

Model Ordinance for Removal of Salvageable Non-Structural Materials from Vacated Buildings

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Background

The closing of major manufacturing plants has had a considerable impact on municipalities across Wisconsin over the last several years. Not only are these closings detrimental to local economies, the remnants of these facilities often leave the community with large pieces of property that have a myriad of issues. Having to address environmental, financial, and land use issues all at once can leave a municipality scrambling to keep track of the various parties' activities. The result often being that the municipality is left with a vacant shell of a building that is unusable.

Purpose of a Salvage Ordinance

To prevent the issues above, many municipalities are enacting local ordinances that deal with the salvaging of non-structural materials outside the demolition process. These local laws ensure that the municipality has approved the salvage activities and that the contractor's operation is safe and not a detriment to the community. Specifically, the purpose of such an ordinance is to:

1. Regulate the removal of salvageable materials from vacated buildings for which there are no immediate functional replacements (e.g. necessary electrical and plumbing items) in order to ensure that a usable site remains;
2. Prevent health and safety hazards and blight due to the removal of materials;
3. Ensure that the operation of the non-structural demolition is completed in a timely manner and in such a fashion that prevents health and safety hazards, nuisances, and environmental pollution; and
4. Provide clear and immediate access to the property for inspections.

Making certain these goals are met necessitates the implementation of a permit process. Permitting requires the contractor to submit plans for non-structural salvaging, provides a clear plan for salvaging operations, establishes timelines and reporting requirements, and provides proof that all necessary insurances and applicable permits have been obtained (including pollution liability insurance, umbrella liability insurance, and stormwater or erosion control permits). The permitting process also provides the municipality with an opportunity to require any special operating conditions that may be appropriate at individual sites.

How to Use this Model

This model ordinance was developed by the Department of Natural Resources with input from stakeholder groups and the public. This model is meant to cover most issues for non-structural, non-demolition salvaging and contains several options that a municipality may consider prior to adoption. Municipalities may elect to use all or a part of the model ordinance, and may choose to add additional provisions. This model ordinance is for non-demolition related salvaging, and municipalities are encouraged to enact a separate demolition ordinance that addresses issues specific to demolition activities.



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

MODEL ORDINANCE

Removal of Salvageable Non-Structural Materials from Vacated Buildings

A. PURPOSE. The purpose of this Ordinance is to regulate the removal of salvageable materials from vacated buildings, not otherwise occurring as part of an approved demolition plan or for the purposes of remodeling, for any purpose other than personal re-use by the owner or personal re-use or required removal by a tenant of the property from which it was removed, without immediate functional replacement thereof.

B. AUTHORITIES. *Insert appropriate authorities here.*

C. DEFINITIONS.

Owner. The term “owner” shall mean the title holder(s) to real property on which stands any vacated building or structure from which any salvageable material is removed.

Tenant. The term “tenant” shall mean a person or entity entitled by written agreement, to occupy the building or structure, or portion of the building or structure, from which any salvageable material is removed.

Operator. The term “operator” shall mean any person, corporation or other business entity or holder of a security interest that undertakes the removal of salvageable material from a Vacated Building within the jurisdictional limits of the *City, Village, etc.*, or which directs or allows such removal.

Salvageable Material. Real or tangible personal property that:

1. is man-made;
2. is affixed to real property or any improvement to real property;
3. is detachable from real property or any improvement to real property;
- and
4. is removed for potential or intended re-use, repurposing or scrap.

Such materials shall include any such materials that were detached from real property or any improvement to real property without a permit after the effective date of this ordinance.

Vacated Building. A building or structure, or portion of a building or structure, that had a principal non-residential use as its most recent use allowed by law, which principal use has ceased. The cessation of the primary activities constituting the principal use shall be determinative of whether the principal use had ceased. The presence of personnel in the building or structure is not determinative of whether the use has ceased.

Code Official(s). *List designated code officials*

Issuing Body. The term “Issuing Body” refers to the Code Official in the case of Tier 1 permits, and the *Governing body* in the case of Tier 2 permits.

D. EXCLUSIONS. This Ordinance does not apply to the following:

1. salvaging operations at structures where its most recent allowable use by law was residential;
2. salvage operations at non-residential structures under *Insert appropriate square footage (e.g. Ten Thousand)* square feet (##,### sq. ft.);
3. items/materials removed where replacement will occur as part of a remodeling process over time pursuant to a valid and subsisting building, heating, plumbing, or electrical permit;
4. salvaging operations that occur as part of an approved demolition plan, pursuant to a valid demolition permit or otherwise, in which the Permit Holder/Owner/Operator is obligated to complete said demolition within a specified time frame;
5. equipment, items or supplies removed by the owner for personal re-use; and
6. equipment, items or supplies owned and removed by the tenant during the term of a written lease.

E. RECYCLING. *(Optional section)*

1. The Permit Holder shall cause to be salvaged, reused or recycled all of the following material/items removed and debris produced on-site as part of the salvaging permit activities:
 - a) Wood that has not been rendered non-recyclable or non-re-useable by the application or attachment of paint, stains, varnish or other liquids or solids;
 - b) Non-toxic metals; and
 - c) Non-asbestos containing shingles.
2. The *City, Village, etc.* maintains the right to suspend requirements of this section if the market for above materials changes, making compliance unattainable, or if the condition of the material(s) and/or proximity to recycling/re-use facilities makes compliance impracticable, as determined by the Code Official *or City Engineer, etc.*

F. PARTIAL EXEMPTION. A partial exemption is allowed under this Ordinance for items and materials removed for the sole purpose of historical or cultural preservation. A request for exemption shall be filed with the *City Clerk or equivalent* on forms created by the Code Official and provided by the *City, Village, etc.*. The request for exemption shall include documentation of historical or cultural significance acceptable to the Code Official which may include written request for preservation by historic society or equivalent.

G. PERMIT. No person, corporation or other business entity or holder of a security interest may remove, direct the removal of, or allow to be removed any salvageable material from a Vacated Building unless such removal is performed pursuant to a permit granted by the Issuing Body and issued to the applicant pursuant to this ordinance. The Owner and Permit Holder shall be jointly responsible for complying with any permit issued pursuant to this ordinance.

H. PERMIT APPLICATION.

1. The applicant may be the owner of the real estate, or a Contractor hired by the owner, tenant or the holder of a security interest in the property, Vacated Building or structure, or the salvageable material. Under all circumstances, the applicant, if other than the owner, shall be jointly and severally responsible for compliance with the terms of this Ordinance.
2. Application for a permit, whether initial or renewal, shall be filed with the *City Clerk or equivalent* on forms provided by the *City, Village, etc.* The application shall include:
 - a. Location and square footage of occupiable space in building(s).
 - b. Name, address and contact information of owner of the building(s).
 - c. Names, addresses and contact information for contractors engaged to carry out the activity.
 - d. Plan for removal of salvageable material including the following details:
 - i. Project schedule and budget.
 - ii. Inventory and projected quantities (by weight or volume) of materials to be removed from the building for salvage purposes.
 - iii. Proposed disposition of salvageable materials.
 - iv. Dust, noise and odor control.
 - v. Hours of operation.
 - vi. Fire suppression.
 - vii. Traffic safety and public infrastructure protection.
 - viii. Site security.
 - ix. Building and grounds management and restoration.
 - x. Proposed post-salvage property ownership and use, if known.
 - e. Plan for removal of hazardous wastes/materials.
 - i. Hazardous materials inventory including raw materials, waste materials, asbestos containing materials, and [with respect to any portion of the building, structure or salvageable material to be altered in the course of the work,] an inventory of lead painted surfaces and PCB-containing materials.
 - ii. Hazardous materials handling, management and disposal prior to salvaging.
 - iii. Proposed environmental monitoring or remediation.
 - f. Plan for disposal of waste, including proposed disposition.

- g. Proof of required demolition/renovation notifications to the appropriate State regulatory agency(ies).

The Issuing Body may require additional information of a specific applicant.

- 3. A permit fee must accompany the application. Permit fees shall be established by resolution of the *Governing body*.

- I. **PERMIT GRANT.** The granting of permits shall be conducted on a two-tiered system based on the occupiable space of the Vacated Building. Occupiable space shall be calculated as one total for all buildings covered under the permit or all buildings on a single property covered under multiple permits.

This section provides for the option of a two-tiered system. Municipalities may also use language from either tier to put a single tier permit granting system in place.

Tier 1. Permit applications for a Vacated Building having occupiable space under *Insert appropriate square footage (e.g. Ten Thousand)*square feet (##,### sq. ft.) shall be reviewed and decided upon by the Code Official pursuant to this ordinance.

In granting the permit, the Code Official shall address the following matters: the amount of the Irrevocable Standby Letter of Credit to be required of the Permit Holder as a condition of issuance of the permit and as a requirement of operation; the justification for drawing against and content of the presentment required to draw against the Irrevocable Standby Letter of Credit; other State or local permits as required by law, rule, or regulation that must be obtained as a condition of issuance of the permit or as a requirement of operation; reasonable special operating requirements to be required of the Permit Holder in addition to those listed in Subsection L herein; and such other matters or limitations as the Code Official determines is necessary to protect the public interest.

Tier 2. Permit applications for a Vacated Building having occupiable space over *Insert appropriate square footage (e.g. Ten Thousand)*square feet (##,### sq. ft.) shall be reviewed by the Code Official and decided upon by the *Governing body*. The Code Official shall make a recommendation to the *Governing body* who shall consider the following matters in granting the permit: the recommendation of the Code Official, the amount of the Irrevocable Standby Letter of Credit to be required of the Permit Holder as a condition of issuance of the permit and as a requirement of operation; the justification for drawing against and content of the presentment required to draw against the Irrevocable Standby Letter of Credit; reasonable special operating requirements to be required of the Permit Holder in addition to those listed in Subsection L herein; the expertise of the applicant; the effect of the proposed operation on the surrounding neighborhood; the effect on

the community of having a stripped structure remain and such other matters germane to the decision.

The *Governing body* shall consider the permit applications only at regular Council meetings, and only after receiving the recommendation of the Code Official.

- J. IRREVOCABLE STANDBY LETTER OF CREDIT.** As a condition of issuance of the permit, the Permit Holder shall provide to the Issuing Body and maintain in effect an Irrevocable Standby Letter of Credit naming the *City, Village, etc.* as beneficiary, in an amount required by the Issuing Body and in a form approved by the *City, Village, etc.* Attorney. The *City, Village, etc.* Attorney shall also approve the form and content of the draw order and all necessary presentment required to compel payment by the issuer to the *City, Village, etc.* of all funds subject to the Irrevocable Standby Letter of Credit.

The Irrevocable Standby Letter of Credit shall be the guarantee of performance by the Permit Holder. The Irrevocable Standby Letter of Credit must be issued by a financial institution certified by the state to conduct such business within the state of Wisconsin, allowing for direct draw by the *City, Village, etc.* upon presentment to the issuing bank without court action and without approval by Permit Holder, to complete work or to repair damage that was the obligation of the Permit Holder. The Irrevocable Standby Letter of Credit must contain as part of its provisions that it will be maintained constantly in force as an obligation to the *City, Village, etc.* for no less than one year after project completion as reasonably determined by the Issuing Body or one year after the expiration of a permit issued under this section to the Permit Holder, whichever is later.

In considering the required amount of the Irrevocable Standby Letter of Credit the Issuing Body shall consider: the expertise of the applicant; the longevity of the applicant; the capitalization of the applicant; the scope of the proposed project; the cost of rectifying the possible environmental hazards that could be created; the effect of the proposed operation on the surrounding neighborhood; the cost of remediation of the *City, Village, etc.* should the *City, Village, etc.* have to address any matter due to the unwillingness or inability of the Permit Holder to fulfill its obligations. The Issuing Body may annually, upon documented request of the Permit Holder, review the pertinent facts and decide to reduce the amount of the required Letter of Credit in accordance with work completed or threats mitigated. In the extraordinary circumstance that the Issuing Body determines that the requirements to obtain an Irrevocable Standby Letter of Credit is unreasonable, the Issuing Body may, in the exercise of its discretion, authorize one or more alternate forms of security in lieu of an Irrevocable Standby Letter of Credit.

Language can be inserted or administrative guidance put in place that sets forth standard amounts for Irrevocable Standby Letters of Credit based on size of project/materials to be removed/possibility of damage, with language allowing the Issuing Body to revise the amount of credit based on circumstances. Language

describing the approved forms of credit (or alternate forms) may be inserted as well.

K. PERMIT TERM AND ASSIGNMENT.

A permit issued to the applicant is permit holder and limited to the term granted.

1. **Initial term.** The initial term of any permit issued under this section shall be *Initial term length* from the date of issue.
2. **Renewal term.** There is no right or expectation of permit renewal. The permit may be renewed at the discretion of the Issuing Body upon application of a Permit Holder, filed with the *City Clerk or equivalent* prior to expiration of the initial term or any renewal terms. Each renewal may be granted for up to *Renewal term length*.
3. **Assignment.** No permit issued pursuant to this ordinance is assignable or transferable without the advance written permission of the Issuing Body, which shall not be granted unless the Permit Holder and prospective assignee demonstrate to the satisfaction of the Issuing Body that assignee is capable of completing the project and all required forms of insurance and financial assurance are made effective prior to the assignment.

L. GENERAL OPERATING REQUIREMENTS. The following general operating requirements shall apply to the Permit Holder and those working for Permit Holder subject to terms of the permit in accordance with the provisions of the ordinance:

1. The permit issued pursuant to this ordinance shall be plainly displayed on the premises upon which the building is located.
2. The building and premises shall, at all times, be maintained in as clean, neat and sanitary of a condition as such premises will reasonably permit.
3. No garbage, refuse or other waste likely or susceptible to give off a foul odor or attract vermin shall be kept on the premises, except for domestic garbage kept in rodent-proof covered containers which are removed from the premises as often as necessary to provide a sanitary, odor free and vermin free environment.
4. Work done under this permit shall be performance in accordance with the Permit and is subject to inspection by the Code Official and other inspectors as provided in this ordinance. Any violation of the Permit shall be deemed a violation of this ordinance.
5. As a condition of the Permit, a Permit Holder shall maintain insurance policies during the life of the permit in the following minimum amounts,

which policies shall name the *City, Village, etc.* as additional insured and provide coverage for work performed on the property or associated with the work under the permit, and shall provide certificates issued by the carriers as proof of all required coverages:

a) Automobile Liability (Owned, non-owned, leased):

1. Bodily Injury:
One Million Dollars (\$1,000,000) each occurrence
2. Property Damage:
One Million Dollars (\$1,000,000) each occurrence

b) Pollution Legal Liability: Five Million Dollars (\$5,000,000) each loss where risk is presented of exacerbation of existing environmental pollution or discharge of any hazardous waste to the environment or asbestos removal, abatement, remediation, or dumping/disposal in a Federal or State regulated facility is required; the *City, Village, etc.* may require a greater or lesser minimum amount down to and including zero (\$0) of Pollution Legal Liability insurance policy, depending on the circumstances of the project that is the subject of the permit.

c) Workers' Compensation: Statutory Limits

d) Umbrella Liability:

Two Million Dollars (\$2,000,000) over the primary insurance coverages listed above.

6. The Permit Holder shall also ensure that subcontractors have appropriate insurance as determined by the Issuing Body. This may include coverage under the Permit Holder's policy, individual coverage, or a combination thereof. The Issuing Body may also require subcontractors to obtain separate permits pursuant to this Ordinance based on the type of proposed activities or extent or complexity of the salvaging activities proposed.
7. No scrap, salvage or debris which is temporarily stored on the premises shall be allowed to rest or protrude over any public rights-of-way or public property, or become scattered about or blown off the premise.
8. No mechanized process whatsoever shall be utilized on premises to reduce the volume of salvageable material or debris after such salvageable material has been detached from the real property, unless a special exception is provided by the Issuing Body in conjunction with a specific permit. Such prohibited mechanized processes include, but are not limited to, crushing and shredding.
9. There shall be strict compliance with *Noise control code reference* related to noise control.
10. There shall be strict compliance with *Dust/erosion control code reference* related to dust and erosion control.

11. No premises or building subject to a permit shall be allowed to become a public nuisance or be operated in such a manner as to adversely affect the public safety, health, or welfare.
12. There shall be full compliance with the *City/Village Building, Fire and Health Codes* and with all other *City, Village, etc.*, County, State and Federal laws, rules or regulations which may be applicable.
13. The Permit Holder shall, during the salvage process, maintain the work site in a safe and secure condition.
14. The Permit Holder shall keep a log of all shipments to and from the work site during the project, including the date, time, transport company, vehicle license number, and description of type and amount of material transported.
15. The Permit Holder must provide to the Code Official, and must maintain current, a list of contractors doing work that is subject to a permit issued pursuant to this Ordinance, which list of contractors shall include proof of valid and subsisting policies of insurance in satisfaction of the General Operating Requirements specified herein. As used herein, the phrase “maintain current” means that the list filed with the *City, Village, etc.* is updated by the Permit Holder as necessary to comply with the ordinance prior to each contractor commencing work pursuant to the Permit.
16. The Permit Holder shall promptly notify the Code Official of the identity, function and insurance coverage of any new contractor, sub-contractor or other person or entity not specifically identified in the Permit that is conducting operations at the property related to removal of salvageable material.
17. The Permit Holder shall identify, handle, manage, store, and dispose of all wastes, lead, asbestos, waste oils, hazardous materials and hazardous substances as provided in the approved Permit plan and as otherwise directed by the *City, Village, etc.* should changed conditions require additional work or precautions to protect the public safety, health or welfare or comply with any other applicable ordinance, law or regulation.
18. The Permit Holder shall dispose of building debris in a licensed landfill, except for salvaged and recycled materials.
19. At any time, the Permit Holder shall produce to the Code Official documentation that disposition of materials occurred in compliance with the approved permit and disposition plans.

20. The Permit Holder shall be responsible for disconnections of utilities, including plumbing and electrical, necessary for safe conduct of the salvaging process, and shall provide evidence that the necessary disconnections have been accomplished.
21. The Permit Holder shall restore the site and/or vacated building to the conditions set forth in the approved Permit.
22. The Permit Holder shall comply with all orders the Issuing Body imposed upon granting of the Permit or at any other time.
23. The Irrevocable Standby Letter of Credit imposed as a condition of issuance of the permit shall be maintained in full force and effect at all times until one year following the Issuing Body's finding of project completion.

M. INSPECTIONS. Permit Holders and property owners shall allow authorized inspection by representatives of any Department of the *City, Village, etc.* and authorized representatives of the State of Wisconsin having enforcement powers to inspect the premises subject to the Permit, with or without advanced notice, as often as may be required to allow said representative to perform their duties and assure compliance with this ordinance as well as state and federal laws, without first obtaining a special inspection warrant. Inspections shall be made during normal hours of business operation except when the presence of emergency circumstances which require prompt action to protect the public health, safety and welfare or to preserve evidence of noncompliance with this ordinance or state or federal laws.

Inspection may include inspection of the entire property subject to the Permit, including buildings, structures, basement, sub-basements, vaults, and other areas of the property.

The unreasonable failure to allow inspections shall be grounds for denial, suspension or revocation of the Permit.

Inspections may include, but are not limited to: taking wipe samples; waste, structural or product sampling; sampling of pits; the logging, gauging and sampling of existing wells; videotaping, preparing site sketches; taking photographs; testing or sampling the groundwater, soil, surface water, sediments, air, soil vapor or other material.

N. IMMEDIATE CESSATION ORDERS. If in the opinion of the Code Official, the public is subject to imminent danger due to violation of any one or combination of more than one of the General Operating Requirements, the Code Official shall issue an order to the violator or the Permit Holder requiring immediate cessation of those operations giving rise to the imminent danger. The

recipient of any such order shall cause such operations to cease as directed by the Code Official. Failure to maintain insurance or a Letter of Credit as required, or to permit inspection as required are each per se violations implicating imminent danger to the public necessitating an order to cease all operations.

In the event that an order to the Permit Holder requiring immediate cessation is issued by the Code Official, such order may be appealed to the *Public Safety/Building Commission or equivalent*. The *Public Safety/Building Commission or equivalent*, after hearing from the Code Official, the Permit Holder, and the public, shall affirm the order, reverse the order, or modify the order. The decision made by the *Public Safety/Building Commission or equivalent* may be appealed to the *Governing body* by either the Code Official or the Permit Holder in accordance with the procedure of the *City, Village, etc.*

Or add or reference an existing permit appeals process.

O. NON-RENEWAL, SUSPENSION OR REVOCATION HEARINGS. There is no right or expectation of permit renewal. The permit may be renewed at the discretion of the Issuing Body upon application of a Permit Holder as described in Subsection K.

Non-renewal, suspension, and revocation appeal hearings shall be held before the *Public Safety/Building Commission or equivalent*, which shall submit a report to the *Governing body*, including Findings of Fact, Conclusions of Law, and a recommendation as to what action, if any, the *Governing body* should take with respect to the permit. The *Public Safety/Building Commission or equivalent* shall provide the Code Official and the Permit Holder with a copy of the report. Either the Code Official or Permit Holder may make an objection, orally or in writing, to the report and shall have the opportunity to present arguments supporting the objection to the *Governing body*. The *Governing body* shall determine whether the arguments shall be presented orally or in writing, or both. If the *Governing body*, after considering the *Public Safety/Building Commission or equivalent* report and any arguments presented by the Code Official and Permit Holder, finds the complaint to be true, or if there is no objection to a report recommending a suspension, revocation or nonrenewal, the permit shall be suspended, revoked or not renewed as provided by law. If the *Governing body* finds the complaint untrue, the proceedings shall be dismissed without cost to the accused. The *City Clerk or equivalent* shall give notice of each suspension, revocation or nonrenewal to the party whose permit is affected.

Or add or reference an existing permit appeals process.

P. VIOLATIONS AND LIABILITY.

1. It shall be a violation of this ordinance to perform, conduct, direct or allow removal of salvageable material except in conformance with a valid Permit issued pursuant to this ordinance.
2. It shall be a violation of this ordinance to disobey or act contrary to any order issued pursuant to this ordinance.
3. The Owner and Permit Holder shall be jointly and severally liable for any violation of this ordinance and any violation of any condition of permit pursuant to this ordinance, whether caused by act or omission, including applicable fines and penalties together with the *City, Village, etc.*'s costs of enforcement, including attorneys' fees.
4. Any Operator involved in the violation of this ordinance shall be found to have committed a separate violation for which it shall be fully liable, including applicable fines and penalties together with the *City, Village, etc.*'s costs of enforcement, including attorneys' fees.

Q. ENFORCEMENT, FINES AND PENALTIES. The *Director of Development, Director of Buildings and Permits, Code Official or equivalent* shall have the primary responsibility to enforce this ordinance. Violations of this Ordinance shall be subject to the general provisions of [*Site general penalties section of municipal code if applicable or a proceeding for determining and levying an appropriate fine and penalty, which shall be conducted in substantially the same manner as would a proceeding for Permit revocation.*] Fines and penalties for violations of this ordinance shall provide sufficient incentive to deter violators and continued violations. For the purpose of calculating fines and penalties, each day of continuing violation shall constitute a separate offense. Any violation of this ordinance constitutes a public nuisance and, in addition to any other remedies provided or allowed, the *City, Village, etc.* may apply to a court of competent and local jurisdiction for injunctive relief and the assessment of damages including attorney's fees and costs.

Or add or reference an existing enforcement, fines and penalties process.

R. REPORTING. Permit holders shall provide reports to the Code Official in accordance with the reporting requirements specified in the Permit as approved by the Issuing Body. These reports shall include the following:

1. Salvageable materials report that identifies the type, quantity and disposition of salvageable materials removed from the property during the reporting period and supporting documentation.
2. Hazardous wastes/materials report that identifies the type, quantity and disposition of hazardous wastes/materials removed from the site during the reporting period. This report should be accompanied by supporting documentation of disposal, name and contact information on haulers, and copies of any applicable permits/exemptions.

3. Waste report that identifies the type, quantity, and disposition of waste materials removed from the site during the reporting period and supporting documentation.
4. Any instances of environmental monitoring performed during the reporting period and the results of same.

These reports shall also include:

1. Supporting documentation of removal and disposition of materials which shall include weigh tickets, bills of lading, sales receipts, chain of custody logs or equivalent documentation.
2. A statement by the Permit Holder that documentation supporting compliance with this ordinance will be maintained for two years from submission of the reports.
3. A statement from the Permit Holder that the information in the reports is truthful and accurate.