



# DNR'S SUPERIOR LIEN AUTHORITY

## What It Means for Property Owners

PUB-RR-507

Fact Sheet 4

September 2012

### **Purpose of Lien Notification Letters**

The Wisconsin Department of Natural Resources (DNR) has the authority to place a superior lien upon a property under certain circumstances, in accordance with s.292, Wis. Stats. The purpose of the DNR superior lien is to recover expenses incurred for response actions the agency has conducted as a result of the unwillingness or inability of the responsible party to investigate or cleanup a contaminated property. The authority to place a superior lien pertains to response actions, which include site investigations and remedial actions at spill sites, state-lead cleanup sites, Superfund sites and for removing abandoned containers that contain hazardous substances.

Under the statute, s.292.81, Wis. Stats., the DNR is to make an attempt to notify property owners that a superior lien may be placed on a property. The DNR will provide notice, by certified mail, to property owners and any mortgage holders that the DNR may be or will be placing a superior lien against the property in order to recover DNR-incurred expenses.

### **How is the DNR's Lien Superior to Other Liens?**

The DNR lien placed on a property takes precedence to all other liens, except on residential property and federal tax liens. In residential property situations, DNR may file a lien against the property but valid prior liens (i.e. mortgage) would have priority over the DNR superior lien.

### **Two Superior Lien Notifications**

#### **First Notification Letter**

The first letter sent by the DNR notifies owners and mortgagees that a superior lien *may* be placed on the property. The first notice should be sent prior to the DNR incurring any expenses for investigations or cleanup actions. Failure to provide this notice does not impair DNR's ability to file a lien or seek to establish the property owner's liability for DNR-incurred expenses.

If you receive a notification letter that a superior lien may be placed against your property, it will include the following information:

- a brief description of the property where the DNR expects to incur response action expenses under s.292.11, 292.41 or 292.31, Wis. Stats.;
- a brief description of the types of activities that the DNR expects may be conducted at the property;
- a statement that the property owner could be liable for expenses incurred by the DNR;
- a statement that the DNR could file a superior lien against the property in order to recover expenses incurred; and



- the name of the DNR project manager to discuss the matter.

### **Second Notification Letter**

The department should send the second letter before a superior lien is placed against a property where DNR conducted the environmental response actions. The second notice should be sent at least sixty days before the superior lien is filed.

If you receive the second notification letter that a superior lien will be placed against the property for DNR-incurred expenses, it should include the following information:

- a statement of the purpose of the superior lien;
- a brief description of the property to be affected by the superior lien;
- a statement of the expenses incurred by the DNR; and
- the date on or after which the superior lien will be filed.



### **How Will the Lien Notices be Sent?**

In either case, department staff will attempt to obtain all the names and addresses of the property owners and mortgagees through the county register of deeds. A letter will be sent by certified mail to all parties.

If a notification letter is returned undelivered, the DNR will place a notice in a newspaper that would likely give notice to the property owners and mortgagees in the area. The notice to owners and mortgage holders that a superior lien may be placed on the property selected for DNR remediation will appear once a week for three consecutive weeks. The last notice will appear one week before the DNR incurs expenses.

The second notification, where the property owner and mortgagees are informed that a DNR superior lien will be filed, is sent at least sixty days prior to the filing of the superior lien.

There are exceptions where a superior lien may be filed by the department without following all of these steps. Please see s. 292.81, Wis. Stats. for details.

### **For More Information**

To obtain this and any other publications, or to find out more information about the Remediation and Redevelopment Program, please check out our web site at <http://dnr.wi.gov/topic/Brownfields>.

*This document may contain some information about certain state statutes and rules but does not necessarily include all of the details found in the statutes/rules. Readers should consult the actual language of the statutes/rules to answer specific questions.*

*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 Equal Opportunity Office, Department of Interior, Washington, D.C. 20240. This publication is available in alternative format upon request. Please call 608-267-3543 for more information.*