated with the source property, and apply to current and future owners of the property. If contamination has migrated off-site, there may be continuing obligations that also apply to off-site, affected properties.

Common Continuing Obligations for Source and Affected, Off-site Properties

One common continuing obligation, for the owners of the source property and affected, off-site properties, is the proper management and disposal of contaminated soil that is excavated. Other continuing obligations and requirements necessary to protect health and safety may include:

- Keeping clean soil and vegetation over contaminated soil;
- Maintaining a cover of pavement, soil, asphalt, etc. over contaminated soil or groundwater;
- Operating and maintaining a vapor mitigation system that is installed by the responsible party;
- Obtaining DNR approval prior to constructing or reconstructing a well at properties with groundwater contamination; and
- Maintaining industrial use for a property that was cleaned up to industrial standards.

Owners of off-site properties are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety, except for those continuing obligations imposed for residual sediment contamination.

Notice to Affected Off-site Property Owners of Case Closure Request and Possible Continuing Obligations

The party responsible for cleaning up contamination must notify affected, off-site property owners of a proposed continuing obligation on their property before the DNR reviews a request for case closure. State law requires this, and it allows the off-site property owners some time to provide the DNR with any technical information that may be relevant to the cleanup approval.

An off-site property owner is, of course, free to discuss responsibility for the proposed off-site continuing obligations with the responsible party. If an off-site property owner enters into a legally enforceable agreement (i.e. a private contract) with the party responsible for the contamination, under which the responsible party assumes responsibility for maintaining a continuing obligation on the off-site owner's property, that agreement must be submitted to the DNR and recorded in the database per Wis. Stat. § 292.12(5)(c).

If the DNR approves a case closure request that includes continuing obligations at an off-site property, the DNR will notify off-site owners of the continuing obligation. A property owner may request modification of a continuing obligation in the future if environmental conditions change. For example, petroleum contamination degrades over time and laboratory test results of new soil, groundwater or vapor samples may support modifying or removing a continuing obligation.

Finding information about continuing obligations

Information about property-specific continuing obligations can be found (as applicable) in the DNR interim action approval letter, the case closure letter for the source property, and in the DNR documents giving notice to off-site property owners. These letters and related documents are available in the DNR database of property cleanup activities.

This database, called BRRTS on the Web, is available at dnr.wi.gov (search "BRRTS"). The documents about affected, off-site properties that are associated with a specific source property can be found in BRRTS when you search the site number or address of the property that is the source of the contamination. Property owners, local government officials, building contractors, well drillers and others may review the database to find out if there are any land-use restrictions or continuing obligations associated with a specific property before beginning work there.

For more information

Questions about the off-site environmental liability exemption and continuing obligations can be directed to the brownfields specialist in your local DNR regional office. To find a specialist in your area, go to dnr.wi.gov and search "brownfields contacts."

For additional information about off-site contamination and liability clarification letters go to dnr.wi.gov and search for "off-site contamination." For additional information about residual contamination and continuing obligations go to dnr.wi.gov and search for "continuing obligations."

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Notice: This form is authorized under ss. 280.11 and 281.11, Stats., and s. NR 812.09(4) and (4)(w), Wis. Adm. Code. Information requested is required to determine if an approval for construction or reconstruction of a well may be granted, under s. NR 812.09(4) and (4)(w), Wis. Adm. Code: "Prior department approval is required for the construction or reconstruction of a well on a property that is listed on the department's geographic information system (GIS) Registry of Closed Remediation Sites." Failure to submit this form or provide all required information may result in your application for approval being denied or your well operating in violation of ch. NR 812, Wis. Adm. Code, or both, and may result in forfeitures under s. 281.98, Stats., of not less than \$10 nor more than \$5,000 for each violation. Personally identifiable information on this form is not likely to be used for any purpose other than administration of the water supply program. However, copies of this form are available to requesters under Wisconsin's Open Records Law [ss. 19.31 - 19.39, Wis. Stats.].

Applicant Information				
Last Name	First	MI	Daytime Phone Number (include area code)	
Mailing Street Address and PO Box		City	State	ZIP Code

Well Site Information						
Facility or Site Name (if any)				BRRTS ID No. (if known)		
Address of well (if different than owner)				Gov't Lot #	1/4	1/4
				Section	Township	Range <input type="radio"/> E <input type="radio"/> W
				State	ZIP Code	County
<input type="radio"/> City <input type="radio"/> Town <input type="radio"/> Village of _____						
Subdivision Name				Lot Number	Block Number	

Well Construction Information			
If approval request is for an existing well, include the following well construction information, if known. Include copy of well report if possible.			
Well Type <input type="radio"/> Drilled <input type="radio"/> Driven Point <input type="radio"/> Other _____		Casing Depth	Total Well Depth
Name of Original Well Owner		Date Well Constructed	Constructed By
			WUWN

Approval Information

Proposed construction and location of well, i.e., to avoid the contamination.

Identify well construction reports for any existing wells, on property or adjacent property, if available.

Are there any other setback separation distance requirements in NR 812.08 that would require a variance to construct the well?

GIS Registry Site Well Approval Application

Form 3300-254 (R 8/01)

Page 2 of 2

Site Drawing

- Sketch the property and location of the water supply. Include the scale of the drawing and distances to known sources of contamination (for example, contaminant plume, septic systems, gas tanks, drain tiles, animal pens, etc.)
- Show slope arrows from well and contamination sources, if lot is sloped
- Attach any extra sheets of other information, which may be useful in describing your situation

(North)

SITE DRAWING

- Department regional personnel may inspect this property to verify information provided and to determine comparable protection options. You may be contacted by phone for an appointment, or if more information is needed.
- NO CONSTRUCTION SHALL BEGIN UNTIL THE OWNER OR CONTRACTOR HAS RECEIVED A WRITTEN APPROVAL DOCUMENT.
- Written notification will be provided of approval or denial with 65 business days of receipt of this application, as provided by s. NR 812, Wis. Adm. Code.

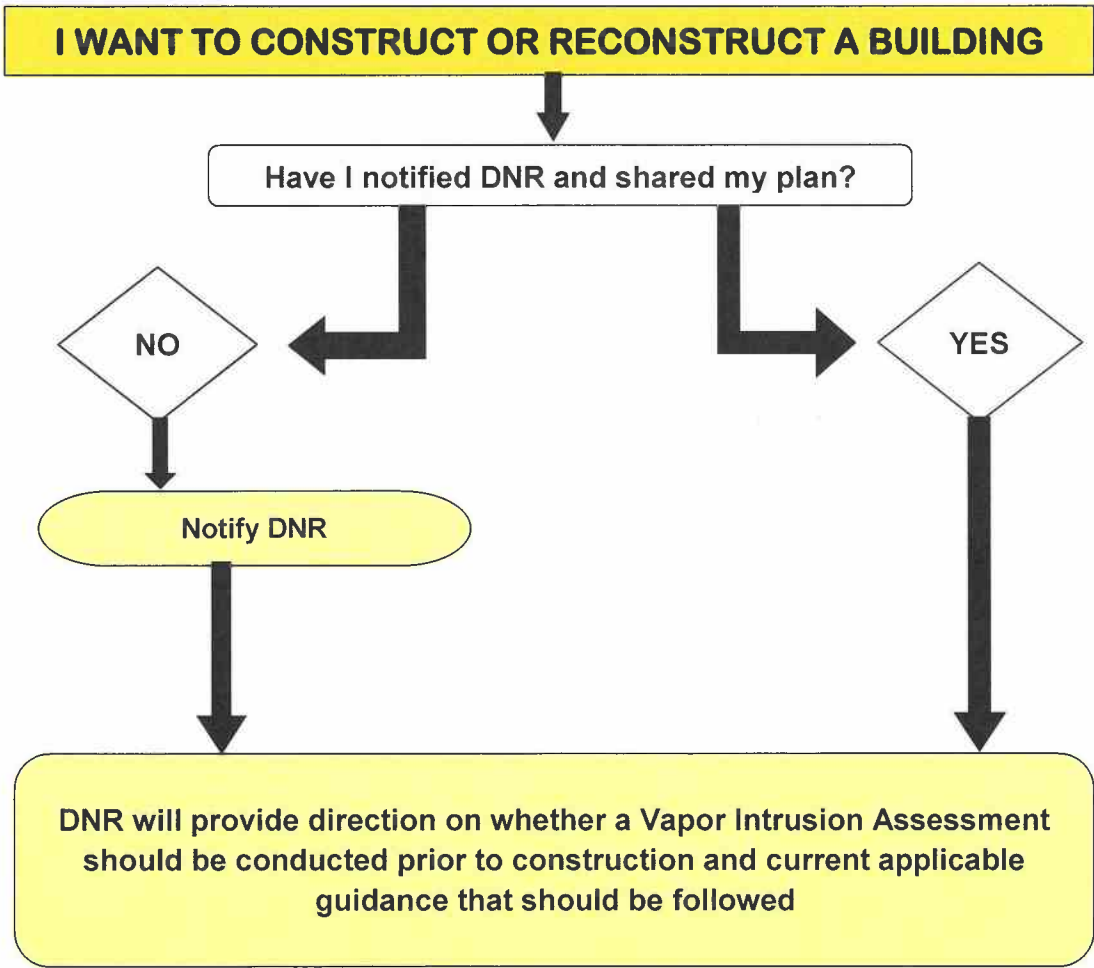
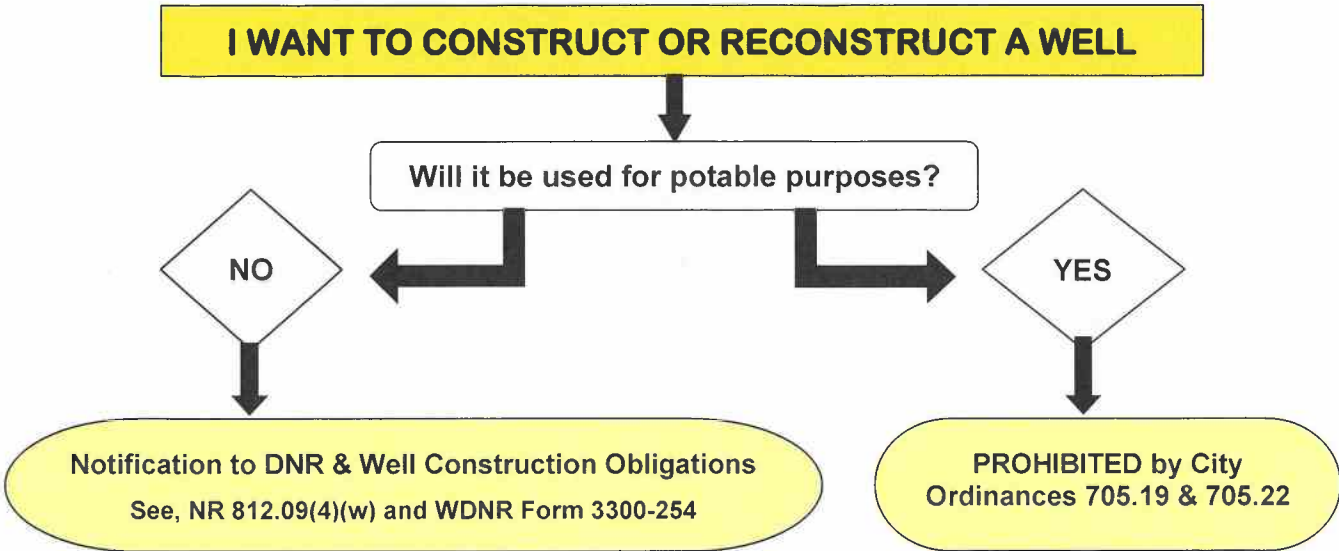
I certify to the best of my knowledge the information provided in this application is true, complete, and correct. I understand that the information I provide will be used by the Department to determine if an approval can be granted and what construction specifications will be required to provide comparable protection. I further understand that in granting an approval the Department does not guarantee acceptable water quality or quantity.

Owner's Signature

Date Signed

Name and Address of Well Driller, Well Contractor or Pump Installer, if known

MAIL THIS APPLICATION TO:



**I'M A PRIVATE PROPERTY OWNER
AND I WANT TO EXCAVATE SOIL**

Is there a Monitoring Well on my Property?

NO

YES

**No Restrictions
Manage excavated soil
consistent with state law.**

Do not excavate within 5 ft. of the Well

ORIGIN ID: LNRA (608) 257-3501
RENÉE V. EXUM
MICHAEL BEST & FRIEDRICH LLP
1 SOUTH PICKNEY STREET
SUITE 700
MADISON, WI 53703
UNITED STATES US

SHIP DATE: 16MAR20
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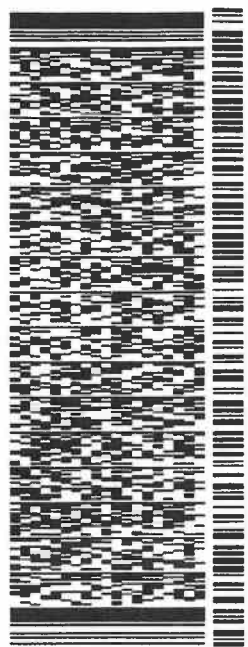
BILL SENDER

TO **JOSEPH J. O'BRIEN**

2975 W. PRINCETON AVENUE

EAU CLAIRE WI 54703

(608) 257-3501 REF: 070086-0205 (RVE 0617)
IN/ DEPT:
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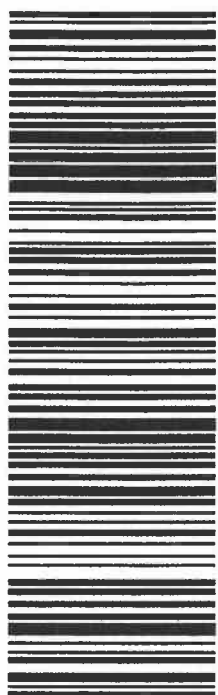
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Dawson, Deborah D (21693)

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Sent: Tuesday, March 17, 2020 10:02 AM
To: Dawson, Deborah D (21693)
Subject: FedEx Shipment 770027066602 Delivered

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Tracking # 770027066602

Ship date:
Mon, 3/16/2020

Renee V. Exum
Michael Best & Friedrich LLP
MADISON, WI 53703
US



Delivery date:
Tue, 3/17/2020 10:00 am


Joseph J. O'Brien
2975 W. Princeton Avenue
EAU CLAIRE, WI 54703
US



Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number:	770027066602
Status:	Delivered: 03/17/2020 10:00 AM Signed for By: Signature not required
Reference:	070086-0205 (RVE 0617)
Signed for by:	Signature not required
Delivery location:	EAU CLAIRE, WI
Delivered to:	Residence
Service type:	FedEx Priority Overnight®
Packaging type:	FedEx® Envelope
Number of pieces:	1
Weight:	0.50 lb.
Special handling/Services:	Deliver Weekday Residential Delivery
Standard transit:	3/17/2020 by 10:30 am

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800.895.4898
xcelenergy.com



March 16, 2020

VIA FEDERAL EXPRESS

Ralphie and Kathryn Rossing
323 St. Claire St.
Ashland, WI 54806

Subject: Remedial Action Approval for Ashland NSP Lakefront Superfund Site
300 St. Claire Street, Ashland, Wisconsin

Dear Mr. & Mrs. Rossing:

Northern States Power Company of Wisconsin (“NSPW”) is providing you this notification in compliance with state law and in connection with environmental work recently completed at the Ashland NSP Lakefront Superfund Site (the “Site”). The Site is located at 300 St. Claire Street, Ashland and a map is enclosed. Further information concerning the site is available here: <https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0507952> or by visiting the document repository maintained at the Vaughn Public Library.

The Wisconsin Department of Natural Resources (“DNR”) recently approved a Remedial Action Plan associated with this work and the U.S. Environmental Protection Agency, in concurrence with DNR, has approved the substantial completion of that work. As part of this approval, we must notify you that your property, which is within the Site, and that you own (the “Property”) is subject to certain continuing obligations.

State law directs parties responsible for environmental contamination to take actions to restore the environment and minimize harmful effects to the extent practicable. In the course of conducting such cleanups, the law allows some amount of residual contamination to remain in soil and groundwater provided it does not pose a threat to public health, safety, welfare or to the environment.

The DNR has recently approved of a Remedial Action Plan and NSPW has implemented that Plan to the extent required by state and federal law. Residual groundwater contamination remains beneath the Property as described further below and in the *Institutional Control Implementation and Assurance Plan* (FE/JV 2020). Because that residual contamination has been determined to not pose any threat to public health, safety, welfare or to the environment, WDNR has allowed that contamination to remain, subject to compliance with certain ongoing use restrictions and continuing obligations applicable to the Property.

Continuing Obligations Applicable to the Property

The Property is subject to certain use restrictions which can be found in and enforceable by the following:

- Granting reasonable access to DNR, the U.S. Environmental Protection Agency, NSPW or its contractors;
- Compliance with the property use restrictions of the *Institutional Control Implementation and Assurance Plan* (FE/JV 2020);
- Avoiding actions that make the contamination worse (e.g., interfering with the performance of the remedy, demolishing or damaging a structure and causing or worsening the discharges to the environment, or exacerbating site conditions).

You are required to manage the Property in compliance with these use restrictions and continuing obligations. Further detail is provided below. Please be aware that failure to comply with the continuing obligations may result in enforcement action by the DNR. The DNR intends to conduct inspections in the future to ensure that the conditions included in this letter are met.

Residual Groundwater Contamination (Wis. Admin. Code ch. NR 140, NR 812)

Due to the existence of residual contamination after completion of the remedial action approved in the Remedial Action Plan approval, this Site, which includes the Property, will be listed on the Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>. If you intend to construct or reconstruct a well on the Property, you will need to get Department approval in accordance with Wis. Admin. Code § NR 812.09 (4) (w). To obtain approval, Form 3300-254 needs to be completed and submitted to the DNR Drinking and Groundwater program's regional water supply specialist. A well driller can help with this form. This form can be obtained online at: <https://dnr.wi.gov/files/PDF/forms/3300/3300-254.pdf>.

Additionally, if you construct or reconstruct any structures on the Property, you should evaluate site conditions in accordance with DNR publication RR-800, "*Addressing Vapor Intrusion at Remediation & Redevelopment Sites in Wisconsin*", dated January 2018 (WDNR, 2018), and any subsequent versions thereof. This fact sheet can be obtained online at: <https://dnr.wi.gov/files/PDF/pubs/rr/RR800.pdf>.

The attached DNR fact sheet RR-819, "*Continuing Obligations for Environmental Protection*", helps explain a property owner's responsibility for continuing obligations on their property. You may obtain additional copies at <http://dnr.wi.gov/files/PDF/pubs/rr/RR819.pdf>.

You have thirty (30) days to comment on the issues addressed in this letter. You may submit any information that you believe is relevant to be considered by DNR and NSPW. You may submit that information at the address(es) provided below.

Notices


Department of Natural Resources
Attn: John Sager
1701 N. 4th Street
Superior, WI 54880
P: 715.392-7822
E: John.Sager@Wisconsin.gov

Michael BeBeau
Xcel Energy
Community Service Manager
2400 Farm Road
Ashland, WI 54806
P: 715.682.6936 F: 715.682.6921
E: michael.s.bebeau@xcelenergy.com

You should retain this document with your property records.

Questions regarding this notification may be directed to Michael Bebeau at 715-682-6936.

Sincerely,


Michael Bebeau (BKC)

Attachments

- Legal Description of Property
- RR-819 – Continuing Obligations for Environmental Protection
- RR-671 – What Landowners Should Know: Information About Using Natural Attenuation To Clean Up Contaminated Groundwater
- RR-589 – When Contamination Crosses a Property Line
- DNR Form 3300-254 – GIS Registry Site Well Approval Application
- Decision Tree – I Want to Construct a Well or Building
- Decision Tree – I Want to Excavate Soil – Private Property Owner

**EXHIBIT A
LEGAL DESCRIPTION**

(Rossing)

The South one-half (S ½) of Lot Twelve (12), Block Thirty-three (33), Ellis Division, City of Ashland, Ashland County, Wisconsin.

(PIN: 201-01022-0000)



Continuing Obligations for Environmental Protection Responsibilities of Wisconsin Property Owners Wis. Stat. § 292.12

Purpose

This fact sheet is intended to help property owners understand their legal requirements under s. 292.12, Wis. Stats., regarding continuing obligations that arise due to the environmental condition of their property.

Introduction

The term “continuing obligations” refers to certain actions for which property owners are responsible following a completed environmental cleanup. They are sometimes called environmental land use controls or institutional controls. These legal obligations, such as a requirement to maintain pavement over contaminated soil, are most often found in a cleanup approval letter from the state.

Less commonly, a continuing obligation may apply where a cleanup is not yet completed but a cleanup plan has been approved, or at a property owned by a local government that is exempt from certain cleanup requirements.

What Are Continuing Obligations?

Continuing obligations are legal requirements designed to protect public health and the environment in regard to contamination that remains on a property.

Continuing obligations still apply after a property is sold. Each new owner is responsible for complying with the continuing obligations.

Background

Wisconsin, like most states, allows some contamination to remain after cleanup of soil or groundwater contamination (residual contamination). This minimizes the transportation of contamination and reduces cleanup costs while still ensuring that public health and the environment are protected.

The Department of Natural Resources (DNR), through its Remediation and Redevelopment (RR) Program, places sites or properties with residual contamination on a public database in order to provide notice to interested parties about the residual contamination and any associated continuing obligations. Please see the “Public Information” section on page 3 to learn more about the database. (Prior to June 3, 2006, the state used deed restrictions recorded at county courthouses to establish continuing obligations, and those deed restrictions have also been added into the database.)

Types of Continuing Obligations

1. Manage Contaminated Soil that is Excavated

If the property owner intends to dig up an area with contaminated soil, the owner must ensure that proper soil sampling, followed by appropriate treatment or disposal, takes place. Managing contaminated soil must be done in compliance with state law and is usually done under the guidance of a private environmental professional.

2. Manage Construction of Water Supply Wells

If there is soil or groundwater contamination and the property owner plans to construct or reconstruct a water supply well, the owner must obtain prior DNR approval to ensure that well construction is designed to protect the water supply from contamination.

Other Types of Continuing Obligations

Some continuing obligations are designed specifically for conditions on individual properties. Examples include:

- keeping clean soil and vegetation over contaminated soil;
- keeping an asphalt “cover” over contaminated soil or groundwater;
- maintaining a vapor venting system; and
- notifying the state if a structural impediment (e.g. building) that restricted the cleanup is removed. The owner may then need to conduct additional state-approved environmental work.

It is common for properties with approved cleanups to have continuing obligations because the DNR generally does not require removal of all contamination.

Property owners with the types of continuing obligations described above will find these requirements described in the state’s cleanup approval letter or cleanup plan approval, and *must*:

- comply with these property-specific requirements; and
- obtain the state’s permission before changing portions of the property where these requirements apply.

The requirements apply whether or not the person owned the property at the time that the continuing obligations were placed on the property.

Changing a Continuing Obligation

A property owner has the option to modify a continuing obligation if environmental conditions change. For example, petroleum contamination can degrade over time and property owners may collect new samples showing that residual contamination is gone. They may then request that the DNR modify or remove a continuing obligation. Fees are required for the DNR’s review of this request and for processing the change to the database (\$1050 review fee, \$300/\$350 database fee). Fees are subject to change; current fees are found in Wis. Admin. § NR 749 online at http://docs.legis.wisconsin.gov/code/admin_code/nr/700/749.

Public Information

The DNR provides public information about continuing obligations on the Internet. This information helps property owners, purchasers, lessees and lenders understand legal requirements that apply to a property. The DNR has a comprehensive database of contaminated and cleaned up sites, *BRRTS on the Web*. This database shows all contamination activities known to the DNR. Site specific documents are found under the *Documents* section. The information includes maps, deeds, contaminant data and the state’s closure letter. The closure letter states that no additional environmental cleanup is needed for past contamination and includes information on property-specific continuing obligations. If a cleanup has not been completed, the state’s approval of the remedial action plan will contain the information about

continuing obligations.

Properties with continuing obligations can generally be located in the DNR's *RR Sites Map*. RR Sites Map provides a map view of contaminated and cleaned up sites, including sites with continuing obligations, and links to BRRTS on the Web. *BRRTS on the Web* and *RR Sites Map* are part of the Wisconsin Remediation and Redevelopment Database (WRRD) at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>.

If a completed cleanup is shown in *BRRTS on the Web* but the site documents cannot be found in the documents section, the DNR's closure letter can still be obtained from a regional office. For assistance, please contact a DNR Environmental Program Associate (see the RR Program's Staff Contact web page at dnr.wi.gov/topic/Brownfields/Contact.html).

Off-Site Contamination: When Continuing Obligations Cross the Property Line

An off-site property owner is someone who owns property that has been affected by contamination that moved through soil, sediment or groundwater from another property. Wis. Stat. § 292.13 provides an exemption from environmental cleanup requirements for owners of "off-site" properties. The DNR will generally not ask off-site property owners to investigate or clean up contamination that came from a different property, as long as the property owner allows access to his or her property so that others who are responsible for the contamination may complete the cleanup.

However, off-site property owners are legally obligated to comply with continuing obligations on their property, even though they did not cause the contamination. For example, if the state approved a cleanup where the person responsible for the contamination placed clean soil over contamination on an off-site property, the owner of the off-site property must either keep that soil in place or obtain state approval before disturbing it.

Property owners and others should check the *Public Information* section above if they need to:

- determine whether and where continuing obligations exist on a property;
- review the inspection, maintenance and reporting requirements, and
- contact the DNR regarding changing that portion of the property. The person to contact is the person that approved the closure or remedial action plan.

Option for an Off-Site Liability Exemption Letter

In general, owners of off-site properties have a legal exemption from environmental cleanup requirements. This exemption does not require a state approval letter. Nonetheless, they may request a property-specific liability exemption letter from the DNR if they have enough information to show that the source of the contamination is not on their property. This letter may be helpful in real estate transactions. The fee for this letter is \$700 under Chapter NR 749, Wis. Adm. Code. For more information about this option, please see the RR Program's Liability web page at dnr.wi.gov/topic/Brownfields/Liability.html.

Legal Obligations of Off-Site Property Owners

- Allow access so the person cleaning up the contamination may work on the off-site property (unless the off-site owner completes the cleanup independently).
- Comply with any required continuing obligations on the off-site property.

Required Notifications to Off-Site Property Owners

1. The person responsible for cleaning up contamination must notify affected property owners of any proposed continuing obligations on their off-site property **before** asking the DNR to approve the cleanup. This is required by law and allows the off-site owners to provide the DNR with any technical information that may be relevant to the cleanup approval.

When circumstances are appropriate, an off-site neighbor and the person responsible for the cleanup may enter into a “legally enforceable agreement” (i.e. a contract). Under this type of private agreement, the person responsible for the contamination may also take responsibility for maintaining a continuing obligation on an off-site property. This agreement would not automatically transfer to future owners of the off-site property. The state is not a party to the agreement and cannot enforce it.

2. If a cleanup proposal that includes off-site continuing obligations is approved, the DNR will send a letter to the off-site owners detailing the continuing obligations that are required for their property. Property owners should inform anyone interested in buying their property about maintaining these continuing obligations. For residential property, this would be part of the real estate disclosure obligation.

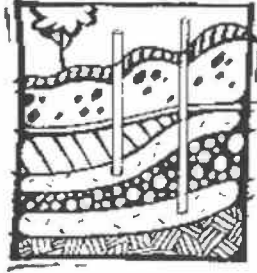
More Information

For more information, please visit the RR Program’s Continuing Obligations website at dnr.wi.gov/topic/Brownfields/Residual.html.

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Chief, Public Civil Rights, Office of Civil Rights, U.S. Department of the Interior, 1849 C. Street, NW, Washington, D.C. 20240.

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Using Natural Attenuation to Clean Up Contaminated Groundwater: What Landowners Should Know

RR-671

December 2016

What Is Natural Attenuation?

Natural attenuation makes use of natural processes in soil and groundwater to contain the spread of contamination and to reduce the amount of contamination from chemical releases.

Natural attenuation is an *in-situ* treatment method. This means that contaminants are left in place while natural attenuation works on them. Natural attenuation is relied upon to clean up contamination that remains after the source of the contamination is removed. An example of a source of contamination would be a leaking underground petroleum tank.

How Does Natural Attenuation Work?

Natural attenuation processes work at many sites, but the rate and degree of effectiveness varies from property to property, depending upon the type of contaminants present and the physical, chemical and biological characteristics of the soil and groundwater.

Natural attenuation processes can be divided into two broad categories – destructive and non-destructive. Destructive processes destroy contaminants. The most common destructive process is **biodegradation**.

Non-destructive processes do not destroy the contaminant, but reduce contaminant concentrations in groundwater through **dilution, dispersion or adsorption**.

Biodegradation

Biodegradation is a process in which micro-organisms that naturally occur in soil and groundwater (e.g. yeast, fungi, or bacteria), break down, or degrade hazardous substances to less toxic or non-toxic substances. Microorganisms, like humans, eat and digest organic compounds for nutrition and energy (organic compounds contain carbon and hydrogen atoms).

Some types of microorganisms can digest organic substances such as fuels or solvents that are hazardous to humans. Microorganisms break down the organic contaminants into harmless products – mainly carbon dioxide and water. Once the contaminants are degraded, the microorganism populations decline because they have used their food sources. These small populations of microorganisms pose no contaminant or health risk.

Many organic contaminants, like petroleum, can be biodegraded by microorganisms in the underground environment. For example, biodegradation processes can effectively cleanse soil and groundwater of hydrocarbon fuels such as gasoline and benzene, toluene, ethylbenzene, and xylene – known as the BTEX compounds, under certain conditions.

Biodegradation can also breakdown other contaminants in groundwater such as trichloroethylene (TCE), a chlorinated solvent used in metal cleaning. However, the processes involved are harder to predict and are less effective at contaminant removal compared to petroleum-contaminated sites.



Wisconsin Department of Natural Resources
P.O. Box 7921, Madison, WI 53707
dnr.wi.gov, search "brownfield"



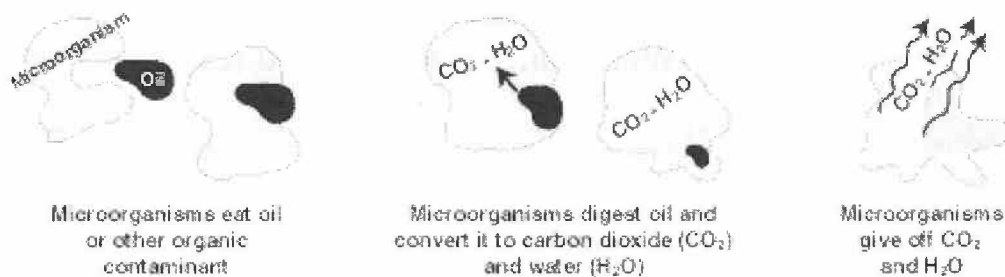


Figure 1. Schematic Diagram of Aerobic Biodegradation in Soil

Dilution and Dispersion

The effects of dilution and dispersion reduce contaminant concentrations but do not destroy contaminants. Clean water from the surface seeps underground to mix with and dilute contaminated groundwater.

Other processes that lead to reduced concentrations of contaminants include clean groundwater flowing into contaminated areas, and the dispersion of pollutants as they spread out and away from the main path of the contaminated plume.

Adsorption

Adsorption occurs when contaminants attach or “sorb” to underground particles. Most oily substances (like petroleum compounds) repel water and escape from the groundwater by attaching to organic matter and clay minerals in the subsurface.

This process holds back or retards contaminant movement and reduces the concentration of contaminants in the groundwater. However, like dilution and dispersion, adsorption does not destroy contaminants.

Why Consider Natural Attenuation To Clean Up Soil And Groundwater?

In certain situations, natural attenuation is an effective, inexpensive cleanup option and the most appropriate way to remediate some contamination problems. Natural attenuation focuses on confirming and monitoring natural remediation processes rather than relying on engineered or “active” technologies (such as pumping groundwater, treating it above ground, then disposing of the treated water).

Contaminants from petroleum are good candidates for natural attenuation because they are among the most easily destroyed by biodegradation. Natural attenuation is non-invasive, which allows treatment to go on below ground, while the surface can continue to be used.

Natural attenuation can also be less costly than active engineered treatment options, and requires no special equipment, energy source, or disposal of treated soil or groundwater.

Will Natural Attenuation Work At My Property?

Whether natural attenuation will work at a particular location is determined by investigating the soil and groundwater. These investigations determine the type of contaminants present, the levels of contamination, and the physical and chemical conditions that lead to biodegradation of the contaminants.

In order to rely on natural attenuation, responsible parties are required to confirm that natural attenuation processes are working by monitoring the soil and groundwater over a period of time to show that the contaminant concentrations are decreasing and that the contamination is no longer spreading.

Those conducting the cleanup need to know whether natural attenuation, or any proposed remedy, will reduce the contaminant concentrations in the soil and groundwater to legally acceptable limits within a reasonable period of time.

Natural attenuation may be an acceptable option for sites where active remediation has occurred and has reduced the concentration of contaminants (for instance, removing leaking underground tanks and contaminated soil).

However, natural attenuation is not an appropriate option at all sites. If the contamination has affected a drinking water well, or has entered a stream or lake, active cleanup options may be necessary to make sure people and the environment are protected from direct contact with the contamination.

The speed or rate of natural attenuation processes is typically slow. Monitoring is necessary to show that concentrations decrease at a sufficient rate to ensure that contaminants will not become a health threat in the future.

Closure Of Contaminated Sites Using Natural Attenuation As A Final Remedy

When contamination is discovered at a property (such as a gas station with leaking underground tanks), the person who is responsible for causing the contamination, and persons having possession or control of hazardous substances that have been discharged, have the responsibility to remove the source of contamination and investigate and clean up the contamination that has escaped into the soil and groundwater.

The contaminant release must be reported to the Wisconsin Department of Natural Resources (DNR) and the site investigation and cleanup are overseen by a state agency. Depending on the type of contaminant, the oversight agency could be the Department of Agriculture, Trade and Consumer Protection or Department of Natural Resources.

When the cleanup has complied with state standards, the person responsible for the contamination will ask the state agency for closure of the case. If natural attenuation is relied upon to finish cleaning up a contaminated property after closure, the responsible person will need to show that contaminant concentrations are not spreading, that contaminant concentrations are stable or decreasing, and that the concentrations will decrease in the future until state groundwater standards are met.

Because natural attenuation processes are slow, it may take many years before the properties with contamination are clean. State rules require that all owners of properties where groundwater contamination has spread must be informed of the contamination below their property.

In addition, the properties with groundwater contamination exceeding state groundwater enforcement standards must be listed on a database to notify future owners and developers of the presence of contamination. If future monitoring occurs and shows that natural attenuation processes have removed the contaminants to state-required cleanup levels, then the properties can be removed from the database.

The state agency will grant closure if the site investigation and monitoring shows that natural attenuation will clean up groundwater to state standards within a reasonable period of time. All state rules for cleanup must be met and the person who is responsible for the contamination must comply with all conditions of the state's closure approval.

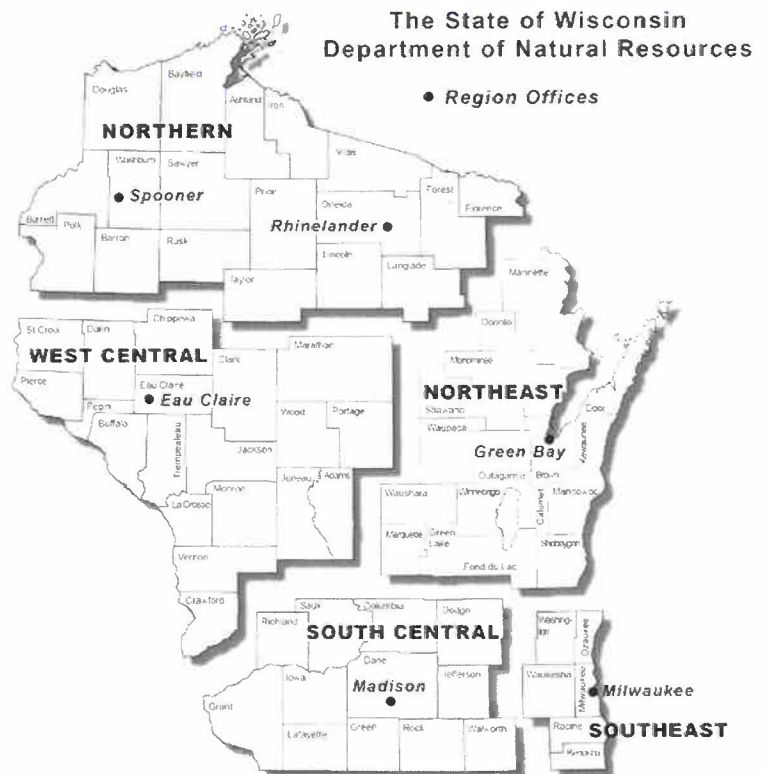
Publications

The following publications provide additional information on natural attenuation. Websites where these can be downloaded free of charge are also listed.

- *A Citizen's Guide to Bioremediation*, September 2012, EPA 542-F-12-003; https://www.epa.gov/sites/production/files/2015-04/documents/a_citizens_guide_to_bioremediation.pdf
- *Commonly Asked Questions Regarding the Use of Natural Attenuation for Petroleum-Contaminated Sites at Federal Facilities*, www.clu-in.org/download/techfocus/na/na-petrol.pdf
- *Monitored Natural Attenuation of Petroleum Hydrocarbons: U.S. EPA Remedial Technology Fact Sheet*, May 1999, EPA 600-F-98-021; www.clu-in.org/download/remed/pet-hyd.pdf
- *Monitored Natural Attenuation of Chlorinated Solvents*, May 1999, EPA 600-F-98-022; www.clu-in.org/download/remed/chl-solv.pdf
- *Guidance on Natural Attenuation for Petroleum Releases, WI DNR, Bureau for Remediation and Redevelopment*, March 2003, PUB-RR-614; dnr.wi.gov/files/PDF/pubs/rr/RR614.pdf

Contact Information

If you have questions about natural attenuation contact a [DNR Environmental Program Associate \(EPA\)](#) in your local DNR regional office. The EPA can direct you to a project manager.



Note: These are the Remediation and Redevelopment Program's designated regions. Other DNR program regional boundaries may be different.

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.



Remediation and Redevelopment Program **March 2018**

When Contamination Crosses a Property Line
The Off-Site Environmental Liability Exemption - Wis. Stat. §§ 292.12 and 292.13
Rights and Responsibilities of Off-site, Affected Property Owners

Purpose
 This fact sheet summarizes the state’s statutory liability exemption for owners of real property affected by environmental contamination migrating from another property. It also explains how contamination from one property can impose health and safety obligations on other properties even when the liability exemption is in effect.

- Related Guidance**
- [Off-site Liability Exemption Application \(Form 4400-201\)](#)
 - [General Liability Clarification Letters \(RR-619\)](#)
 - [Continuing Obligations for Environmental Protection \(RR-819\)](#)
 - [Environmental Contamination and Your Real Estate \(RR-973\)](#)

Background

It is relatively common to discover that substances used at an older commercial or industrial property have migrated into the soil, surface water and groundwater and have traveled onto a neighboring property. When this occurs, the party responsible for investigating and cleaning up the source of the contamination is required to take action to address health and safety concerns at both the source property and the off-site property.

When contamination from one property crosses a property boundary, Wisconsin law provides an environmental liability exemption to the affected property owner who meets the conditions in the law. The affected property owner is identified as the “off-site” owner in state law, because environmental contamination has moved beyond the source property’s boundaries.

The Wisconsin Department of Natural Resources (DNR) will generally not ask off-site, exempt property owners to investigate or remediate contamination that did not originate on their property. A few exceptions to the exemption, related to imminent health and safety threats and long term obligations, are described in the next section.

The statutory off-site exemption is self-implementing and is effective as long as an eligible party meets all the statutory conditions. Property owners and others may request a written exemption determination letter from the DNR for a fee, but this letter is not required to have the exemption protections.

Summary of an off-site property owner’s rights and responsibilities

Wisconsin law, Wis. Stat. § 292.11(3), requires anyone who causes, possesses or controls a hazardous substance discharge to the environment (i.e. land, air, water) to take action to restore the

environment to the extent practicable and minimize harmful effects. When contamination from one property migrates and affects another property, however, Wisconsin law provides an exemption for an owner (possessor) of the affected, neighboring property from the requirement to take response actions under Wis. Stat. §§ 292.11(3), (4) and (7)(b) and (c). This statutory provision is known as the “off-site liability exemption,” and is authorized by Wis. Stat. § 292.13.

An off-site property owner is someone who owns property affected by soil, groundwater, sediment, soil gas (vapor) or other environmental contamination that originated on another property. The property where the contamination began is known as the source property. An affected off-site property owner is eligible for an off-site liability exemption if all of the following conditions in Wis. Stat. § 292.13 are satisfied, including, but not limited to:

- The off-site property owner did not cause the original discharge of the hazardous substance;
- The off-site property owner did not, and does not, possess or control the hazardous substance that was discharged on the source property;
- The property that contains the source of the migrating contamination is not owned or controlled by the same person or entity that owns the affected off-site property;
- The off-site property owner allows reasonable access to their property, so the DNR and its contractors, along with those responsible for the contamination, can take necessary response actions to protect public health;
- The off-site property owner does not interfere with the response actions of others and does not do anything to make the contamination situation worse;
- The off-site property owner agrees to other conditions that the DNR determines are reasonable and necessary to ensure that response actions are adequate; and
- For soil and sediment contamination, when the responsible party is not responding appropriately to the contamination, the off-site property owner agrees to take actions that the DNR determines are necessary to prevent an imminent threat to human health and safety. For example, taking action to limit public access to the property, installing containment barriers, and addressing fire, explosion and vapor hazards on the property.

No Exemption from Reporting Requirements

The off-site exemption does not exempt an affected property owner from Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR.

Limitations of the Exemption

The off-site exemption is conditional, limited in scope and applies solely to legal responsibilities identified in Wis. Stat. §§ 292.11(3), (4) and (7)(b)(c). The off-site exemption does not exempt a property owner from:

- Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR;
- Wis. Stat. § 292.12, which authorizes the DNR to require continuing public health protection obligations on any property affected by environmental contamination (see page 4 of this fact sheet); and
- Limited, immediate actions, as specified in Wis. Stat. § 292.13(1m)(e). For instance, off-site property owners may be required to address an imminent threat from fire, explosion or vapors if there is not a party responsible for the cleanup who can conduct the actions.

In addition, the off-site liability exemption is not automatically transferable, nor assignable, to future owners of the off-site property. However, it is likely that a new owner could be eligible for the exemption if they meet the conditions in Wis. Stat. § 292.13, including the ability to substantiate that they do not currently, or have ever, owned the source property and did not cause the discharge.

Overview of migrating contamination

Hazardous substances that are spilled or otherwise discharged to the environment can disperse and move around underground. These substances can spread out and migrate, or travel, through the soil into groundwater and nearby lakes and rivers. Gases (vapors) emanating from underground hazardous substances can also make their way upward into houses and other buildings.

When hazardous substances (contamination) move from their starting place (source) and affect the soil, sediment, groundwater or indoor air of an adjacent or nearby property, it is important to accurately determine who is legally responsible for investigating the nature and extent of the contamination, cleaning it up, and mitigating its harmful effects.

Discovering contamination from an off-site source

When a property owner discovers soil or groundwater contamination they believe came from another property, the owner must first notify the DNR of the contamination. The DNR will then work with the owner and potentially responsible parties to ensure appropriate actions are taken to investigate and clean up the contamination to protect health and safety.

Migrating contamination and access to property

Responsible parties are required by state law to investigate and remediate, to the extent practicable, all contamination that migrates within and beyond the boundaries of a source property. If the contamination crosses a property line, the responsible party must investigate where it goes and ask owners of affected, off-site properties for permission to access their properties. Property access is needed so the environmental investigation and cleanup or mitigation work can be completed.

An off-site property owner must allow access to their property to be eligible for the off-site liability exemption. When signing an access agreement, the off-site owners may wish to negotiate with the responsible party on issues such as the work schedule, the restoration of disturbed landscaping, etc.

If the owner of an affected off-site property does not allow the responsible party's environmental consultants or the DNR onto their property, the off-site owner will not qualify for the off-site exemption and the off-site owner may assume legal responsibility for the contamination on their property.

Obtaining an off-site liability determination letter from the DNR

Off-site property owners can request a liability determination letter from the DNR, for a fee, that documents the exemption in writing.

To obtain a letter, the off-site property owner must provide information to demonstrate that there are hazardous substances impacting their property from a source on another property and that all the other conditions for the exemption have been met. The off-site property owner can use the investigation data collected by the responsible party in response to the contamination or an owner of an off-site property may collect their own data to demonstrate the contamination is coming from somewhere else.

Requesting a Determination or Clarification Letter

To obtain an off-site liability determination letter or liability clarification letter, submit the DNR's Off-site Liability Exemption application, Form 4400-201 and the applicable fee. This form includes instructions and describes the information needed by the DNR for a site-specific letter.

Obtaining a liability clarification letter from the DNR

If someone does not meet all the requirements for the exemption, (e.g. a prospective purchaser) and therefore doesn't qualify for an off-site liability determination letter, anyone with an interest in a property that is or may be affected by migrating contamination can still request that the DNR review the site-specific situation and provide a written liability clarification letter for a fee. Liability clarification letters may be helpful when evaluating the potential purchase of a property or when contamination is suspected to be impacting a property.

Continuing obligations for the protection of health and safety at off-site properties

When residual contamination extends across a property line, continuing obligations may also extend onto an affected, off-site property. In these situations, owners of off-site properties may not be legally responsible for responding to the contamination, but they are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety.

Wisconsin, like most states, allows some residual contamination to remain after a cleanup of contaminated soil, vapors, sediment or groundwater has been approved by the state (see Wis. Stat. § 292.12). The removal of all contamination is generally not practicable, nor is it always necessary for the protection of public health and the environment.

When the DNR approves the completion of an interim action, or a remedial action, or issues a case closure letter at a site where residual contamination exists, the DNR may condition or qualify its case closure approval on compliance with continuing obligations at the source property and affected off-site properties to protect public health and the environment.

These continuing obligations are property-specific requirements and restrictions identified in the DNR approval or case closure letter. They are legal responsibilities associated with the source property, and apply to current and future owners of the property. If contamination has migrated off-site, there may be continuing obligations that also apply to off-site, affected properties.

Common Continuing Obligations for Source and Affected, Off-site Properties

One common continuing obligation, for the owners of the source property and affected, off-site properties, is the proper management and disposal of contaminated soil that is excavated. Other continuing obligations and requirements necessary to protect health and safety may include:

- Keeping clean soil and vegetation over contaminated soil;
- Maintaining a cover of pavement, soil, asphalt, etc. over contaminated soil or groundwater;
- Operating and maintaining a vapor mitigation system that is installed by the responsible party;
- Obtaining DNR approval prior to constructing or reconstructing a well at properties with groundwater contamination; and
- Maintaining industrial use for a property that was cleaned up to industrial standards.

Owners of off-site properties are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety, except for those continuing obligations imposed for residual sediment contamination.

Notice to Affected Off-site Property Owners of Case Closure Request and Possible Continuing Obligations

The party responsible for cleaning up contamination must notify affected, off-site property owners of a proposed continuing obligation on their property before the DNR reviews a request for case closure. State law requires this, and it allows the off-site property owners some time to provide the DNR with any technical information that may be relevant to the cleanup approval.

An off-site property owner is, of course, free to discuss responsibility for the proposed off-site continuing obligations with the responsible party. If an off-site property owner enters into a legally enforceable agreement (i.e. a private contract) with the party responsible for the contamination, under which the responsible party assumes responsibility for maintaining a continuing obligation on the off-site owner's property, that agreement must be submitted to the DNR and recorded in the database per Wis. Stat. § 292.12(5)(c).

If the DNR approves a case closure request that includes continuing obligations at an off-site property, the DNR will notify off-site owners of the continuing obligation. A property owner may request modification of a continuing obligation in the future if environmental conditions change. For example, petroleum contamination degrades over time and laboratory test results of new soil, groundwater or vapor samples may support modifying or removing a continuing obligation.

Finding information about continuing obligations

Information about property-specific continuing obligations can be found (as applicable) in the DNR interim action approval letter, the case closure letter for the source property, and in the DNR documents giving notice to off-site property owners. These letters and related documents are available in the DNR database of property cleanup activities.

This database, called BRRTS on the Web, is available at dnr.wi.gov (search "BRRTS"). The documents about affected, off-site properties that are associated with a specific source property can be found in BRRTS when you search the site number or address of the property that is the source of the contamination. Property owners, local government officials, building contractors, well drillers and others may review the database to find out if there are any land-use restrictions or continuing obligations associated with a specific property before beginning work there.

For more information

Questions about the off-site environmental liability exemption and continuing obligations can be directed to the brownfields specialist in your local DNR regional office. To find a specialist in your area, go to dnr.wi.gov and search "brownfields contacts."

For additional information about off-site contamination and liability clarification letters go to dnr.wi.gov and search for "off-site contamination." For additional information about residual contamination and continuing obligations go to dnr.wi.gov and search for "continuing obligations."

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Chief, Public Civil Rights, Office of Civil Rights, U.S. Department of the Interior, 1849 C Street, NW, Washington, D.C. 20240. This publication is available in alternative format (large print, Braille, etc.) upon request. Please call for more information. Note: If you need technical assistance or more information, call the Accessibility Coordinator at 608-267-7490 / TTY Access via relay - 711

Notice: This form is authorized under ss. 280.11 and 281.11, Stats., and s. NR 812.09(4) and (4)(w), Wis. Adm. Code. Information requested is required to determine if an approval for construction or reconstruction of a well may be granted, under s. NR 812.09(4) and (4)(w), Wis. Adm. Code: "Prior department approval is required for the construction or reconstruction of a well on a property that is listed on the department's geographic information system (GIS) Registry of Closed Remediation Sites." Failure to submit this form or provide all required information may result in your application for approval being denied or your well operating in violation of ch. NR 812, Wis. Adm. Code, or both, and may result in forfeitures under s. 281.98, Stats., of not less than \$10 nor more than \$5,000 for each violation. Personally identifiable information on this form is not likely to be used for any purpose other than administration of the water supply program. However, copies of this form are available to requesters under Wisconsin's Open Records Law [ss. 19.31 - 19.39, Wis. Stats.].

Applicant Information

Last Name	First	MI	Daytime Phone Number (include area code)		
Mailing Street Address and PO Box			City	State	ZIP Code

Well Site Information

Facility or Site Name (if any)			BRRTS ID No. (if known)		
Address of well (if different than owner)			Gov't Lot #	¼ ¼	¼
			Section	Township	Range <input type="radio"/> E <input type="radio"/> W
<input type="radio"/> City <input type="radio"/> Town <input type="radio"/> Village of _____			State	ZIP Code	County
Subdivision Name			Lot Number		Block Number

Well Construction Information

If approval request is for an existing well, include the following well construction information, if known. Include copy of well report if possible.

Well Type <input type="radio"/> Drilled <input type="radio"/> Driven Point <input type="radio"/> Other _____		Casing Depth	Total Well Depth
Name of Original Well Owner		Date Well Constructed	Constructed By
			WUWN

Approval Information

Proposed construction and location of well, i.e., to avoid the contamination.

Identify well construction reports for any existing wells, on property or adjacent property, if available.

Are there any other setback separation distance requirements in NR 812.08 that would require a variance to construct the well?

GIS Registry Site Well Approval Application

Form 3300-254 (R 8/01)

Page 2 of 2

Site Drawing

- Sketch the property and location of the water supply. Include the scale of the drawing and distances to known sources of contamination (for example, contaminant plume, septic systems, gas tanks, drain tiles, animal pens, etc.)
- Show slope arrows from well and contamination sources, if lot is sloped
- Attach any extra sheets of other information, which may be useful in describing your situation

(North)

SITE DRAWING

- Department regional personnel may inspect this property to verify information provided and to determine comparable protection options. You may be contacted by phone for an appointment, or if more information is needed.
- NO CONSTRUCTION SHALL BEGIN UNTIL THE OWNER OR CONTRACTOR HAS RECEIVED A WRITTEN APPROVAL DOCUMENT.
- Written notification will be provided of approval or denial with 65 business days of receipt of this application, as provided by s. NR 812, Wis. Adm. Code.

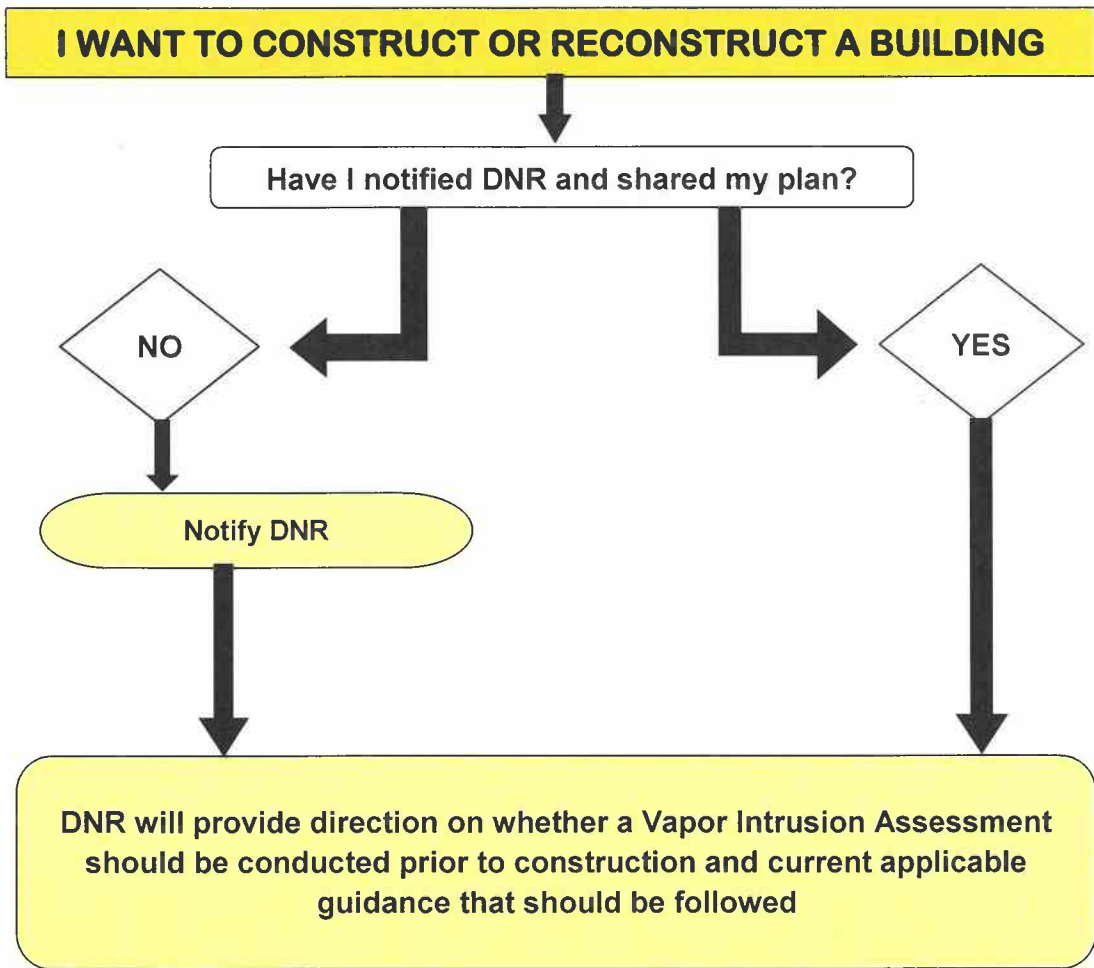
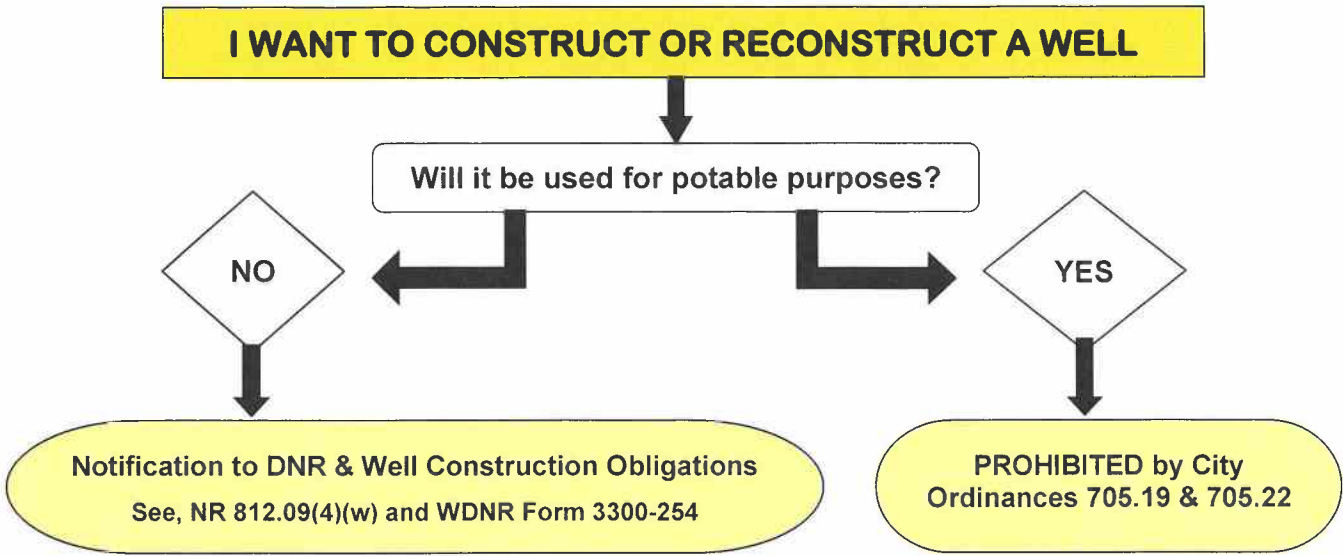
I certify to the best of my knowledge the information provided in this application is true, complete, and correct. I understand that the information I provide will be used by the Department to determine if an approval can be granted and what construction specifications will be required to provide comparable protection. I further understand that in granting an approval the Department does not guarantee acceptable water quality or quantity.

Owner's Signature

Date Signed

Name and Address of Well Driller, Well Contractor or Pump Installer, if known

MAIL THIS APPLICATION TO:



**I'M A PRIVATE PROPERTY OWNER
AND I WANT TO EXCAVATE SOIL**

Is there a Monitoring Well on my Property?

NO

YES

**No Restrictions
Manage excavated soil
consistent with state law.**

Do not excavate within 5 ft. of the Well

ORIGIN D:LNRA (608) 257-3501
RENEE V. EXUM
MICHAEL BEST & FRIEDRICH LLP
1 SOUTH PICKNEY STREET
SUITE 700
MADISON, WI 53703
UNITED STATES US

SHIP DATE: 16MAR20
ACTWGT: 1.00 LB
CAD: 108763992/NET4220

BILL SENDER

TO RALPHIE AND KATHRYN ROSSING

323 ST. CLAIRE ST.

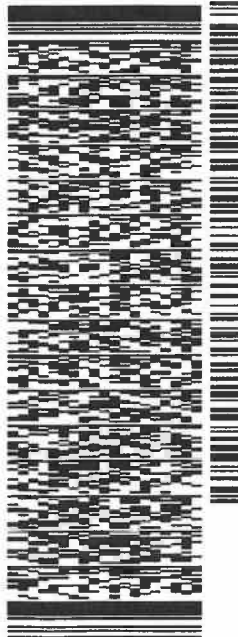
ASHLAND WI 54806

(608) 257-3501

REF: 070086-0205 (RVE 0617)

INV:

DEPT:



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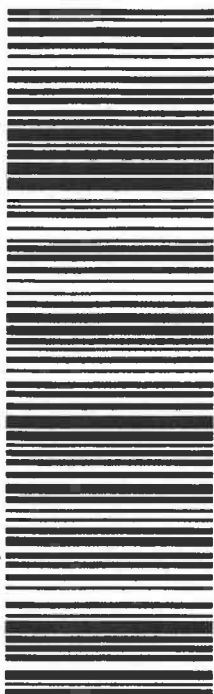
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Dawson, Deborah D (21693)

From: TrackingUpdates@fedex.com
Sent: Tuesday, March 17, 2020 2:19 PM
To: Dawson, Deborah D (21693)
Subject: FedEx Shipment 770027130074 Delivered

Your package has been delivered

Tracking # 770027130074

Ship date:
Mon, 3/16/2020

Renee V. Exum
Michael Best & Friedrich LLP
MADISON, WI 53703
US



Delivery date:
Tue, 3/17/2020 2:14 pm

Ralphie and Kathryn Rossing
323 St. Claire St.
ASHLAND, WI 54806
US



Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number:	770027130074
Status:	Delivered: 03/17/2020 2:14 PM Signed for By: Signature not required
Reference:	070086-0205 (RVE 0617)
Signed for by:	Signature not required
Delivery location:	ASHLAND, WI
Delivered to:	Residence
Service type:	FedEx Priority Overnight®
Packaging type:	FedEx® Envelope
Number of pieces:	1
Weight:	0.50 lb.
Special handling/Services:	Deliver Weekday Residential Delivery
Standard transit:	3/17/2020 by 4:30 pm

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Thank you for your business.