

RR-060

Management of Contaminated Soils and Other Solid Wastes - Wis. Admin. Code §§ NR 718.12 and NR 718.15

Wisconsin Department of Natural Resources
(August, 2016)

The attached document, "Management of Contaminated Soils and Other Solid Wastes - Wis. Admin. Code §§ NR 718.12 and NR 718.15", provides guidance to persons undertaking construction projects where contaminated environmental media (e.g., soil) or a combination of contaminated soil and other solid waste materials (e.g., historic fill) at environmental response action sites are encountered. These situations can include utility and pipeline installation and repair projects, as well as building construction, demolition, or road construction projects. This guidance was developed to assist responsible parties in understanding how to safely manage such materials in compliance with state law.

Management of contaminated soil or other solid wastes encountered during construction or utility projects are considered "response actions" as defined in s. NR 700.03(50), Wis. Adm. Code, Sections NR 718.12(1) and (2), and s. NR 718.15 Wis. Adm. Code, specify the requirements for managing these materials.

This guidance lays out the steps that should be followed by persons responsible for utility or construction projects where excavation or trenching activities involve the management of contaminated media (e.g., soil) or solid waste materials. The process described in this guidance assumes that the contaminated media or waste materials are neither defined as a hazardous waste nor contain a hazardous waste.

This guidance was prepared to parallel the Low Hazard Exemption process guidance prepared by the Waste and Materials Management Program (WA-1645).

Once the 45 day notice period is complete, all comments will be considered, revisions will be made to the guidance as needed, and final guidance will be made available to the appropriate internal and external stakeholders.

Comments related to this draft guidance document should be sent to Judy Fassbender, Judy.Fassbender@wisconsin.gov; (608)266-7278.



Management of Contaminated Soil and Other Solid Wastes

Wis. Admin. Code §§ NR 718.12 and NR 718.15

Purpose

This guidance is intended for use by responsible parties - as well as consultants, utilities, and developers - when excavating minimally contaminated soil and/or other waste materials and those materials may not warrant disposed at an operating, licensed landfill. This guidance describes several exemptions that may be available in such situations.

Related Guidance

The following DNR guidance documents may be useful to responsible parties and other when determining the proper protocol for managing soil, contaminated soil, and other solid wastes, particularly during response actions:

- *Exempting Low-Hazard Wastes from Solid Waste Regulations*, DNR publication WA-1645
- *Obtaining DNR Approval Prior to Use of Imported Soil and Other Fill Materials on Voluntary Party Liability Exemption Sites*, Wis. Stats. § 292.15, DNR publication RR-041
- *Waste Soil Determinations and Identifying Clean Soil*, DNR publication WA-1820
- *PCB Remediation in Wisconsin under One Cleanup Program Memorandum of Agreement*, DNR publication RR-786
- *Guidance for Hazardous Waste Remediation*, DNR publication RR-705

Background

Contaminated soil and other solid wastes that are generated as part of a *response action* under the state's clean-up rules may be eligible for an exemption from state solid waste laws. Wisconsin Administrative Code NR 700 rule series governs the response to and cleanup of hazardous substance discharges and environmental pollution. These exemptions to solid waste management are granted under Wis. Admin. Code §§ NR 500.08(6), NR 718.12 and 718.15. Where contaminated soil or other solid wastes at a response action pose fewer hazards (e.g., lower concentration of substances and smaller volume of materials) to human health and the environment, these exemptions allow for options other than management at an operating facility licensed to take that solid waste.

Applicability

In general, once contaminated soil and other solid waste are excavated they must be managed in accordance with local, state and federal laws. The solid waste exemptions created in Wis. Admin. Code §§ NR 718.12 and 718.15 are intended to streamline the management of contaminated soil and other solid wastes generated as part of an environmental response action.

Response action is defined in Wis. Admin. Code § NR 700.03(50) to mean “any action taken to respond to a hazardous substance discharge or to environmental pollution, including emergency and non-emergency immediate actions, investigations, interim actions and remedial actions.”

A response action site would include any *site or facility* subject to jurisdiction under Wisconsin Statutes (Wis. Stats.) § 292 and Wis. Admin. Code § NR 700 rule series, whether the person has or has not notified the Department of Natural Resources (DNR) of a discharge of a hazardous substance under Wis. Admin. Code § NR 706. Information on reporting a discharge of a hazardous substance to the environment can be found at this web site: <http://dnr.wi.gov/topic/Spills/>.

This document is intended solely as guidance and does not include 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 manner addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

In general, this guidance covers the following two exemptions in Wis. Admin. Code § NR 718 relating to managing certain types of solid waste materials during response actions:

- **NR 718.12 – Applies to contaminated soil management:** Where the contaminated soil will be managed on the same property or at a different property that meets the definition of “site or facility”, and does not require management at an operating, licensed solid waste facility.
- **NR 718.15 – Applies to other solid waste management:** Where contaminated solid waste materials other than contaminated soil are being generated during a response action, the Wis. Admin. Code § NR 718.15 exemption may allow the material to be placed in a safe manner on the site or facility from which they were generated rather than being taken to an operating, licensed solid waste facility. “Other solid wastes” may include contaminated sediments, fly ash, debris, or foundry sand, for example.

DNR Program Responsibility

Unless the contaminated soil or other solid waste is being taken to an operating, licensed solid waste facility, the management of contaminated soil and certain solid wastes as part of a response action must follow the provisions in Wis. Admin. Code § NR 718, entitled “Management of Contaminated Soil or Solid Wastes Excavated During Response Actions” and generally will be reviewed by the Remediation and Redevelopment (R&R) Program project manager, and not the Waste and Materials Management (WMM) Program. Thus, where the DNR appears in this guidance it is referring to the RR program, unless explicitly noting the roles and responsibilities of the WMM program.

There may be limited situations where management of soil excavated from a site/facility other than a response action site/facility would be regulated by the WMM program. An example of that would be where excavated soil containing concentrations greater than background with no known source need to be properly managed. In such a situation, a low-hazard waste grant of exemption may be an option. The WMM program project manager will consider the provisions in Wis. Admin. Code § NR 718, to guide the disposal of non-response action contaminated soil at a site or facility, other than at an operating, licensed landfill. Please refer to the DNR publication WA-1645, *Exempting Low-Hazard Wastes from Solid Waste Regulations*, for more information on low-hazard exemptions.

Eligibility

The following persons *may* be eligible for the exemptions in Wis. Admin. Code §§ NR 718.12 and NR 718.15:

- A person who meets the definition of “**responsible party**” (RP) is eligible to apply for the exemptions. Refer to Text Box A for general guidelines on who may or may not be considered a “responsible party” under Wis. Stats. § 292 and Wis. Admin. Code § NR 700.; or
- “A person who is managing contaminated soil as part of a **utility project or other construction-related work** can generally manage the material in accordance with Wis. Admin. Code § 718.12 (1). However, that person should contact the DNR upon discovery of contaminated soil for direction on how to proceed.” [See note in Wis. Admin. Code § NR 718.12] Persons who fall into this category may refer to the text box on page 4 for a list of DNR regional contacts. Depending on the contaminant levels, volume and location, the materials may need to be taken to a licensed, operating solid waste facility or alternatively, may be handled under a low-hazard waste grant of exemption (See DNR publication WA-1645 for further guidance).

The following scenarios are general examples of where an RP could apply for one or more of the above-referenced exemptions. However, each situation is unique, and the approval of any exemption will be based on the site-specific factors, applicable laws and the DNR’s best professional judgment. The section of this guidance entitled “Restrictions” provides a list of exceptions or qualifiers that may apply. RPs may be eligible for an exemption in the following situations:

- A property where contaminated soil or certain other solid wastes are confirmed through testing to pose fewer hazards (e.g., lower contaminant concentrations) to human health and the environment

and those materials are being generated as part of a Wis. Admin. Code § NR 700 “immediate, interim or remedial action”. Refer to the text box on page 5 for definitions of those terms.

- Properties where contaminated soils or certain other solid wastes are excavated and their presence requires a response action under Wis. Stats. § 292. Responsible parties are subject to Wis. Stats. 292 and Wis. Admin. Code § NR 700 rule series even if the RP has not notified the DNR of a discharge.
- A property where the contaminated soil will be placed meets the definition of “site” or “facility” in Wis. Admin. Code § NR 700.03. [Refer to the text box on page 9 for annotated versions of those definitions].
- A response action site/facility where dewatered, contaminated sediments will be managed and the site/facility is the source of the discharged hazardous substance or environmental pollution that impacted the sediments.
- At a property where materials generated are a mixture of soil and other waste materials (e.g, fly ash), and the majority of the material is considered a “contaminated soil”.

Who is a “responsible party” (RP) under Wis. Stats. § 292?

The exemptions provided in Wis. Admin. Code §§ NR 718.12 and 718.15 are available to any person who meets the definition of a “responsible party” under Wis. Admin. Code § NR 700 and Wis. Stats. § 292. Those persons who meet the definition of “responsible party” (RP) are eligible to apply for the Wis. Admin. Code § 718 exemptions. An RP is also responsible for notifying the DNR of a discharge of a hazardous substance that occurs or is discovered, and responsible to take the necessary response actions under state law.

The Spill Law, Wis. Stat. § 292.11(3), states that...”a person who **possesses or controls** a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state.

In general, the following definitions from Black’s Law Dictionary and citations from Wisconsin cause law may aid in determining who may be considered a person who “possesses, controls or causes” a hazardous substance discharge. However, the DNR will assess each of the following on a case-by-case basis:

Cause a hazardous substance means:

- To be the cause or occasion of; to effect as an agent; to bring about; to bring into existence; to make to induce; to compel (verb).
- Each separate antecedent of an event. Something that precedes and brings about an effect or result. A reason for an action or condition...An agent that brings something about. That which in some manner is accountable for condition that brings about an effect or that produces a cause for the resultant action or state. (noun) (Definitions from *State of Wisconsin v. Chrysler Outboard Marine Corporation*; Black’s Law Dictionary – 6th edition – 1990)
- A person can bring about a discharge of a hazardous substance by not only acting affirmatively, but also by failing to act. (*State of Wisconsin v. Chrysler Outboard Marine Corporation, 219 Wis 2d 130(1988)*)

Possesses a hazardous substance means:

- To have in one’s actual control; to have possession of;
- The fact of having or holding a property in one’s power; the exercise of dominion over property. The right under which one may exercise control over something to the exclusion of all others (i.e., possession) (Black’s Law Dictionary – 8th edition 2004)
- The person owns the property where the hazardous substance discharge is occurring or occurred. (*State of Wisconsin v. Mauthe, 123 Wis. 2d 288 (1985)*)

Controls a hazardous substance means:

- To exercise power or influence over; to regulate or govern; have a controlling interest in. (verb)
- The direct or indirect power to direct the management and policies of a person or entity, whether through ownership of voting securities; by contract or otherwise; the power of authority to manage, direct or oversee. (noun) (Black’s Law Dictionary – 8th edition 2004)

The exemptions in Wis. Admin. Code §§ NR 718.12 and 718.15 do not apply to the following situations:

- Where the generator has made the determination that the soil is considered “clean soil” under Wis. Admin. Code § NR 500.08(2). See text box on page 6 and DNR publication WA-1820.
- Contaminated soils and other solid wastes (e.g., contaminated sediments, fill, and foundry sand) being managed at an operating solid waste facility licensed to accept that solid waste.
- Soils that are contaminated with substances that require them to be managed as a hazardous waste under the Wis. Admin. Code § NR 600 rule series or as a federal, Toxic Substance Control Act (TSCA) regulated waste (i.e., certain concentrations of, or situations involving PCBs).
- Asbestos-containing materials (ACMs) with the intent to dispose of the material at the response action site or facility from which it was excavated. Refer to page 16 “Additional Considerations” for further information on ACMs.
- Management of “other solid waste materials” (e.g., foundry sand or contaminated sediments) at a different response action site or facility from where they were originally discharged. These materials may be eligible for another exemption in Wis. Admin. Code § NR 500 rule series.
- Management of contaminated soil at a property that does not meet the definition of “site” [NR 700.03(57)] or “facility” [NR 700.03(21)], as defined in Wis. Stats. § 292 and Wis. Admin. Code § NR 700.03. Thus, contaminated soils may not be disposed under this exemption at another property that does not meet the definition of a “site” or “facility” – meaning that the contaminated soil may not be disposed of at a property with no environmental contamination impacts (e.g., hazardous substance discharges or environmental pollution).

Regional Contacts

General questions regarding NR 718.12 and 718.15 exemptions should be made to:

- Northeast Region: Kristen Dufresne, Kristen.dufresne@wisconsin.gov, (920) 662-5443
- Northern Region: Chris Saari, Chris.Saari@wisconsin.gov, (715) 685 - 2920
- South Central Region: Mike Schmoller, Michael.Schmoller@wisconsin.gov, (608) 275-3303
- Southeast Region:
 - Nancy Ryan, Nancy.Ryan@wisconsin.gov, (414) 263 - 8550
 - Paul Grittner, Paul.Grittner@wisconsin.gov, (414) 263-8541
 - Linda Michalets, Linda.Michalets@wisconsin.gov, (414) 263-8757
- West Central Region: Matt Thompson, Matthew.Thompson@wisconsin.gov, (715) 839-3750

Waste Determination Process

State law requires that persons who generate a solid waste material make a waste determination under Wis. Admin. Code § NR 500. The WMM program fact sheet, entitled *Waste Soil Determinations and Identifying Clean Soil*, WA-1820, lays out the criteria to consider and documentation requirements for making a waste determination. Even at a response action site, a waste determination is required so that the proper handling of any materials generated – whether as part of a cleanup, utility work or development activities - are managed in a manner protective of the human health, safety, welfare and the environment. There may be response action sites/facilities where a waste determination renders some of the soil that is generated as “clean soil”, some as having to be managed as a “solid waste” and other materials as having to be managed as a “hazardous waste.”

The DNR recommends that RPs document and maintain a record of their solid waste determinations, even though it is not required by state law. [Note: Wis. Admin. Code § NR 600 does require the generator to maintain documentation of a waste determination involving hazardous waste.] Where RPs or others are importing soil or other solid wastes to a site or facility participating in the Voluntary Party Liability Exemption process, RPs should follow the soil testing procedures in DNR’s guidance *Obtaining DNR Approval Prior to Use of Imported Soil and Other Fill Materials on Voluntary Party Liability Exemption Sites*, Wis. Stats. § 292.15 DNR publication RR-041.

NR 718 Exemption Options

An RP undertaking a response action may be eligible for one or more of the exemptions in Wis. Admin. Code §§ NR 718.12 and 718.15. Any soil excavated as a result of these response actions must be stored in accordance with s. NR 718.05, Wis. Adm. Code, unless the exemption in Wis. Admin. Code NR 708.05(5)(b) applies. The requirements and process for being granted an exemption will differ based on the type of response action being undertaken and the exemption criteria that apply to those NR 700 actions. The “NR 718 Quick Guide” in Appendix 1 provides a summary of the three types of exemptions available to manage contaminated soil or other solid waste at a site or facility. Wis. Admin. Code §§ NR 718.12 and 718.15 provides for these exemptions:

1. **NR 718.12 (1) Exemption for “immediate actions” involving contaminated soil** – this exemption is *generally* considered a self-implementing option. If the RP’s actions meet the criteria in Wis. Admin. § NR 718.12(1) they do not need the DNR’s approval to proceed with the management of the contaminated soil.
2. **NR 718.12 (1) and (2) Exemption for “interim or remedial actions” involving contaminated soil** – this exemption requires DNR review and approval *before* an interim or a remedial action may be taken pursuant to the exemption.
3. **NR 718.15 Exemption for “interim or remedial actions” involving other solid waste** - this exemption requires a DNR review and approval *before* an interim or a remedial action may be taken pursuant to the exemption.

It is the responsibility of the RP to sufficiently document for the DNR’s approval how the waste characteristics and proposed management approach will not cause a discharge of a hazardous substance to the environment or result in environmental pollution under Wis. Stats. § 292, or cause a violation of other environmental laws, such as Wis. Stats. §160 and Wis. Admin. Code § NR 140 relating to groundwater quality.

Response Action Definitions

The following definitions are from Wis. Stats. § 292 and Wis. Admin. Code § NR 700.03:

"Immediate action" means a response action that is taken within a short period of time after the discharge of a hazardous substance occurs, or after the discovery of a hazardous substance discharge or environmental pollution, to halt the discharge, contain or remove discharged hazardous substances or remove contaminated environmental media, in order to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to air, lands and waters of the state and to eliminate any imminent threat to public health, safety, or welfare that may exist. This term includes both emergency and non-emergency immediate actions. [NR 700.03(28)]

"Interim action" means a response action taken to contain or stabilize a discharge of a hazardous substance, in order to minimize any threats to public health, safety, or welfare or the environment, while other response actions are being taken or planned for the site or facility. [NR 700.03(29)]

"Remedial action" or "remedy" means those response actions, other than immediate or interim actions, taken to control, minimize, restore, or eliminate the discharge of hazardous substances or environmental pollution so that the hazardous substances or environmental pollution do not present an actual or potential threat to public health, safety, or welfare or the environment. The term includes actions designed to prevent, minimize, stabilize, or eliminate the threat of discharged hazardous substances, and actions to restore the environment to the extent practicable and meet all applicable environmental standards. Examples include storage, disposal, containment, treatment, recycling, or reuse, and any monitoring required to assure that such actions protect public health, safety, and welfare and the environment. [NR 700.03(48)]

“Response” or “response action” means any action taken to respond to a hazardous substance discharge or to environmental pollution, including emergency and non-emergency immediate actions, investigations, interim actions and remedial actions. [NR 700.03(50)]

Guidance on and Definitions for Types of Soil or Other Materials

The following information is from the WMM program's *Waste Soil Determinations and Identifying Clean Soil*, DNR publication WA-1820.

"Clean soil" is a term used in Wis. Admin. Code § NR 500.08(2)(a) to categorize a type of soil that is eligible for a clean fill exemption under state solid waste law.

Soil that is excavated to be discarded is a solid waste. Because all contaminated soil must be managed as a solid waste, it is in the best interest of the generator to determine whether the soil may be eligible for use as clean fill or needs to be disposed of in a more secure manner to prevent environmental pollution. Clean soil can be used as exempt clean fill without DNR approval if done so in a manner and location consistent with the provisions in ss. 504.04(3)(c) and 504.04(4)(a) through (f), Wis. Adm. Code, as discussed below. Clean soil is referenced in the "clean fill" exemption (s. NR 500.08(2)(a), Wis. Adm. Code), but not defined.

For further guidance on what may be considered by the DNR to be clean soil, please consult DNR's guidance entitled *Waste Soil Determinations and Identifying Clean Soil*, DNR Publication WA-1820.

What constitutes "clean soil" is a case-by-case determination made by the generator (i.e., the person excavating the material). To assist external parties and DNR staff, the following criteria may be used by persons excavating soil to assist with making soil management decisions. In general, the DNR considers soil that meets the factors listed below to be "clean soil" and exempt under Wis. Admin. Code § NR 500.08(2)(a).

Soil is likely considered clean soil if the sampling data, where it exists, meets all of the following criteria:

- Does not contain detectable concentrations of compounds that are not naturally occurring (e.g., volatile organic compounds (VOCs), polychlorinated biphenyls (PCBs), pesticides, and other contaminants of concern);
- Contains naturally occurring compounds, at concentrations that are at or below Wisconsin background threshold values (Wisconsin BTVs for select parameters are listed in the table found later in this document), and
- If it contains PAHs, which may or may not be naturally occurring, they are present at concentrations below the non-industrial direct contact and groundwater protective residual contaminant levels (RCLs) calculated using default parameters as specified in ch. NR 720, Wis. Adm. Code, and DNR guidance document RR 890.

Parameter	mg/kg	Parameter	mg/kg
Aluminum (Al)	29,000	Iron (Fe)	34,000
Arsenic (As)	8	Lead (Pb)	52
Barium (Ba)	360	Magnesium (Mg)	8,300
Cadmium (Cd)	1	Manganese (Mn)	2,900
Calcium (Ca)	15,000	Nickel (Ni)	31
Chromium (Cr), Total	44	Strontium (Sr)	55
Cobalt (Co)	22	Vanadium (V)	85
Copper (Cu)	35	Zinc (Zn)	150

Background threshold values are non-outlier parameter maximum levels in Wisconsin surface soils from the USGS Report "Distribution and Variation of Arsenic in Wisconsin Surface Soils, With Data on Other Trace Elements" at: <http://pubs.usgs.gov/sir/2011/5202>.

The remaining definitions listed below are from Wis. Stats. § 292 and Wis. Admin. Code § NR 700 rule series, as noted:

"Contaminated sediment" means sediment that contains a hazardous substance. [Wis. Stats. § 292.01(1s)]

"Contaminated soil" means soil which contains one or more hazardous substances or environmental pollution and which is not a hazardous waste as defined in s. NR 660.10 (52) or 42 USC. [Wis. Admin. Code § NR 718.03(5)]

"Sediment" means particles in the bed of navigable water up to the ordinary high-water mark that are derived from the erosion of rock, minerals, soil, and biological materials and from chemical precipitation from the water column and that are transported or deposited by water. [Wis. Stats. § 292.01(17g)]

"Soil" means unsaturated organic material, derived from vegetation and unsaturated, loose, incoherent rock material, of any origin, that rests on bedrock other than foundry sand, debris and any industrial waste. [Wis. Admin. Code § NR 700.03(58)]

NR 718.12(1) Exemption: Immediate Actions Involving Management of Contaminated Soil at a Response Action Site or Facility

Eligibility

RPs undertaking immediate actions involving contaminated soil under Wis. Admin. Code § NR 708.05 may be eligible for the exemption in Wis. Admin. Code § NR 718.12(1)¹. The RP is generally eligible if:

1. The response action meets the definition of an “immediate action” under Wis. Admin. Code § NR 708.05.
2. Actions will be conducted in accordance with Wis. Admin. Code § NR 700 to 754.
3. Materials being managed are contaminated soil that are proposed to be managed on the response action site/facility from which they were excavated or at another property that meets the definitions of “site” or “facility” in Wis. Admin. Code § NR 700.03.
4. The response action does not result in the excavation and disposal, treatment or storage of more than 100 cubic yards of contaminated soil, debris, sediment or a combination of these media from a single site or facility, as specified in Wis. Admin. Code NR § 708.05(3)(b)2.
5. Locational criteria in Wis. Admin. Code § NR 718.12(1)(c) are met, or a written exemption is granted in writing by the DNR from those locational criteria. [Refer to the text box on page 13 for locational criteria and exemptions]
6. The placement of the contaminated soil will not pose a threat to public health, safety, welfare and the environment. In determining this, the RP should ensure that:
 - a. **SOIL.** Soil sampling demonstrates that the contaminated soil does not attain or exceed the applicable Wis. Admin. Code § NR 720 (the “NR 720”) soil clean-up standards for the type of land use classification (i.e., industrial or non-industrial as specified in Wis. Admin. Code § NR 720.05(5)) for both direct contact and the groundwater migration pathways. In addition:
 - i. When an RP proposes to take contaminated soil from one site or facility to another site or facility, and the concentration of substances in the contaminated soil exceeds the NR 720 non-industrial soil direct contact standards but not the industrial RCLs or groundwater RCLs, the receiving site or facility must meet the definition of “industrial land use” in Wis. Admin. Code § NR 700.03 (28m), and that site or facility must be zoned as “industrial.”
 - ii. The concentrations of substances in the contaminated soil that will be managed and the land use of the site/facility are such that no cap, cover or performance standard would be otherwise required by DNR under Wis. Admin. Code § NR 720.
 - b. **GROUNDWATER.** Soil sampling and location of placement of contaminated soil will not result in an attainment or exceedance of groundwater quality standards in Wis. Stats. § 160 and Wis. Admin. Code § NR 140.
 - c. **VAPOR.** No vapor intrusion would result from the placement of the contaminated soil.
 - d. **OTHER.** All other pathways of concern at the site or facility (e.g, surface water and sediment) are protective of public health, safety, welfare and the environment.

Documentation

While the RP does not need pre-approval from the DNR to conduct an immediate action involving contaminated soils in accordance with Wis. Admin. Code § NR 718.12(1), the RP is required to:

- Conduct sampling of the contaminated soil in accordance with the requirements in Wis. Admin. Code § NR 718.12(1)(e), unless the DNR has approved an alternate sampling and analysis proposal. [Refer to text box on page 11];

¹ A person who is managing contaminated soil as part of a utility project or other construction-related work can generally manage the material in accordance with Wis. Admin. Code § NR 718.12 (1). Depending on the contaminant concentrations, volume and location, the materials may need to be taken to a licensed, operating solid waste facility or alternatively, may be handled under a low-hazard waste grant of exemption. (See DNR publication WA-1645 for further guidance.)

- Report all analytical results to the DNR within 10 business days after receiving the sampling results, in accordance with Wis. Admin. Code § NR 718.12(1). See DNR Form [in development]; and
- Submit written documentation to the DNR within 45 days of the completion of the immediate action, including the Wis. Admin. Code § 718.12(1) soil management, in accordance with the documentation requirements in Wis. Admin. Code § NR 708.05(6). This submittal should include the location of the site or facility where the material was excavated *and* the location of the site or facility where the contaminated soil was placed. [Refer to the text box on this page (8) for details of what should be reported to the DNR as part of the Wis. Admin. Code § NR 708.05(6) submittal.]

Documentation of Immediate Actions Involving Management of Contaminated Soil Under Wis. Admin. Code § NR 718.12(1)

Responsible parties that undertake immediate actions are required to prepare and submit written documentation to the DNR describing the actions taken at their site or facility and the outcome of those actions. This report should be submitted to the DNR within 45 days after the completion of the Wis. Admin. Code § NR 718.12(1) contaminated soil exemption work. The report should include the required information on the site or facility where the contaminated soil was generated from and the location of the site or facility where it was placed. This documentation is required pursuant to Wis. Admin. Code § NR 708.05(6)(c).

The written documentation shall include all of the following:

1. A statement expressing the purpose of the submittal and the desired DNR action or response.
2. Name, address and telephone number of the responsible parties.
3. Location of the site(s) or facility(ies), or discharge incident, including street address; quarter–quarter section, township, range, and county; and the location information specified in Wis. Admin. Code § NR 716.15 (5) (d); latitude and longitude, and legal description of lot, if located in platted area.
4. Any information required under Wis. Admin. Code § NR 706 that has not been provided to the DNR previously.
5. The type of engineering controls, treatment or both and the effluent quality of any permitted or licensed discharge.

The type, total volume and final disposition of the discharged hazardous substance, environmental pollution and contaminated materials generated as part of the immediate action, including legible copies of manifests, receipts and other relevant documents. This should include a narrative description as to how each of the locational requirements in Wis. Admin. Code§ NR 718.12(1) were met.

Definition of “Site” or “Facility”

Contaminated soils may be excavated from one response action site or facility and managed in accordance with the exemption under Wis. Admin. Code §§ NR 718.12 (1) and/or (2) on either: (1) the same site or facility from which the contaminated soil was excavated; or (2) another location that meets the definition of “site” or “facility”. This guidance provides annotated definitions of “site” and “facility” which are summarized below; these definitions are for guidance purposes only and should not be relied on to make regulatory decisions. These terms are more fully defined in both Wis. Stats. § 292.01 and Wis. Admin. Code § 700.03. [Note: Italics denotes statutory or administrative code definitions.]

“Site” means:

1. Any “*waste site*” as defined in Wis. Stats. §. 292.01 (21) and Wis. Admin. Code § NR 700.03(56)(a). A “waste site” is “*any site, other than an approved facility, an approved mining facility or a non-approved facility, where waste is disposed of regardless of when disposal occurred or where a hazardous substance is discharged before May 21, 1978.*” In essence, this type of property would be an unlicensed, historical solid waste site; or
2. “*any area where a hazardous substance has been discharged,*” as defined in Wis. Admin. Code § NR 700.03(56)(b). This would include any site listed in the Bureau for Remediation and Redevelopment Tracking System (BRRTS) as a Spill, an Environmental Repair Program (ERP) site, a Leaking Underground Storage Tank (LUST) site, or a Voluntary Party Liability Exemption (VPLE) site.

“Facility” means:

An “approved facility” as defined in s. 289.01 (3), Stats., includes an “*approved mining facility*” as defined in s. 292.01 (1m), Stats., and a “*non-approved facility*” as defined in s. 289.01 (24), Stats.

NOTE: A Wis. Admin. Code § NR 718.12 exemption is only applicable in the situation when the contaminated soil that is generated will not be managed at an operating, licensed “facility” approved to accept that waste. In other words, no solid waste exemption is required if the contaminated soil will be managed at an operating, licensed facility approved to accept that waste.

For the purposes of a Wis. Admin. Code§ NR 718.12 exemption, it is assumed that the DNR is granting a one-time exemption to take contaminated soil to the type of “facility” listed below. Since an exemption is needed to undertake that type of response action, these facilities listed below are no longer considered an operating, licensed facility approved to accept that type of waste on a regular basis. This includes, but is not limited to, the following types of “facilities” defined under Wis. Stats. §§ 289, 293 and 295:

- NR 700.03 Note a licensed “solid or hazardous waste *disposal* facility with an approved plan of operation”;
- a licensed “approved mining facility” used for the disposal of solid waste resulting from mining, or “mining waste site”; or
- a “non-approved facility” such as “a licensed solid or hazardous waste disposal facility which is not an approved facility.”

Interim or Remedial Actions Taken at Response Action Sites: NR 718 Exemptions for the Management of Contaminated Soils or Other Solid Wastes

Overview

RPs undertaking interim and/or remedial actions involving the management of contaminated soil may be eligible for the Wis. Admin. Code §§ NR 718(1) and (2) or NR exemption as an alternative approach to taking that material to an operating solid waste facility licensed to accept that waste. Additionally, if “other solid waste” is

proposed to be managed on the site or facility from which it was excavated, the exemption in Wis. Admin. Code § NR 718.15 may be an alternative to taking the material to an operating, licensed solid waste facility.

The RP must receive written, prior approval from the DNR to utilize the exemptions in Wis. Admin. Code §§ NR 718.12(1) and (2) or NR 718.15. An applicant should provide a complete application submittal to the DNR at least 7 days prior to taking the proposed actions, and receive approval prior to taking those actions. However, the DNR may take a longer period of time to review a submittal. Please refer to “Application Process” section of this guidance for more information on planning and timing of your projects.

NR 718.12(1) and (2) Exemption: Interim and Remedial Actions Involving Management of Contaminated Soil at a Response Action Site or Facility

Eligibility

The DNR uses professional judgment in assessing the factors established in law to determine if and when a Wis. Admin. Code §§ NR 718.12(1) and (2) exemption can be issued. RPs may apply for this exemption for contaminated soils when the proposed interim or remedial action complies with the following:

1. The proposed action meets the definition of an “interim action” or “remedial action” under Wis. Admin. Code § NR 700 administrative rule series.
2. Actions will be conducted in accordance with Wis. Admin. Code §§ NR 700 to 754.
3. Materials being managed are contaminated soil that are proposed to be managed on the site or facility from which they were excavated or at another location that meets the definition “site” or “facility” under Wis. Admin. Code § NR 700.03.
4. Locational criteria in Wis. Admin. Code§ NR 718.12(1)(C) are met, or a written exemption is granted by the DNR from those locational criteria. [See Text Box F for locational criteria and locational criteria exemption]
5. The placement of the contaminated soil will not pose a threat to public health, safety, welfare and the environment. In determining this, the RP should ensure that:
 - a. **SOILS.** A cap, cover or performance standard would be protective of direct contact or groundwater migration concerns, in accordance with Wis. Admin. Code §§ NR 140, NR 718.12 (2) and NR 720.
 - b. **GROUNDWATER.** Soil sampling and location of placement of contaminated soil will not result in an attainment or exceedance of groundwater quality standards in Wis. Stats. § 160 and Wis. Admin. Code § NR 140.
 - c. **VAPOR.** No vapor intrusion would result from the placement of the contaminated soil.
 - d. **OTHER.** All other pathways of concern at the site or facility (e.g., surface water and sediment) are protective of public health, safety, welfare and the environment.

NR 718.15 Exemption: Interim or Remedial Actions Involving Management of Other Solid Waste (i.e., not including contaminated soil) at a Response Action

Eligibility

The DNR uses professional judgment in assessing the factors established in law to determine if and when a Wis. Admin. Code §§ NR 718.15 exemption can be issued. RPs may apply for this exemption for solid wastes generated as part of an interim or remedial action (other than contaminated soils) when the proposed interim or remedial action complies with the following:

1. The proposed action meets the definition of an “interim action” or “remedial action” under Wis. Admin. Code § NR 700 administrative rule series.

2. Actions will be conducted in accordance with Wis. Admin. Code §§ NR 700 to 754².
3. The material is a solid waste (other than contaminated soil) and that waste is proposed to be placed at the “site or facility” - as defined in Wis. Admin. Code § NR 700.03 – from which it was excavated as part of a response action. See “Additional Considerations” section on page 16 for more information on exceptions to this general rule, including limitations on the management of asbestos-containing materials.
4. Locational criteria in Wis. Admin. Code § NR 718.12(1)(c) are met, or a written exemption is granted by the DNR from those locational criteria. [See text box on page 13 for locational criteria and locational criteria exemption.]
5. The placement of the other solid waste will not pose a threat to public health, safety, welfare and the environment. In determining this, the RP should ensure that:
 - a. **SOLID WASTE.** A cap, cover or performance standard would be protective of direct contact or groundwater migration concerns, in accordance with Wis. Admin. Code §§ NR 140, NR 500 rule series, NR 718.12 (1) and (2) and NR 720. There may be other laws that prohibit the excavation and disposal of other solid waste materials (e.g., foundry fill contaminated with asbestos-containing materials) on the site or facility. [See the “Additional Conditions” section of the guidance]
 - b. **GROUNDWATER.** Soil sampling and location of placement of contaminated soil will not result in an attainment or exceedance of groundwater quality standards in Wis. Stats. § 160 and Wis. Admin. Code § NR 140.
 - c. **VAPOR.** No vapor intrusion would result from the placement of the contaminated soil.
 - d. **OTHER.** All other pathways of concern at the site or facility (e.g, surface water and sediment) are protective.

Sampling Requirements for Wis. Admin. Code §§ NR 718.12 and 718.15

The DNR strongly encourages RPs considering less sampling and analysis than what is required in Wis. Admin. Code § NR 718.12(1) to contact the DNR in advance for pre-approval of such an approach. Unless an alternative sampling methodology or protocol is approved by the DNR, responsible parties shall sample and analyze all contaminated soil and other solid waste in accordance with all the following requirements:

1. For each site or facility, one sample shall be collected for analysis for each 100 cubic yards of contaminated soil, for the first 600 yards with a minimum of 2 samples being collected. For volumes of contaminated soil that exceed 600 cubic yards, one sample for each additional 300 cubic yards shall be collected for analysis.
2. Samples shall be analyzed for all contaminants that were detected during a site investigation. In addition, available information shall be evaluated to determine what contaminants may have been discharged at the site or facility and samples shall be analyzed for those contaminants that are expected to be present based on past land use. [NOTE: Typical analytical parameters include volatile organic compounds (VOCs), polycyclic aromatic hydrocarbons (PAHs) and eight RCRA metals, but the actual parameters selected for analysis depends upon knowledge of the past uses of the site.]
3. All soil samples shall be collected from areas most likely to contain residual soil contamination.
4. Responsible parties shall report all analytical results to the DNR in writing within 10 business days after receiving the sampling results.

² RPs proposing to manage “other solid waste” as part of an interim or remedial action are subject to the applicable provisions of the Wis. Admin. Code § NR 700 rule series, including the provisions of Wis. Admin. Code § NR 718.12 if they are requesting an exemption under Wis. Admin. Code § NR 718.15.

Application Process: NR 718 Exemptions for Interim and Remedial Actions Involving Contaminated Soil or Other Solid Wastes

Where approval of a Wis. Admin. Code § NR 718 exemption is required, the DNR will base its decision on the requirements in state law and professional judgment. By the DNR issuing an approval for one or more of these exemptions, the DNR is using its discretion to establish an alternative regulatory approach (i.e., full or partial approval of a proposal, possibly with added conditions) appropriate for the relatively low risk posed by the planned disposal of the contaminated soil or other solid waste. The DNR's discretion under Wis. Stats. § 292 and Wis. Admin. Code § NR 718 may be used to limit proposed projects, after considering such factors as the receiving site's size, locational requirements, type and concentration of contaminants and similarity of this project compared to other regulated facilities such as landfills.

The DNR relies on the content and quality of the information submitted by the applicant to conduct a timely review and issue an approval. Applicants are encouraged to discuss their project with the DNR before submitting an exemption request for an interim or remedial action, which could help expedite the project. The submittal of a complete application at the outset of the initial request should receive faster review by the DNR. A detailed description of the content of the submittal can be found on page 18.

RPs are required to obtain review and approval by the DNR of a soil or waste management plan prior to managing the materials under Wis. Adm. Code § NR 718.12(1) and (2) or NR 718.15. In order to comply with the exemption criteria, the RP is required to do all of the following at a minimum:

- Conduct sampling of the contaminated soil or other solid waste material in accordance with the requirements in Wis. Admin. Code § NR 718.12(1)(e). [Refer to text box on page 10.]
- Document that the person taking the samples meets the qualifications under Wis. Admin. Code §§ NR 712.05(3) and (4) and that all documents submitted to the DNR for the interim or remedial action include the appropriate certifications under Wis. Admin. Code NR 712.09.
- **SUBMITTAL:** Submit a **Wis. Admin. Code § NR 718 exemption application package** to the DNR at least 7 days³, and preferably 60 days, prior to taking the proposed action. The application package should include:
 - DNR's "Technical Assistance, Environmental Liability Clarification or Post-Closure Modification Request Form, accessed at: <http://dnr.wi.gov/files/PDF/forms/4400/4400-237.pdf>;
 - A soil or waste management plan, including all the applicable information required in Wis. Admin. Code §§ NR 718.12(2)(b) through (c);
 - Sampling and analysis results required under Wis. Admin. Code § NR 718.12(1);
 - The information required in Wis. Admin. Code § NR 718.12(1) and (2), which is summarized in the checklist on page 18;
 - The appropriate Wis. Admin. Code § NR 749 fees [Refer to the text box on page 14.]; and
 - The information requested in the "Additional Considerations" section of this guidance on page 16 if the site or facility where the material is proposed to be disposed of is regulated as a non-metallic mine.
- **DNR RESPONSE:** Receive DNR approval prior to conducting any of the proposed contaminated soil or other solid waste management activities;
- **CONTINUING OBLIGATIONS:** Comply with notification and continuing obligation requirements in Wis. Admin. Code § NR 718.12(2)(d) and (e) if the activities proposed in the soil or waste management plan will result in the need for a *continuing obligation* at the response action site or facility or receiving site or facility. The RP shall comply with the notification, fee submittal, and database documentation requirements of Wis. Admin. Code §§ NR 718.12 and NR 725. Requirements relating to continuing obligations are more fully explained in the next section of this guidance;

³ Wis. Admin. Code § NR 718.12(2)(a) requires at least a 7 day notice.

- **DOCUMENTATION:** Submit written documentation to the DNR within 60 days⁴ of the completion of the interim involving engineering controls or barriers (e.g., caps or covers) or remedial action in accordance with the requirements in Wis. Admin. Code § NR 724.15, including the documentation of activities conducted at the “site” or “facility” under the Wis. Admin. Code § NR 718.12 or NR 718.15 exemption. The DNR may require RPs to submit written documentation in accordance with Wis. Admin. Code § NR 724.15 for other types of interim actions taken on a site-by-site basis. Where the documentation requirements of Wis. Admin. Code § NR 724.15 do not apply, the RP should follow the documentation requirements for interim actions in Wis. Admin. Code § NR 708.15. This submittal would include documentation of the contaminated soil management activities conducted on the receiving site or facility even if the receiving site or facility is not the response action site from which the contaminated soil was generated.

Locational Requirements

Responsible parties may not place or replace excavated contaminated soil or other solid waste excavated as part of an immediate, interim or remedial action in the following areas unless the DNR has granted a written exemption pursuant to Wis. Admin. Code § NR 718.12:

- Within a floodplain.
- Within 100 feet of any wetland or critical habitat area.
- Within 300 feet of any navigable river, stream, lake, pond, or flowage.
- Within 100 feet of any on-site water supply well or 300 feet of any off-site water supply well.
- Within 3 feet of the high groundwater level.
- At a depth greater than the depth of the original excavation from which the contaminated soil was removed.

Exemption Requests from Locational Requirements

Where a written grant of exemption is being requested by the RP, it is the responsibility of the RP and his/her consultant to provide an *adequate rationale and supporting documentation* to the DNR that demonstrates why granting a Wis. Admin. Code § NR 718.12(1) locational criteria exemption would not cause a threat to public health, safety, welfare and the environment.

The RP should provide the DNR the following information - as specified in Wis. Admin. Code §§ NR 718.12(1)(c) and (d) - so that the DNR may make a determination on the RP’s exemption request from locational requirements:

- Sufficient information as to how relevant state and federal laws, such as the Wis. Admin. Code §§ NR 700 to 754 rule series, would not be violated by granting the exemption.
- A description of waste characteristics and quantities.
- Adequate explanation of the geology and hydrogeology of the area, including information from well logs and well construction records for nearby wells.
- Rationale as to the unavailability of other environmentally suitable alternatives.
- The RP should clearly explain in the request how the placement of the contaminated soil or other solid waste materials will not pose a threat to public health, safety, welfare or the environment given all exposure and migration pathways of concern, including direct contact exposure (e.g., Wis. Admin. Code § NR 720), vapor intrusion, ground water, surface water, sediment and any other relevant pathways in the event the DNR grants the locational requirement exemption.

RPs should use DNR form [in development] to request this exemption for immediate, interim and remedial. For RPs requesting an exemption while conducting an interim or remedial action, that request form can be incorporated into the overall NR 718.12 exemption request package.

⁴ Wis. Admin. Code § NR 724.15(1) requires submittal of construction completion documentation for remedial actions, as well as interim actions involving on-site engineering controls or barriers (e.g., caps or covers).

Continuing Obligations, Fees and Database Tracking For NR 718 Exemptions Related to Contaminated Soil or Other Solid Waste

Continuing obligations can be site-specific conditions (e.g., a cap or cover) or a law (e.g., solid waste law) that requires the property owner or RP to maintain or comply with the long-term conditions placed on the site or facility due to residual contamination remaining at the end of the response action. Continuing obligations may be triggered at a site or facility, pursuant to Wis. Stats. § 292.12, and relevant chapters of Wis. Admin. Code § NR 700 rule series. A soil or waste management plan may be submitted to the DNR as part of an interim or remedial action. Where the implementation of a soil or waste management plan required under Wis. Admin. Code §§ NR 718.12 or NR 718.15 results in the need for a continuing obligation (e.g., an engineering control or cover, or use of industrial zoning), as specified in Wis. Admin. Code § NR 725.05(2), the RP shall:

1. Provide written notice to anyone meeting the criteria in Wis. Admin. Code § NR 725.05(1) at least 30 days prior to submitting the soil or waste management plan to the DNR.
2. Send the notification letters required in Wis. Admin. Code §§ NR 718.12(2)() in accordance with the procedures in Wis. Admin. Code § NR 725.07.
3. Provide to the DNR all applicable database documentation requirements as specified in Wis. Admin. Code §§ NR 726.11 (2) through (6).
4. Provide the appropriate Wis. Admin. Code § NR 749 database listing fee.

The DNR will list and track the activities at these sites or facilities in the Bureau for Remediation and Redevelopment Tracking System on the web (BOTW). The database can be accessed at: <http://dnr.wi.gov/topic/Brownfields/clean.html>. Information tracked would include the location of the response action site as well as the location any other site or facility where contaminated soil has been disposed of through the Wis. Admin. Code § NR 718 exemption process.

NR 749 Fees for Review of Wis. Admin. Code §§ NR 718.12 Soil or NR 781.15 Waste Management Plans

(If soil is managed on both the source property and on a different site or facility, fees from all columns apply)

NR 749 Fees for Actions and Soil Management Plans (SMP) submitted under NR 718.12 and NR 718.15		Soil or Waste Managed on the Source Property (of "site" or "facility")		Soil or Waste Managed on a Different "Site" or "Facility"	
Action	Action Fee	SMP Fee	GIS Fee	SMP Fee	GIS Fee
Immediate Actions: NR 708.05 (6), if SMP submitted in compliance with NR 718.12 (1)	\$350*	No fee	No fee	No fee	No fee
Interim Actions with SMP for NR 718.12 (1) and (2) or NR 718.15	\$700	0	0	\$700	\$300
Remedial Action Plan approval with SMP (NR 718.12(1) and (2) or NR 718.15) without residual soil CO	\$1050	0	0	\$700	No fee
Remedial Action Plan approval for site with residual soil CO, with SMP	\$1050	0	\$300	\$700	\$300
SMP submitted separately from RAP, with residual soil CO	NA	\$700	\$300	\$700	\$300
Closed Sites: Post-closure action with SMP, no residual soil CO at source property	NA	\$700	\$300	\$700	\$300
Closed Sites: Post-closure action, with residual soil CO, with SMP	\$1050	0	\$300	\$700	\$300
SMP submitted separately from post-closure action, residual soil CO on source property	NA	\$700	\$300	\$700	\$300

*Fee applies only if a NFA letter is requested.

NA means Not Applicable

Soil and Waste Management at Closed Response Action Sites

No Continuing Obligations Affected

Wisconsin has thousands of sites where the DNR has granted case closure under the Wis. Admin. Code § NR 700 rules series. The management of contaminated soil and other solid waste at these closed sites may occur as a normal course of reuse and development activities. To determine if continuing obligations may have been placed on a property, case closure letters may be accessed at: <http://dnr.wi.gov/topic/Brownfields/clean.html>. Prior to excavating soil or other solid wastes it is important to understand if there are any conditions that were placed on the site requiring notification to the DNR and possibly DNR approval to proceed with a proposed action.

Where a proposed action at a closed site involves the management of contaminated soil or other solid waste material that *will not impact an existing continuing obligation* (e.g., an engineering control or cover) the person undertaking the actions may be eligible for one or more of the exemptions in Wis. Admin. Code §§ NR 718.12(1), 718.12(2) and/or NR 718.15. The RP should determine if the proposed actions meet the definition of an immediate action under Wis. Admin. Code§ NR 718.12(1), or should be classified as an interim or remedial action that may be eligible for an exemption under Wis. Admin. Code §§ NR 718.12(1) and (2) and/or Wis. Admin. Code § NR 718.15.

One or More Continuing Obligations Affected

In the situation where the proposed action *will impact one or more of the existing continuing obligations* (e.g., engineering control or cover) as identified in the case closure letter, such an action would be considered an “interim” or “remedial” action. The case closure letter for the site or facility should state whether or not notification to the state is necessary prior to taking certain actions. The property owner would need to notify the DNR in writing at least 45 days in advance of any action, as required by Wis. Admin. Code § NR 727.07. Refer to the adjacent text box for a listing of those continuing obligations that if impacted by the proposed actions require DNR notification and pre-approval.

Such notification should include sufficient information to describe the proposed actions at the property, and how the proposed action will be conducted in accordance with all applicable laws. The DNR recommends that the RP submit the Wis. Admin. Code§ NR 718.12(1) and (2) exemption application package as previously described in this guidance, including the soil management plan, as outlined in the “interim and remedial action” section in this guidance. When submitting the DNR’s “Technical Assistance, Environmental Liability Clarification or Post-Closure Modification Request Form, accessed at:

<http://dnr.wi.gov/files/PDF/forms/4400/4400-237.pdf>, the property owner should identify that this is both a post-closure modification

Post-Closure Continuing Obligations that Require Advance Notice to the DNR

At sites or facilities with the following types of “continuing obligations”, if a *proposed* soil and/or solid waste excavation action would impact the continuing obligations (C.O.s) listed below, then the RP must provide the DNR at least 45 day notice prior to taking the proposed action. [See Wis. Admin. Code § NR 727.07.] Those C.O.s are:

- (1) Removal of a building, cover, including a soil cover, barrier, or engineered containment structure or a portion thereof.
- (2) Removal of a structural impediment, including any structural impediment that prevented completion of the investigation or remediation.
- (3) Change from industrial to non-industrial land use, including where soil standards applied at closure were based on industrial land use exposure assumptions.
- (4) Change in use of a vapor mitigation system, including a passive or active vapor mitigation system.
- (5) Change in use from non-residential setting to residential setting, including where vapor risk screening levels were based on non-residential setting exposure assumptions at closure.
- (6) Construction of a building over residual soil or groundwater contamination by volatile compounds, including where a building did not exist at closure, but where construction of a building without adequate vapor control may result in a completed exposure pathway.
- (7) Site-specific conditions, including any other situation where the agency required notification, on a case-by-case basis, including changes in use or occupancy of a property.

and Wis. Admin. Code § NR 718 request. The appropriate Wis. Admin. Code NR 749 fee should be submitted to cover the costs of the technical review of the soil management plan and for modifying the case closure database package. The fee table in text box on page 13 lists the fees that may be applicable to this situation.

Additional Considerations

Non-metallic Mines

If the excavated contaminated soil is proposed for use in reclaiming a non-metallic mine (e.g., a gravel pit, quarry, etc.), the disposal of such material must be specifically allowed in the mine's reclamation plan. If not, the reclamation plan should be modified prior to the DNR approving the disposal of the contaminated soil at non-metallic mine. The RP should include the following information in the exemption application package:

- Include a copy of the reclamation plan with the exemption application request.
- Identify if the non-metallic mine has been dewatered for mining.
- Indicate what the natural groundwater level is expected to be when dewatering is terminated.
- Specify if the proposed use of the waste would be below or within 10 feet of the water table, which is a limitation specified in Wis. Admin. Code § NR 503.0(1)(e)1.

Projects involving large-scale disposal or which may include or require items such as a liner system, leachate treatment and an engineered cap, or projects proposing to place the material below the groundwater table, are beyond the scope of this guidance. Check with DNR staff before submitting such a proposal.

National Heritage Inventory (NHI)

An NHI screening is recommended if the proposed exemption would have the potential to impact endangered resources, including the potential to impact lands, wetlands or water bodies. The NHI Public portal <http://dnr.wi.gov/topic/ERReview/PublicPortal.html> is an online tool that provides users with an instant response and documented preliminary assessment regarding whether or not a full Endangered Resources Review is necessary to ensure compliance with Wisconsin's Endangered Species Law.

Asbestos Containing Materials (ACMs)

Where the responsible party proposes to manage asbestos-containing materials that are generated as part of a response action, those materials must be managed in accordance with Wis. Admin. § NR 506.10 and Wis. Admin. § NR 447, where applicable. Those administrative codes only allow the ACM to be disposed of at an "approved facility" as defined in Wis. Stats. § 289.01(3). Therefore, the Department may not grant an exemption under Wis. Admin. § NR 718.15 to manage ACM at a response action site or facility.

Other State Laws

Other state laws may apply to immediate, interim or remedial actions being taken at the response action site or facility. To determine if your project needs other waterways related approvals or permits please go to: <http://dnr.wi.gov/topic/waterways/>.

Also, Wis. Admin. Code § NR 506.085 prohibits the following activities at solid waste disposal facilities which are no longer in operation, unless specifically approved by the DNR in writing:

- use of the waste disposal area for agricultural purposes;
- establishment or construction of any buildings over the waste disposal area; and
- excavation of the final cover or any waste materials. See "Other State Laws" section above for more details.

The DNR has developed detailed guidance to address the issues associated with building on historic fill sites and licensed landfills. This information can be found at: <http://dnr.wi.gov/topic/landfills/development.html>.

Reviews and Timelines

Review of exemption requests will be conducted on a case-by-case basis. It is the applicant's responsibility to provide information to the DNR sufficient to substantiate the lack of potential hazards to public health, welfare

and the environment that will be posed by the contaminated soil or other solid waste (e.g., contaminated sediment or foundry fill) as it is proposed to be managed. The DNR may request review assistance from other programs that administer regulations related to the project. The DNR may request additional information from the applicant if it is necessary to complete the review of the proposal.

The DNR's goal is to approve or deny an exemption request within 60 calendar days of receiving a complete exemption submittal. Some exemption requests may be reviewed more quickly than 60 calendar days, depending on DNR workload and the completeness and complexity of the request. As part of its review, the DNR may conduct a site inspection to examine the contaminated soil or other solid waste material and the proposed location of the disposal or reuse activity.

- If the request is deemed incomplete, the DNR will reply in writing specifying the information needed to continue the review.
- The DNR may determine that an exemption is appropriate for only a portion of the soils requested, with the remainder requiring disposal at an operating solid waste facility licensed to accept the solid waste.
- If the request is denied, the DNR will reply in writing stating why it was denied, and provide information on appeal rights.
- If the request is approved, the DNR will reply in writing, including any conditions or limitations on the approval. The DNR may set an expiration date for the exemption and may require a renewal to continue the activity.

NOTE: Filing an application for a Wis. Admin. Code § NR 718 exemption does not authorize any person to transport, move, or use any waste until the DNR issues a written exemption for the management of the specific contaminated soil and other solid waste material.

This document is intended solely as guidance and does not include 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 manner addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

This publication is available in alternative format upon request. Please call (608) 266-2111 for more information.

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.

NR 718.12 and NR 718.15 EXEMPTION EXAMPLE PROPOSAL FORMAT

The purpose of this form is to provide the DNR reviewer and, where applicable, the public, with a detailed description of the proposed project and to demonstrate that the material qualifies for an NR 718.12 and NR 718.15 exemption.

Per the requirements of s. NR 718.12(2)(b), a soil management plan must be submitted to the Dept. for review and approval. The soil management plan/exemption request should include the following information and be submitted to the DNR Project Manager:

Section 1 - Property, Contact and Recipient Information

- GENERATOR: Mailing address, email and phone #.
- Generator Property Address: Street, City, location by quarter-quarter section, township, range, and county; geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the site or facility from which the contaminated soil will be removed.
- BRRTS Number or Facility ID number
- Check box for request type;
 - 718.12(1) or (2),
 - 718.15
- If 718.12(1) or (2) provide –
 - Disposal Site Property Owner (s): The name, address, and telephone number of the owner or owners of the property.
 - Disposal Site Property Address: Street, City, location by quarter-quarter section, township, range, and county, geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the site or facility where the contaminated soil is to be placed.
 - legal description of the proposed site.
- Describe any environmental or public health regulatory compliance or enforcement activities conducted by the DNR or other agency related to the waste, generator and disposal or reuse site.

Section 2 - Project Information

- Description of the project including location and type of disposal or reused being proposed.
- Volume of contaminated soil to be managed: [xxxx] cubic yards
- Material consists primarily of (check or list all that apply)
 - native soil
 - soil fill
 - mixed soil and waste
 - foundry materials
 - sediment
 - other waste material. *Reminder - only soil can be approved for management at a site other than the site at which it was generated under NR 718. Off site management of material other than soil must be approved through a Low Hazard Exemption granted by the Waste and Materials Management Program.*
- Statement of results of analyses performed on the contaminated soil.
 - Soil (or waste) proposed for excavation from the GENERATOR SITE NAME is contaminated with (type of contamination, i.e. VOCs, PAHs, metals).
 - Reported contaminants are present above (non-industrial RCLs, industrial RCLs, groundwater protective RCLs).
- Provide summary table of analytical data.

Samples must be collected for analysis of all contaminants previously detected or expected to be present based on past land use and from areas most likely to contain residual soil contamination and represents the material planned for removal at a rate of 1/100 yd³ for first 600 yd³ for a minimum of 2 samples collected and for volumes greater than 600 yd³, one sample collected for each additional 300 yd³ OR if the sampling conducted is less than specified, justification must be provided for the DNR to accept the characterization, i.e. list reasons to support lower sampling frequency, such as low concentrations, consistent results, soil homogeneity, etc.

- Confirmation that soil meets the locational criteria and will not be placed or replaced in the following areas. If the distance is greater than the indicated distance listed here, you may state that without specifying the exact distance:
 1. Within a floodplain
 2. Within 100 feet of a wetland or critical habitat area
 3. Within 300 feet of any navigable river, stream, lake, pond or flowage
 4. Within 100 feet of any on-site water supply well or 300 feet of any off-site water supply well
 5. Within 3 feet of the high groundwater level
 6. At a depth greater than the depth of the original excavation from which the contaminated soil was removed
 7. Where the contaminated soil poses a threat to public health, safety or welfare or the environment.

If the locational criteria cannot be met, the DNR can provide an exemption from the criteria upon consideration of all of the following:

1. Waste characteristics and quantities.
 2. The geology and hydrogeology of the area, including information from well logs and well construction records for nearby wells.
 3. The unavailability of other environmentally suitable alternatives.
 4. Compliance with other state and federal regulations.
 5. The threat to public health, safety, or welfare or the environment.
- If management of the contaminated soil is proposed to take place at a location other than where it was excavated, provide the following additional information:
 - The geology and hydrogeology of the site or facility, including information from any previous remedial investigations.
 - Information from well logs or well construction records for nearby wells.
 - Sufficient information to justify that the placement or replacement of contaminated soils will meet the requirements of s. NR 726.13(1)(b) 1. through 5. (Describe any response actions proposed for the disposal site to address the relocated contaminated soil, i.e. remedial action plan consisting of cap construction over contaminated soil, continuing obligation for inspection and maintenance of cap.)
 - Provide a description of the disposal or reuse site's current and historic land use including any available information regarding environmentally sensitive areas.
 - Identify if the disposal site has previously been used for licensed or unlicensed solid waste disposal or use, and state the types, volumes, locations, and dates of the waste disposed.
 - Describe any design criteria related to the disposal site.
 - Describe any activities (i.e., regulatory, enforcement, or inspections) conducted by the DNR or any other agency at the waste's destination site.
 - Signed statement from owner acknowledging acceptance. (See template in Appendix 2.)

Section 3 - Figures

- Map that shows the areas planned for excavation, sample locations with excavation depths indicated.
- Map showing planned disposal location.

Note: Maps should be drawn to scale not larger than 1 inch equal to 100 feet, of the location where the waste is to be managed showing wetlands, floodplain, surface water boundaries, USGS topographic contours, roads and buildings.

Section 4 - Project Timeline

- Proposed schedule for implementation of the soil management plan, including anticipated start and end dates.

Section 5 - Contractor Contacts and Certifications

- Name, address and phone # of any consultants or contractors involved with the project.
- Project Contact Person(s)* Name, title, organizational affiliation, address, telephone number and e-mail address of the person who will be working with the DNR on the proposed exemption request.

Certification Statement

Wis. Admin. Code § NR 712, entitled “Personnel Qualifications for Conducting Environmental Response Actions,” establishes minimum standards for experience and professional qualifications for persons who perform certain environmental services. This law applies work conducted under Wis. Admin. Code § NR 718, unless specifically exempted.

Thus, when submittals are required to be prepared by, or under the supervision of, a professional engineer, a hydrogeologist or a scientist those reports shall be dated and certified by the professional engineer, hydrogeologist or scientist using the appropriate certification provided below.

Depending on the nature of the site and the type of response action conducted, at least one or more of the certifications provided below, as required in Wis. Admin. Code § NR 712.09, should be included as part of the submittal.

The following certification shall be attached to any submittal that is required to be prepared by, or under the supervision of, a professional engineer under Wis. Admin. Code §§ NR 712.07 (2), (3) or (5):

“I, _____, hereby certify that I am a registered professional engineer in the State of Wisconsin, registered in accordance with the requirements of ch. A–E 4, Wis. Adm. Code; that this document has been prepared in accordance with the Rules of Professional Conduct in ch. A–E 8, Wis. Adm. Code; and that, to the best of my knowledge, all information contained in this document is correct and the document was prepared in compliance with all applicable requirements in chs. NR 700 to 726, Wis. Adm. Code.”

Signature, title and P.E. number P.E. stamp _____
Date

The following certification shall be attached to any submittal that is required to be prepared or to have its preparation supervised by a certified hydrogeologist under s. NR 712.07 (2), (4) or (5):

"I, _____, hereby certify that I am a hydrogeologist as that term is defined in s. NR 712.03 (1), Wis. Adm. Code, am registered in accordance with the requirements of ch. GHSS 2, Wis. Adm. Code, or licensed in accordance with the requirements of ch. GHSS 3, Wis. Adm. Code, and that, to the best of my knowledge, all of the information contained in this document is correct and the document was prepared in compliance with all applicable requirements in chs. NR 700 to 726, Wis. Adm. Code."

Signature and title _____
Date

The following certification shall be attached to any submittal that is required to be prepared or to have its preparation supervised by a certified scientist under s. NR 712.07 (5):

“I, _____, hereby certify that I am a scientist as that term is defined in s. NR 712.03 (3), Wis. Adm. Code, and that, to the best of my knowledge, all of the information contained in this document is correct and the document was prepared in compliance with all applicable requirements in chs. NR 700 to 726, Wis. Adm. Code.”

Signature and title Date

Additional Attachments

- Analytical Package for Contaminant Profile Testing:
Provide a copy of the analytical package for all sampling results submitted to the DNR. The package should include the chain of custody, sampling methods and QA/QC data along with the results. The package should also include documentation that the laboratory used for the testing is a Wisconsin certified laboratory. Analytical results should be displayed in a table to help the DNR review your request in a timely manner.

Paper and Electronic Copies: Unless otherwise specified, send the DNR 2 paper copies and one electronic copy of the report, plan sheets, and drawings.

Appendix 1



Remediation and Redevelopment Program

April 2016

NR 718 Quick Guide: What Contaminated Soil or other Solid Waste Management Options are Available at Response Action Sites or Facilities?

This table is a general guide that describes what management/exemption options are available to responsible parties (RPs) and possibly others when managing contaminated soil or other solid waste (e.g., contaminated sediments, fill, foundry sand) excavated as a result of an immediate, interim or remedial response action taken under the Wis. Admin. § NR 700 rule series. This is an alternative approach to managing the material as a solid waste at an operating solid waste facility licensed to accept that waste.

Questions	NR 718.12(1) Contaminated Soil Exemption	NR 718.12(1) & (2) Contaminated Soil Exemption	NR 718.15 – on site replacement of solid waste other than soil
1. Who may utilize the NR 718 exemptions?	<ul style="list-style-type: none"> Responsible parties construction or utility projects⁵ 	<ul style="list-style-type: none"> Responsible parties 	<ul style="list-style-type: none"> Responsible parties
2. What type of NR 700 response actions are eligible for the exemptions?	<ul style="list-style-type: none"> Immediate Actions - NR 708.05 	<ul style="list-style-type: none"> Interim Actions - NR 708.11 Remedial Actions – NR 722 	<ul style="list-style-type: none"> Interim Actions - NR 708.11 Remedial Actions – NR 722 and 724
3. Is Department pre-approval required to receive the NR 718 exemption and take action?	<ul style="list-style-type: none"> No, but all criteria in NR 718.12(1) must be met 	<ul style="list-style-type: none"> Yes, pre-approval in writing RP is required to provide DNR advance notice of 7 or 45 days, depending on situation RP must wait for approval. 	<ul style="list-style-type: none"> Yes, pre-approval in writing RP is required to provide DNR advance notice of 7 or 45 days, depending on situation RP must wait for approval.
4. Is a Waste Determination Required?	Yes, documentation is recommended by not required.	Yes, documentation is recommended by not required.	Yes, documentation is recommended by not required.
5. Is sampling required under Wis. Admin. Code §§ NR 718.12 and NR 718.15?	Yes. Per NR 718.12(1)(e), RPs must submit data to DNR within 10 business days of receiving data.	Yes. Per NR 718.12(1)(e), RPs must submit data to DNR within 10 business days of receiving data.	Yes. Per NR 718.12(1)(e), RPs must submit data to DNR within 10 business days of receiving data.

⁵ See the note in Wis. Admin. Code § NR 718.12(1) for further clarification on the appropriateness of using this exemption at construction and utility projects.

Questions	NR 718.12(1) Contaminated Soil Exemption	NR 718.12(1) & (2) Contaminated Soil Exemption	NR 718.15 – on site replacement of solid waste other than soil
6. Can EPA’s Synthetic Precipitation Leaching Procedure be used to determine acceptability of soil placement options?	Not as an immediate action; using this alternative method requires DNR approval.	Yes, on a case-by-case basis SPLP may be used to evaluate leachability; requires DNR approval.	Yes, on a case-by-case basis SPLP may be used to evaluate leachability; requires DNR approval.
7. Is a Soil or Waste Management Plan Required?	No	Yes, and contaminated soil management plan needs approval by the DNR.	Yes, and contaminated waste management plan needs approval by the DNR.
8. Do NR 718.12(1) locational requirements apply?	Yes	Yes	Yes
9. Is an exemption from location requirements needed?	Yes, in writing from the DNR	Yes, in writing from the DNR	Yes, in writing from the DNR
10. What limitations apply to the excavation and placement of this contaminated soil or other solid waste on a site or facility?	<p>RPs soil management actions must comply with NR 718.12(1), including:</p> <ul style="list-style-type: none"> • Meet NR 700 to 754. • Contaminated soil managed should be at concentrations less than Wis. Admin § NR 720 RCLs⁶, and thus not require a performance standard (e.g. cap or cover). • Not pose a threat to public health, safety, welfare and the environment, including a vapor risk. 	<p>RPs soil management actions must comply with NR 718.12(1) and (2), including:</p> <ul style="list-style-type: none"> • Meet NR 700 to 754. • Meet NR 726.13(1)(b) 1 to 5 • Meet NR 718.12(1)(c)7. • Not pose a threat to public health, safety, welfare and the environment, including a vapor risk. 	<p>RPs solid waste management actions must comply with NR 718.15, including:</p> <ul style="list-style-type: none"> • Meet NR 700 to 754. • Meet NR 726.13(1)(b) 1 to 5 • Meet NR 718.12(1)(c)7. • Not pose a threat to public health, safety, welfare and the environment, including a vapor risk. <p>Contaminated sediment may be eligible to be managed on the land portion of the source site under this exemption.</p>

⁶ If the residual concentrations of contaminated soil attain or exceed the Wis. Admin. Code § NR 720 soil cleanup standards for the land use of the site or facility, thus requiring an engineering control (e.g., a cap or cover), those response actions would be considered an “interim or remedial action” and are subject to Wis. Admin. § NR 718.12(1) and (2).

Questions	NR 718.12(1) Contaminated Soil Exemption	NR 718.12(1) & (2) Contaminated Soil Exemption	NR 718.15 – on site replacement of solid waste other than soil
11. What documentation is required at completion of response actions on or off the site or facility?	Documentation required under Wis. Admin. § NR 708.05(6). Within 45 days of notification to release to the department.	Documentation of completed interim or remedial actions is required under applicable sections of Wis. Admin. §§ NR 708.15, NR 724 & NR 726.	Documentation of completed interim or remedial actions is required under applicable sections of Wis. Admin. §§ NR 708.15, NR 724 & NR 726.
12. Is exemption available for placement on-site, off-site or both?	Contaminated soil may be managed on site or placed only at another location meeting definition of “site” or “facility”	Contaminated soil may be managed on site or placed only at another location meeting definition of “site” or “facility”	Other solid waste may only be managed on the site or facility from which it was excavated. Otherwise, it must be managed at operating, licensed solid waste facility or be granted an exemption under Wis. Admin. § NR 500.
13. Is the property where the material is placed tracked in BRRTS?	Yes, sites or facilities will be tracked in BRRTS and/or SHWIMS.	Yes, sites or facilities will be tracked in BRRTS and/or SHWIMS.	Yes, sites or facilities will be tracked in BRRTS and/or SHWIMS.
14. Do continuing obligations and long-term maintenance apply to the disposal area?	No, as actions triggering the need for a continuing obligation are not considered “immediate actions”	Yes, depending on the interim or remedial actions.	Yes, depending on the interim or remedial actions.
15. Who is responsible for any future contamination that might result from an NR 718 action?	<ul style="list-style-type: none"> • RP who excavated material • Owner of property where material was disposed • Hauler in limited situations 	<ul style="list-style-type: none"> • RP who excavated material • Owner of property where material was disposed • Hauler in limited situations 	<ul style="list-style-type: none"> • Person who excavated material • Owner of property where material was disposed

This document is intended solely as guidance and does not include 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 manner addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

Appendix 2

Wisconsin Department of Natural Resources
Agreement to Receive Contaminated Soil
At a Site or Facility

August 2016

Responsible Party / 3rd Party Version
**Model Agreement to Receive Contaminated Soil
Under Wis. Admin. Code § NR 718.12(1) and (2)**

Instructions for Use

This template agreement is meant to be used by anyone who possess or controls soil that does meet the criteria to be categorized as “clean,” and who wishes to relocate the contaminated materials to another site or facility” as defined in Wis. Stats. § 292. This agreement is not needed if the contaminated soil is being transported to an operating, licensed solid waste facility.

This signed agreement should be submitted to the Department of Natural Resources (the “Department”) as part of a broader Wis. Admin. Code § NR 718.12 “Management of Contaminated Soil” exemption request. The Department must provide written approval of a this exemption request prior to moving any contaminated soil to location other than an operating solid waste facility that is licensed to accept that waste material.

You may cut and paste this letter to your own letterhead.

Your communication with affected property owners should be done in plain, easily understood language. Laboratory results should be shared along with a simple cover letter that summarizes the results of the sampling. If any continuing obligations (e.g., cap or cover) will be placed on the property accepting the contaminated soil, those obligations (e.g., maintenance of cap, inspections, repair of cap) should be clearly identified and the long-term obligations explained to the property owner.

Comments or questions about this template letter can be sent to: WI DNR Brownfields Program, to the attention of Judy Fassbender (Judy.Fassbender@wisconsin.gov).

For additional information, the following DNR documents may be useful:

RR-060	Management of Contaminated Soil and Other Solid Waste
WA-1820	Waste Soil Determinations and Identifying Clean Soil
WA-1645	Exempting Low-Hazard Wastes from Solid Waste Regulations
PUB-RR-973	“Environmental Contamination and Your Real Estate”

AGREEMENT TO RECEIVE CONTAMINATED SOIL

Information About The Site Where Soil Was Excavated From			
Site Address		BRRTS No.	
City		VPLE No.	
State		Parcel ID No.	
Zip Code		Solid Waste License No.	
Acres		BRRTS Activity (Site) Name	
Company Name		WTM Coordinates	
Responsible Party (RP) Name		XY	
Mailing Address, City, State, ZIP Code		WTM Coordinates Represent	
Email		Source Area Parcel Center	

Information About The Site Or Facility Where Soil Will Be Disposed			
Site Address		BRRTS No.	
City		VPLE No.	
State		Parcel ID No.	
Zip Code		Solid Waste License No.	
Acres		BRRTS Activity (Site) Name	
Company Name		WTM Coordinates	
Responsible Party (RP) Name		XY	
Mailing Address, City, State, ZIP Code		WTM Coordinates Represent	
Email		Source Area Parcel Center	

I, _____ hereby give permission to the **Name of RP or Consultant**
(Print Name)

and its employees, duly authorized representatives, agents and contractors, to enter upon and have access at reasonable times to the property located at

(ADDRESS) _____

and that is owned by _____ for the deposition of contaminated soil as described below.

[INSERT NARRATIVE DESCRIBING SOIL RELOCATION PROJECT]

Include: Volume of material, depth of the original excavation and the excavation at the receiving site, depth to groundwater at receiving site or facility, contaminant concentrations, placement location and a description of any continuing obligations required (e.g., cap or cover, inspection requirements, maintenance requirements, etc.) that will be required if the Department approves of the disposal of the contaminated soil..

[ATTACH MAP]

Attach a map of the receiving property to this agreement clearly displaying where the contaminated soil will be placed, and identify to scale the location of any of the locational items listed in acknowledgement #5 below.

I understand and accept the following:

- (1) I understand that I may not allow the placement of contaminated soil on my site or facility until the Department issues a written exemption under Wis. Admin. Code § NR 718.12(1) and (2).*
- (2) I acknowledge that I am accepting contaminated material and that I have responsibility as the person who possesses or controls a hazardous substance discharge or environmental pollution as defined in Wisconsin State Statute Chapter 292.*
- (3) I certify to the Department that my property meets the definition of a “site” or “facility” in Wis. Stats. 292.*
- (4) I understand that without prior written approval from the Department the material may not be placed: (1) within a floodplain; (2) within 100 feet of a wetland or critical habitat area; (3) within 300 feet of any navigable river, stream, lake, pond, or flowage; (4) within 100 feet of any on-site water supply well or 300 feet of any off-site water supply well; (5) within 3 feet of the high groundwater level; and (6) at a depth greater than the depth of the original excavation from which the contaminated soil was removed.*
- (5) I will maintain all Wis. Stats. § 292.12 and Wis. Admin. Code § NR 727 continuing obligations required to be placed on the property to maintain protectiveness, including conducting annual inspections, recordkeeping and maintenance requirements.*
- (6) I understand that the presence of the contaminated soil may be discloseable under Wisconsin’s real estate disclosure law, Wis. Stats. § 709.*
- (7) I acknowledge that the Department of Natural Resources has the right to inspect my property to determine the adequacy of any continuing obligation placed on the material to ensure protection of public health, safety, welfare and the environment.*

- (8) *I understand that if I elect to excavate the contaminated soil in the future, that I will need to obtain written, prior approval from the Department to relocate that material to any other location other than an operating, licensed solid waste facility;*
- (9) *I acknowledge that if I plan to build on the area where the contaminated soil will be disposed of, I will need to notify the Department prior to conducting any development activities and may need to receive additional written approvals and pay Department fees for those activities; and*
- (10) *I understand that my site or facility – including the site or facility name, location and the relevant site documents - will be entered into and tracked on the Department’s publicly available Bureau for Remediation and Redevelopment Tracking System (BRRTS) database.*

Please note, while this document serves to notify you of the potential risks and liabilities associated with accepting contaminated soil, not signing the document does not waive a property owner of those risks, obligations and liabilities if they otherwise accept the contaminated soil.

[NOTE: If there is more than one owner of the site or facility, each and every property owner’s signature must be included as part of the agreement. If a one of the owners of the site or facility is acting on behalf of other owners, a power of attorney form or statement must be signed and attached to this agreement clearly granting the agent the authority to accept the contaminated soils on behalf of all other owners of the site or facility whose signatures are not included on this agreement.]

IN WITNESS WHEREOF:

_____	_____
Signature of Property Owner	Date
_____	_____
Print Name	Email Address

Mailing Address	

Area Code and Telephone Number	

ATTACHMENTS:

- MAPS
- POWER OF ATTORNEY