



**Remediation and Redevelopment Program** **April 2022**

# Guidance for Management of Contaminated Soil and Other Solid Wastes - Wis. Admin. Code §§ NR 718.12 and NR 718.15

Background..... 1

Waste Determination ..... 4

Immediate Actions Involving Management of Contaminated Soil ..... 7

Interim or Remedial Actions Involving Management of Contaminated Soil ..... 8

Interim or Remedial Actions Involving Management of Other Solid Waste..... 9

Application Process ..... 10

Continuing Obligations, Fees and Database Tracking..... 12

Soil and Waste Management at Closed Response Action Sites..... 13

Additional Considerations ..... 14

Additional Considerations ..... 18

## Background

Contaminated soil and other solid wastes that are generated as part of a response action under the state’s cleanup rules may be eligible for an exemption from state solid waste laws under Wisconsin Statute chapter (Wis. Stat. ch.) 292 and Wisconsin Administrative (Wis. Admin.) Code chs. NR 500 to 599. Wis. Admin. Code chs. NR 700 to 799 governs the response to and cleanup of hazardous substance discharges and environmental pollution. These approvals for solid waste management exemptions are granted under Wis. Admin. Code §§ NR 500.08(6), NR 718.12 and NR 718.15. See the “Quick Guide” in Appendix 1 for an overview.

Where contaminated soil or other solid waste at a response action site pose fewer hazards (e.g., lower concentration of substances and smaller volume of materials) to human health and the environment, Wis. Admin. Code ch. NR 718 allows for options other than disposal at an operating facility licensed to take that solid waste. This guidance is applicable to situations where contaminated soil or other solid waste from a response action site is proposed to be managed at a location *other than* an operating,

### Purpose

This guidance is intended for use by responsible parties when excavating contaminated soil and other solid waste that may not warrant disposal at an operating, licensed landfill. This guidance describes several approvals that may be available in such situations.

### Related DNR Guidance

The following documents may also be useful:

- *Exempting Low-Hazard Wastes from Solid Waste Regulations, (WA-1645)*
- *Obtaining DNR Approval Prior to Use of Imported Soil and Other Fill Materials on Voluntary Party Liability Exemption Sites, Wis. Stat. § 292.15, (RR-041)*
- *Waste Determinations & Recordkeeping, WA-1152*
- *PCB Remediation in Wisconsin under the One Cleanup Program Memorandum of Agreement, (RR-786)*
- *Guidance for Hazardous Waste Remediation, (RR-705)*
- *NR 718.12 Sample Results Notification, (RR-071)*
- *Exempt Soil Management: A Self-implementing Option for Soil Excavated During a Response Action Under Wis. Admin. Code chs. NR 700 through NR 750, (RR-103)*
- *Recommended Template for Request to Manage Materials under Wis. Admin. Code § NR 718.12 or NR 718.15, (4400-315)*
- *Request for Exemption from Locational Criteria of NR 718.12 (1) (c) for Managing Soil as an Immediate Action, (4400-315A)*

DNR guidance include a number beginning with WA-, RR- or 4400-. To locate these files, visit [dnr.wi.gov](http://dnr.wi.gov) and search for that number.

licensed solid waste facility. Wis. Admin. Code §§ NR 718.12 and NR 718.15 do not apply to management of hazardous waste (as defined in Wis. Admin Code § NR 66.10(52) or 42 USC 6901 to 6991, as amended) or wastes regulated under the Toxic Substances Control Act (TSCA).

### **Applicability**

In general, once contaminated soil and other solid waste (e.g., contaminated sediment, fly ash, or foundry fill) are excavated they must be managed in accordance with local, state and federal laws. The approvals 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 includes any *site or facility* subject to jurisdiction under Wis. Stat. ch. 292 and Wis. Admin. Code chs. NR 700 to 799, *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 ch. NR 706*. Information on reporting a discharge of a hazardous substance to the environment can be found at <http://dnr.wi.gov/topic/Spills/>.

This guidance covers two approvals in Wis. Admin. Code ch. NR 718 relating to managing certain types of solid waste materials, including contaminated soil, during response actions – rather than disposing of the materials at an operating, licensed solid waste facility under Wis. Admin. Code chs. NR 500 to NR 599:

- **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.”
- **NR 718.15 – Applies to other solid waste management:** Where solid waste materials, other than contaminated soil, are being generated during a response action, the approval under Wis. Admin. Code § NR 718.15 may allow the material to be placed in a safe manner on the site or facility from which it was generated rather than being taken to an operating, licensed solid waste facility. “Other solid wastes” includes materials such as contaminated sediment, fly ash, debris, or foundry sand.

### **Definitions for Types of Soil or Other Materials**

The definitions listed below are from Wis. Stat. ch. 292 and Wis. Admin. Code chs. NR 700 to 799, as noted:

**“Contaminated sediment”** means sediment that contains a hazardous substance. [Wis. Stat. § 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 Wis. Admin. Code § NR 660.10(52) or 42 USC 6901 to 6991, as amended. [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. Stat. § 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)]

### **DNR Program Responsibility**

The management of contaminated soil and other solid wastes as part of a response action should follow the provisions in Wis. Admin. Code ch. NR 718, “*Management of Contaminated Soil or Solid Wastes Excavated During Response Actions*,” including submittals to the Remediation and Redevelopment (RR) Program for prior approval. Reference to the “DNR” appearing in this guidance are referring to the RR Program unless explicitly noting the roles and responsibilities of the Waste and Materials Management (WA) Program.

In limited situations the WA Program may approve exemptions under Wis. Admin. Code. ch. NR 718. The WA Program also reviews all other exemption requests under Wis. Stat. § 289.43(8)(b) or Wis. Admin. Code § NR 500.08(4). Please refer to the DNR publication WA-1645, *Exempting Low-Hazard Wastes from Solid Waste Regulations* (go to [dnr.wi.gov](http://dnr.wi.gov) and search “WA-1645”), for more information on low-hazard exemptions when:

- other solid waste that is part of a response action at a site or facility will be managed at a location other than the one it was generated, or
- contaminated soil from a response action will be managed at a location other than a site or facility, or
- contaminated soil or other solid waste is not being managed as part of a response action at a site or facility.

### **Definition of “Site” or “Facility”**

Contaminated soil may be excavated from one response action site or facility and managed in accordance with the approval under Wis. Admin. Code § NR 718.12(1) and/or (2) on either the same site or facility from which the contaminated soil was excavated or at 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. Stat. § 292.01 and Wis. Admin. Code § NR 700.03. (NOTE: Italics denotes statutory or administrative code definitions.)

#### **“Site” means:**

1. any “*waste site*” as defined in Wis. Stat. § 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 Wis. Stat. § 289.01(3), includes an “*approved mining facility*” as defined in Wis. Stat. § 292.01(1m), and a “*non-approved facility*” as defined in Wis. Stat. § 289.01(24).

**NOTE:** Approval under Wis. Admin. Code §§ NR 718.12 and NR 718.15 is not required if the contaminated soil or other solid waste will be managed at an operating, licensed facility approved to accept that waste.

Under Wis. Admin. Code § NR 718.12, it is assumed the DNR is granting a one-time approval to take contaminated soil to the type of “facility” listed below that are no longer in operation. This includes, but is not limited to, the following types of non-operational (i.e., closed) “facilities” defined under Wis. Stat. chs. 289, 293 and 295:

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

## Eligibility

The following persons *may* be eligible for an approval under Wis. Admin. Code §§ NR 718.12 and NR 718.15:

- A person who meets the definition of a “**responsible party**” (RP) under Wis. Stat. ch. 292 and Wis. Admin. Code chs. NR 700 to 799.
- A person who is managing contaminated soil as part of a **utility project or other construction-related activity** can generally manage the material in accordance with Wis. Admin. Code § NR 718.12(1). However, that person should contact the DNR upon discovery of contaminated soil for direction on how to proceed. DNR contacts are provided on page 17. Depending on the contaminant levels, volume and location of the materials, and whether the materials were excavated at a response action site or facility, the materials may need to be taken to a licensed, operating solid waste facility or handled under a low-hazard waste grant of exemption (see DNR publication WA-1645, *Exempting Low-Hazard Wastes from Solid Waste Regulations*, for further guidance; go to [dnr.wi.gov](http://dnr.wi.gov) and search “WA-1645”).

The approvals provided under Wis. Admin. Code §§ NR 718.12 and 718.15 can be requested by the RP in the following situations:

- Soil, containing no waste or a small proportion of waste, excavated from a response action site will be managed at a site or facility. Soil could be managed on the same site from which it was excavated or at a different site or facility.
- Other solid waste, such as foundry sand, fly ash or dewatered sediment, is proposed to be managed at the response action site from which it was generated.

The approvals provided under 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 not contaminated soil.
- Contaminated soil and other solid wastes (e.g., contaminated sediment, fill, and foundry sand) are being managed at an operating solid waste facility licensed to accept that solid waste.
- Soil that is contaminated with substances that require them to be managed as either a hazardous waste under Wis. Admin. Code chs. NR 600 to 699 or as a federal, TSCA regulated waste (e.g., soil with certain concentrations of PCBs).
- Asbestos-containing materials (ACM).
- Management of “other solid waste” at a different response action site or facility from where they were generated. These materials may be eligible for a low-hazard waste exemption under Wis. Stat. § 289.43 from the WA Program.
- Management of contaminated soil at a property that does not meet the definition of “site” [Wis. Admin. Code § NR 700.03(57)] or “facility” [Wis. Admin. Code § NR 700.03(21)], as defined in Wis. Stat. ch. 292 and Wis. Admin. Code § NR 700.03. Contaminated soil should not be disposed of at a property with no existing environmental contamination impacts (e.g., hazardous substance discharges or environmental pollution).

## Waste Determination

Prior to handling contaminated material, an evaluation should be completed to determine if the materials excavated are considered contaminated soil, solid waste and/or hazardous waste. Wis. Stat. § 291.21 requires that “any person generating solid waste shall determine if the solid waste is a hazardous waste.” This is generally referred to as making a “waste determination.” A waste determination is typically based on generator knowledge of the soil or waste material and is supported by soil sampling/waste characterization. A waste determination helps to ensure that the materials generated – whether as part of a cleanup, utility work or development activities – are managed in a manner that is protective of human health, safety, welfare and the environment. The number of soil samples required to characterize a given volume of soil is outlined in Wis. Admin. Code § NR 718.12(1)(e) and in the text box on page 11.

It is in the best interest of the receiving property owner to ensure that the appropriate waste determination was made by the RP and that the material is managed in accordance with local, state and federal law. An incorrect waste determination that results in environmental pollution or a discharge of a hazardous substance may result in the RP who generated the waste and the receiving property owner being held responsible for cleaning up the contamination in accordance with Wis. Stat. ch. 292.

Documentation of a waste determination is required where it is reasonably expected that the material may be a hazardous waste (Wis. Stat. § 291.21 and Wis. Admin. Code ch. 661). The DNR recommends that RPs document and maintain a record of all waste determinations, even in situations when it is not explicitly required by state law.

### NR 718 Approval and Process Options

An RP undertaking a response action may be eligible for one or more of the approvals under 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 Wis. Admin. Code § NR 718.05, unless the exemption in Wis. Admin. Code § NR 708.05(5)(b) applies. The requirements and process for approval to manage soil or other material under Wis. Admin. Code ch. NR 718 differs based on the type of response action undertaken and the exemption criteria that apply to those response actions. The “NR 718 Quick Guide” in Appendix 1 provides a summary of the three types of approvals available to manage contaminated soil or other solid waste at a site or facility. Wis. Admin. Code §§ NR 718.12 and 718.15 provide for the following:

1. **NR 718.12(1) approval for “immediate actions” involving contaminated soil** – this is *generally* considered a self-implementing option.



\* If the RP’s actions meet the criteria in Wis. Admin. Code § NR 718.12(1), the RP does not need the DNR’s approval to proceed with the management of the contaminated soil.

2. **NR 718.12(1) and (2) approval for “interim or remedial actions” involving contaminated soil** – this requires DNR review and approval *before* an interim or a remedial action may be taken.



3. **NR 718.15 approval for “interim or remedial actions” involving other solid waste** - this requires DNR review and approval *before* an interim or a remedial action may be taken.



It is the responsibility of the RP to sufficiently document 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. Stat. ch. 292, or cause a violation of other environmental laws, such as Wis. Stat. ch.160 and Wis. Admin. Code ch. NR 140 relating to groundwater quality.

## Response Action Definitions

The following definitions are from Wis. Stat. ch. 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. [Wis. Admin. Code § 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. [Wis. Admin. Code § 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. [Wis. Admin. Code § 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. [Wis. Admin. Code § NR 700.03(50)]

## Immediate Actions Involving Management of Contaminated Soil

### Eligibility

RPs undertaking immediate actions involving contaminated soil under Wis. Admin. Code § NR 708.05 may be eligible for a self-implementing exemption from solid waste laws (Wis. Stat. ch. 289 and Wis. Admin. Code chs. NR 500 to 599) under Wis. Admin. Code § NR 718.12(1)<sup>1</sup> without approval from the DNR. The RP is generally eligible if:

1. Actions will be conducted in accordance with Wis. Admin. Code chs. NR 700 to 799.
2. Materials being managed are contaminated soil that are proposed to be managed on the response action site or 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.
3. 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.
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 (refer to the text box on page 12 for locational criteria and exemptions).
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. **SOIL.** Soil sampling demonstrates that the contaminated soil does not equal or exceed the applicable Wis. Admin. Code ch. NR 720 soil cleanup 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 hazardous substances in the contaminated soil exceeds the Wis. Admin. Code ch. NR 720 non-industrial soil direct contact standards but not the industrial residual contaminant levels (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 hazardous substances in the contaminated soil that will be managed and the land use of the site or facility – whether based on an industrial or non-industrial land use classification in accordance with Wis. Admin. Code § NR 720.05(5) – are such that no cap, cover or performance standard would be otherwise required by the DNR under Wis. Admin. Code chs. NR 720, 722 and 726.
    - iii. The material is not a hazardous waste.
  - b. **GROUNDWATER.** An attainment or exceedance of groundwater quality standards in Wis. Stat. ch. 160 and Wis. Admin. Code ch. NR 140, would not occur based on soil sampling and the location of placement of the contaminated soil.
  - 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, sediment, etc.) are protective of public health, safety, welfare and the environment. Further definition on what is protective may be referenced in Wis. Admin. Code §§ NR 708.11, NR 722.09, and NR 726.05.

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<sup>1</sup> 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, *Exempting Low-Hazard Wastes from Solid Waste Regulations*, for further guidance.)

## Documentation

While the RP does not need pre-approval from the DNR to conduct an immediate action involving contaminated soil if the proposed immediate action meets all the requirements in 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 the text box on page 11);
- 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); and
- Submit written documentation to the DNR within 45 days of the completion of the immediate action, including the Wis. Admin. Code § NR 718.12(1) soil management documentation, in accordance with the requirements in Wis. Admin. Code § NR 708.05(6).
- The written documentation shall include all of the following:
  1. Wis. Admin. Code § NR 708.05(6)(c)1. A statement expressing the purpose of the submittal and the desired DNR action or response.
  2. Wis. Admin. Code § NR 708.05(6)(c)2. Name, address and telephone number of the RP(s).
  3. Wis. Admin. Code § NR 708.05(6)(c)3. 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 including the locational information specified in Wis. Admin. Code § NR 716.15(5)(d); latitude and longitude, and legal description of lot, if located in a platted area.
  4. Any information required under Wis. Admin. Code ch. NR 706 that was not provided to the DNR previously.
  5. The type of engineering controls, treatment or both and the effluent quality of any permitted or licensed discharge.
  6. 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.

## Interim or Remedial Actions Involving Management of Contaminated Soil

### Overview

RPs undertaking interim and/or remedial actions involving the management of contaminated soil may be eligible for an approval under Wis. Admin. Code §§ NR 718.12(1) and (2) for an alternative approach to taking select 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, an approval may be provided under Wis. Admin. Code § NR 718.15 as an alternative to taking the material to an operating, licensed solid waste facility.

Unlike management activities associated with immediate actions under Wis. Admin. Code § NR 718.12(1), an RP must receive written, prior approval from the DNR under Wis. Admin. Code §§ NR 718.12(1) and (2) or § NR 718.15 for an interim or remedial action. An applicant should provide a complete application submittal to the DNR at least seven days prior to taking the proposed actions, and must receive written approval prior to taking those actions. In some situations, more than seven days advanced notice to the DNR is required. In addition, the DNR may take a longer period of time to review a submittal and issue written approval. Please refer to the “Application Process” section of this guidance for more information on planning and timing of your projects.

### Eligibility

RPs may request an approval to manage contaminated soil when the proposed interim or remedial action complies with the following:

1. Actions will be conducted in accordance with Wis. Admin. Code chs. NR 700 to 799.
2. 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 of “site” or “facility” under Wis. Admin. Code § NR 700.03.
3. 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 (refer to the text box on page 12 for locational criteria and exemptions).
4. 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:
    - i. The contaminated soil does not equal or exceed the applicable Wis. Admin. Code ch. NR 720 soil cleanup 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. Alternatively, all direct contact or groundwater migration concerns, in accordance with Wis. Admin. Code chs. NR 140 and NR 720 and § NR 718.12(2), are addressed through an engineered cap, soil cover or other performance measures.
    - ii. The material is not a hazardous waste.
  - b. **GROUNDWATER.** An attainment or exceedance of groundwater quality standards in Wis. Stat. ch. 160 and Wis. Admin. Code ch. NR 140 would not occur based on soil sampling and the location of placement of the contaminated soil.
  - 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, sediment) are protective of public health, safety, welfare and the environment. Further definition on what is “protective” is referenced in Wis. Admin. Code §§ NR 708.11, NR 722.09 and NR 726.05.

## Interim or Remedial Actions Involving Management of Other Solid Waste

### Eligibility

RPs may request an approval to manage solid waste generated as part of an interim or remedial action when the proposed interim or remedial action complies with the following:

1. Actions will be conducted in accordance with Wis. Admin. Code chs. NR 700 to 799.
2. The material being managed is a solid waste which contains waste other than contaminated soil that is proposed to be replaced 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 the “Additional Considerations” section on page 15 for more information on exceptions to this general rule, including limitations on the management of asbestos-containing materials).

Management of solid waste generated as part of an interim or remedial action is part of a response action subject to response action goals in Wis. Admin. Code § NR 726.05, and the RP will need to demonstrate as part of a case closure request that the placement of the solid waste will not pose a threat to public health, safety, welfare and the environment. In determining this, the RP should ensure that:

1. **SOLID WASTE.** Waste characterization demonstrates that the solid waste will not pose direct contact or groundwater migration concerns, in accordance with Wis. Admin. Code chs. NR 140, NR 720, NR 500 to 599 and § NR 718.12(1) and (2), or those concerns are addressed through an engineered cap, soil cover or other performance measures.
2. **GROUNDWATER.** An attainment or exceedance of groundwater quality standards in Wis. Stat. ch. 160 and Wis. Admin. Code ch. NR 140, would not occur based on waste characterization and the location of placement of the solid waste.
3. **VAPOR.** The placement of the solid waste will not cause a violation of air quality standards or cause a vapor action level in indoor air to be attained or exceeded.

4. **OTHER.** All other pathways of concern at the site or facility (e.g., surface water and sediment, etc.) are protective of public health, safety, welfare and the environment. Further definition on what is protective may be referenced in Wis. Admin. Code §§ NR 708.11, NR 722.09, and NR 726.05.

When planning management of solid waste generated as part of an interim or remedial action, the DNR recommends utilizing the locational criteria in Wis. Admin. Code § NR 718.12(1)(c) (see text box on page 12 for locational criteria).

## Application Process

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 a request to manage material during an interim or remedial action, which could help expedite review of the proposed project. The DNR will base its decision on the requirements in state law to provide an approval based on an alternative regulatory approach appropriate for the relatively lower risk posed by the planned management of the contaminated soil or other solid waste.

RPs are required to obtain review and prior approval by the DNR for management of contaminated soil or other solid waste as part of interim actions or remedial actions prior to managing the materials under Wis. Admin. Code §§ NR 718.12(1) and (2) or NR 718.15. To receive approval, the RP is required to do all of the following at a minimum:

- **SAMPLING:** Conduct soil sampling in accordance with the requirements in Wis. Admin. Code § NR 718.12(1)(e) (refer to the text box on page 11). Applicants requesting approval for management of solid waste under Wis. Admin. Code § NR 718.15 are encouraged to conduct waste characterization following this protocol to facilitate review and approval by DNR and to demonstrate compliance with the response action goals and other case closure criteria in Wis. Admin. Code § NR 726.05.
- **CONSULTANT QUALIFICATIONS:** 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 ch. NR 718 request package** to the DNR at least seven days<sup>2</sup>, and preferably 60 days, prior to taking the proposed action. The application package should include:
  - A material 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) or an alternative sampling plan pre-approved by the DNR;
  - The information required in Wis. Admin. Code §§ NR 718.12(1) and (2);
  - The appropriate Wis. Admin. Code ch. NR 749 fees (refer to the text box on page 16); and
  - The information requested in the “Additional Considerations” section of this guidance on page 14 if the site or facility where the material is proposed to be disposed of is regulated as a non-metallic mine.

DNR form 4400-315, *Recommended Template for Request to Manage Materials Under Wis. Admin. Code § NR 718.12 or § NR 718.15*, was prepared by the DNR for use by RPs and environmental consultants to provide the above information. (Go to [dnr.wi.gov](http://dnr.wi.gov) and search “4400-315” to download the form.) The use of this document is not required, but is recommended for requests for approvals to manage soil and other solid waste to ensure that a complete request is prepared.

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<sup>2</sup> Wis. Admin. Code § NR 718.12(2)(a) requires at least a seven day notice. Certain situations involving continuing obligations require at least 45 days notice to the DNR (see Wis. Admin. Code § NR 727.07).

- **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) or ch. NR 727 if the activities proposed in the material management plan will result in the need for a continuing obligation at the response action site 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 Wis. Admin. Code ch. NR 725. Requirements relating to continuing obligations are more fully explained in the next section of this guidance.
- **DOCUMENTATION OF ACTIONS TAKEN:** RPs must submit written documentation to the DNR within 60 days<sup>3</sup> of the completion of the interim or remedial action involving engineering controls or barriers (e.g., caps). This should be done in accordance with the requirements in Wis. Admin. Code § NR 724.15. Where the documentation requirements of Wis. Admin. Code § NR 724.15 do not apply (e.g., no engineering control involved), RPs are to follow the documentation requirements for interim actions in Wis. Admin. Code § NR 708.15. Either submittal should include documentation of the interim or remedial activities conducted on the site(s) or facility(ies) from which the solid waste was excavated and the site or facility at which the material was disposed of.

### Sampling Requirements for Wis. Admin. Code ch. NR 718

Unless an alternative sampling methodology or protocol is approved by the DNR, responsible parties shall sample and analyze all contaminated soil 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 two 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, including emerging 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 or facility).
3. All soil samples shall be collected from areas most likely to contain residual soil contamination.
4. Analyses must be conducted by a Wis. Admin. Code ch. NR 149 certified/registered laboratory.
5. Responsible parties shall report all analytical results to the DNR in writing within 10 business days after receiving the sampling results [Wis. Admin. Code § NR 716.14(2)].

Applicants requesting approval for management of solid waste under Wis. Admin. Code § NR 718.15 are encouraged to conduct waste characterization following this protocol to facilitate review and approval by DNR. 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.

<sup>3</sup> 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).

## Locational Requirements

Responsible parties may not place or replace excavated contaminated soil 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 onsite water supply well or 300 feet of any off-site water supply well.
- Within three (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.
- Where contaminated soil poses a threat to public health, safety or welfare, or the environment.

## Exemption Requests from Locational Requirements

Where a written grant of exemption from locational criteria is being requested by the RP, it is the responsibility of the RP and their 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:

- Sufficient information as to how relevant state and federal laws, such as the Wis. Admin. Code chs. NR 700 to 799, 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 ch. NR 720), vapor intrusion, ground water, surface water, sediment and any other relevant pathways in the event the DNR grants the locational requirement exemption. Further definition under Wis. Admin. Code chs. NR 700 to 799 on what is “protective” may be referenced in Wis. Admin. Code §§ NR 708.11, NR 722.09, and NR 726.05.
- RPs should use DNR form 4400-315A, “*Request from Location Criteria of NR 718.12(1)(c) for Managing Soil as an Immediate Action*” to request this exemption. For RPs requesting an approval to manage materials while conducting an interim or remedial action, the location exemption request should be included in the overall Wis. Admin. Code § NR 718.12 request package.

## Continuing Obligations, Fees and Database Tracking

Continuing obligations can be site-specific conditions (e.g., a maintenance plan for an engineering control) 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 required at a site or facility pursuant to Wis. Stat. § 292.12 and relevant chapters of Wis. Admin. Code chs. NR 700 to 799. A material management plan may be submitted to the DNR as part of an interim or remedial action. Where the implementation of a material management plan results in the need for a continuing obligation (e.g., an engineering control, use of industrial zoning), as specified in Wis. Admin. Code § NR 725.05(2), the RP shall conduct the following actions for both the response action site and any receiving site or facility:

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 material management plan to the DNR.
2. Send the notification letters required in Wis. Admin. Code § NR 718.12(2)(d) 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 ch. NR 749 database listing fee.

Using DNR form 4400-315, *Recommended Template for Request to Manage Materials under Wis. Admin. Code § NR 718.12 or § NR 718.15*, will assist RPs in ensuring their submitted request for approval will satisfy the above requirements. This document requires the owner of the property receiving the contaminated soil to sign and therefore acknowledge the continuing obligations that will be placed on the property. Once signed, there is no need to wait 30 days prior to submitting this document.

The DNR will list and track the activities at these sites or facilities on the Bureau of Remediation and Redevelopment Tracking System (BRRTS) on the Web (BOTW) database. The database is located at [dnr.wi.gov](http://dnr.wi.gov) and search “WRRD.” Information regarding waste management activities conducted through the Wis. Admin. Code ch. NR 718 approval process, including the approval request and documentation of continuing obligations imposed as a result of these activities, will be accessible by looking up the generating site and the site or facility where the material was finally disposed of.

## **Soil and Waste Management at Closed Response Action Sites**

### **No Continuing Obligations Affected**

Wisconsin has thousands of sites where the state has granted case closure under Wis. Admin. Code chs. NR 700 to 799. 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 were placed on a property, case closure letters may be found on BOTW. Prior to excavating soil or other solid waste 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 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 approvals 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 708.05, or should be classified as an interim or remedial action that may be eligible for an approval 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 or other approval letter, such an action would follow the same procedures as “interim” or “remedial” actions. The approval letter for the site or facility should state whether or not notification to the DNR 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 text box on page 14 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 site or facility, and how the proposed action will be conducted in accordance with all applicable laws. The DNR recommends the RP submit the Wis. Admin. Code § NR 718.12(1) and (2) approval request package as previously described in this guidance, including the material management plan, as outlined in the “interim and remedial action” section in this guidance. The request should identify that the submittal is both a continuing obligation modification and a Wis. Admin. Code ch. NR 718 approval request. The appropriate Wis. Admin. Code ch. NR 749 fee should be

submitted to cover the costs of the technical review of the material management plan and for modifying the case closure database package. The fee table on page 16 lists the fees that may be applicable to this situation.

### **Modifications to 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 (COs) listed below, then the RP must provide the DNR at least 45 days notice prior to taking the proposed action [see Wis. Admin. Code § NR 727.07].

Those COs 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.

### **Additional Considerations**

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.

### **Non-metallic Mines**

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

- Include a copy of the reclamation plan with the request and identify where in the plan the placement of contaminated soil is allowed.
- 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 natural (i.e., not dewater) water table, which is a limitation specified in Wis. Admin. Code § NR 503.08(1)(e) and (2)(d).

### **Natural Heritage Inventory (NHI)**

NHI screening is recommended if the proposed management of material would have the potential to impact endangered resources, including the potential to impact lands, wetlands or water bodies. The NHI public portal (visit [dnr.wi.gov](http://dnr.wi.gov), search “NHI portal”) 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 (ACM)**

Where the RP proposes to manage ACM that are generated as part of a response action, those materials must be managed in accordance with Wis. Admin. Code § NR 506.10 and Wis. Admin. Code ch. NR 447, where applicable. Those administrative codes only allow the ACM to be disposed of at an “approved facility” as defined in Wis. Stat. § 289.01(3). The DNR cannot approve management of ACM under Wis. Admin. Code § NR 718.15 at a response action site or facility.

## **Voluntary Party Liability Exemption (VPLE) Program**

Where RPs or others are importing soil to a site or facility participating in the Voluntary Party Liability Exemption (VPLE) program, RPs should follow the soil testing procedures in the DNR’s guidance RR-041, *Obtaining DNR Approval Prior to Use of Imported Soil and Other Fill Materials on Voluntary Party Liability Exemption Sites*, Wis. Stat. § 292.15 (go to [dnr.wi.gov](http://dnr.wi.gov) and search “RR-041”).

## **Waterways**

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, visit [dnr.wi.gov](http://dnr.wi.gov), search “waterways.”

## **Construction on Historical Fill Sites And Licensed Landfills**

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.

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 by visiting [dnr.wi.gov](http://dnr.wi.gov), search “historic fill.”

## **Hauler Requirements**

In accordance with Wis. Admin. Code § NR 502.06(2)(j), services for the collection and transportation of contaminated soil are exempt from collection and transportation licensing provided the material is managed in compliance with the general requirements of Wis. Admin. Code § NR 502.04 and Wis. Admin. Code ch. NR 718.

## **Reviews and Timelines**

Review of requests for approval under Wis. Admin. Code ch. NR 718 are conducted on a case-by-case basis. It is the submitter’s responsibility to provide sufficient information to the DNR 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 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 submitter if it is necessary to complete the review of the proposal.

The DNR’s goal is to approve or deny a request within 60 calendar days of receiving a complete submittal. Some requests may be reviewed more quickly than 60 calendar days, depending on 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 approval is appropriate for only a portion of the soil requested, with the remainder requiring disposal at an operating solid waste facility licensed to accept the material.
- 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 approval and may require a renewal to continue the activity.

**NOTE:** Submitting a request for a Wis. Admin. Code ch. NR 718 approval does not authorize any person to transport, move or use any waste until the DNR issues a written approval for the management of the specific contaminated soil and other solid waste material.

### NR 749 Fees for Review of Wis. Admin. Code §§ NR 718.12 or NR 718.15 Requests

<b>Fee Assessed to Excavate or Manage Soil or Other Solid Waste Managed on the Generating Property (at least one row must be selected from the following)</b>			
Action	Action Fee	Database Fee	Total On-Site Management Fee
<b>Immediate Actions</b> per NR 708.05(6), if MMP submitted in compliance with NR 718.12(1)	\$350*	No fee	<b>\$350*</b>
<b>Interim Actions</b> per NR 708.11, with MMP with CO	\$700	\$300	<b>\$1000</b>
<b>Interim Actions</b> per NR 708.11, with MMP and without CO	\$700	No fee	<b>\$700</b>
<b>Remedial Action Plan</b> approval, with MMP, without residual soil CO	\$1050	No fee	<b>\$1050</b>
<b>Remedial Action Plan</b> approval, with MMP, with residual soil CO	\$1050	\$300	<b>\$1350</b>
<b>MMP</b> submitted separately from a RAP or CO modification, without residual soil CO	\$700	No fee	<b>\$700</b>
<b>MMP</b> submitted separately from a RAP or CO modification, with residual soil CO	\$700	\$300	<b>\$1000</b>
<b>Closed Sites:</b> Post-closure action, with MMP, without residual soil CO	\$1050	No fee	<b>\$1050</b>
<b>Closed Sites:</b> Post-closure action, with MMP, with residual soil CO	\$1050	\$300	<b>\$1350</b>
<b>Fee Assessed to Manage Soil on a Site or Facility other than the Generating Property (at least one row must be selected for <u>each</u> receiving site)</b>			
Action	Action Fee	Database Fee	Total Off-Site Management Fee
<b>Immediate Actions</b> per NR 708.05(6), if MMP submitted in compliance with NR 718.12(1)	\$350*	No fee	<b>\$350*</b>
<b>Interim Actions</b> per NR 708.11, with MMP with CO	\$700	\$300	<b>\$1000</b>
<b>Interim Actions</b> per NR 708.11, with MMP without CO	\$700	No fee	<b>\$700</b>
<b>All other Actions</b> (Remedial actions, CO modifications, etc.) with residual soil CO	\$700	\$300	<b>\$1000</b>
<b>All other Actions</b> (Remedial actions, CO modifications, etc.) without residual soil CO	\$700	No fee	<b>\$700</b>

Notes:

- 1) \* Fee applies only if a NFA letter is requested.
- 2) If soil is being managed at a site or facility other than where it was generated then both the On-Site Management Fee and Off-Site Management Fees apply.
- 3) **MMP** – a Material Management Plan submitted in accordance with NR 718.12(1) and (2) or NR 718.15.
- 4) **“With residual soil CO”** - site will have a residual soil continuing obligation applied at the source property at the end of the applicable action; remedial action approval, or approval by an addendum to the closure letter.
- 5) **“Without residual soil CO”** - site that will not have a residual soil continuing obligation applied at the source property at the end of the applicable action.

## **RR Program Contacts**

General questions regarding Wis. Admin. Code §§ NR 718.12 and 718.15 approvals should be made to:

- Paul Grittner, [Paul.Grittner@wisconsin.gov](mailto:Paul.Grittner@wisconsin.gov), (414) 405-0764
- Judy Fassbender, [Judy.Fassbender@wisconsin.gov](mailto:Judy.Fassbender@wisconsin.gov), (414) 507-5571

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

The Wisconsin Department of Natural Resources (DNR) is committed to promoting diversity, fairness, equity and the principles of environmental justice. We ensure that we do not discriminate in employment, programs, decisions, actions or delivery of services. If you have questions or to request information in an alternative format (large print, Braille, audio tape, etc.), please contact us at 888-936-7463 or <https://dnr.wisconsin.gov/About/Nondiscrimination>

## Wis. Admin. Code 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 options are available when managing contaminated soil or other solid waste (e.g., contaminated sediment, fill, foundry sand) excavated as a result of an immediate, interim or remedial response action taken under Wis. Admin. Code chs. NR 700 to 799. This is an alternative approach to managing the material as a solid waste at an operating solid waste facility licensed to accept that waste. Wis. Admin. Code §§ NR 718.12 and NR 718.15 do not apply to management of hazardous waste or TSCA regulated waste.

Questions	Approvals under NR 718.12(1) for Immediate Actions Involving Contaminated Soil	Approvals under NR 718.12(1) & (2) for Interim or Remedial Actions Involving Contaminated Soil	Approvals under NR 718.15 for Interim or Remedial Actions Involving Other Solid Waste
1. What types of NR 700 response actions are eligible?	<ul style="list-style-type: none"> <li>Immediate Actions - NR 708.05</li> </ul>	<ul style="list-style-type: none"> <li>Interim Actions - NR 708.11</li> <li>Remedial Actions – NR 722 and 724</li> </ul>	<ul style="list-style-type: none"> <li>Interim Actions - NR 708.11</li> <li>Remedial Actions – NR 722 and 724</li> </ul>
2. Who may utilize the NR 718 approvals?	<ul style="list-style-type: none"> <li>Responsible parties</li> <li>Construction or utility projects<sup>4</sup></li> </ul>	<ul style="list-style-type: none"> <li>Responsible parties</li> </ul>	<ul style="list-style-type: none"> <li>Responsible parties</li> </ul>
3. Is department pre-approval required to manage materials under this NR 718 section prior to taking action?	<ul style="list-style-type: none"> <li>No, but all criteria in NR 718.12(1) must be met</li> </ul>	<ul style="list-style-type: none"> <li>Yes, pre-approval in writing.</li> <li>The RP is required to provide the DNR advance notice of at least 7 or 45 days, depending on situation.</li> <li>The RP must wait for approval.</li> </ul>	<ul style="list-style-type: none"> <li>Yes, pre-approval in writing.</li> <li>The RP is encouraged to provide the DNR advance notice of at least 7 days, and may be required to provide advance notice of 45 days, depending on situation.</li> <li>The RP must wait for approval.</li> </ul>
4. Is a waste determination required?	Yes		

<sup>4</sup> See the note in Wis. Admin. Code § NR 718.12(1) for further clarification on the appropriateness of using this type of approval at construction and utility projects.

Questions	Approvals under NR 718.12(1) for Immediate Actions Involving Contaminated Soil	Approvals under NR 718.12(1) & (2) for Interim or Remedial Actions Involving Contaminated Soil	Approvals under NR 718.15 for Interim or Remedial Actions Involving Other Solid Waste
5. Is sampling required under NR 718.12?	Yes. Per NR 718.12(1)(e), RPs must submit data to the DNR within 10 business days of receiving data.	Yes. Per NR 718.12(1)(e), RPs must submit data to the DNR within 10 business days of receiving data.	The DNR strongly encourages waste characterization utilizing the protocol described in NR 718.12 to facilitate review and approval. Under NR 716.14(2), RPs are required to submit data to the DNR within 10 business days of receiving data.
6. Can the EPA Synthetic Precipitation Leaching Procedure (SPLP) 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 material management plan required under NR 718?	No; however, documentation of the immediate action should be submitted in accordance with NR 708.05(6) and analytical results in accordance with NR 718.12(1).	Yes, and contaminated soil management plan needs approval by the DNR.	A material management plan is strongly encouraged to facilitate review and approval by the DNR.
8. Do NR 718.12(1) locational requirements apply?	Yes	Yes	Consideration of the locational criteria is strongly encouraged to facilitate review and approval by the DNR.
9. Is an exemption from location requirements needed?	Yes, in writing from the DNR	Yes, in writing from the DNR	Coordination with the DNR regarding deviations from locational criteria is strongly encouraged to facilitate review and approval.

Questions	Approvals under NR 718.12(1) for Immediate Actions Involving Contaminated Soil	Approvals under NR 718.12(1) & (2) for Interim or Remedial Actions Involving Contaminated Soil	Approvals under NR 718.15 for Interim or Remedial Actions Involving Other Solid Waste
10. What limitations apply to the excavation and placement of this contaminated soil or other solid waste on a site or facility?	<p>The soil management actions must comply with NR 718.12(1), including:</p> <ul style="list-style-type: none"> <li>• Meet NR 700 to 799.</li> <li>• Contaminated soil managed must be at concentrations less than NR 720 RCLs<sup>5</sup>, and thus not require a performance standard (e.g. cap or cover).</li> <li>• Not pose a threat to public health, safety, welfare and the environment, including a vapor risk.</li> </ul>	<p>The soil management actions must comply with NR 718.12(1) and (2), including:</p> <ul style="list-style-type: none"> <li>• Meet NR 700 to 799.</li> <li>• Meet NR 726.13(1)(b)1 to 5.</li> <li>• Meet NR 718.12(1)(c)7.</li> <li>• Not pose a threat to public health, safety, welfare and the environment, including a vapor risk.</li> </ul>	<p>The solid waste management actions must comply with NR 718.15, including:</p> <ul style="list-style-type: none"> <li>• Meet NR 700 to 799.</li> <li>• Meet NR 726.13(1)(b)1 to 5.</li> <li>• Not pose a threat to public health, safety, welfare and the environment, including a vapor risk.</li> </ul> <p>The DNR recommends that the proposed placement of solid waste meets the locational requirements under NR 718.12(1)(c)7.</p> <p>Contaminated sediment may be eligible to be managed on the land portion of the source site under this approval.</p>
11. What documentation is required at completion of response actions on or off the site or facility?	Documentation required under 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 NR 708.15, NR 724 & NR 726.	Documentation of completed interim or remedial actions is required under applicable sections of NR 708.15, NR 724 & NR 726.
12. Is approval to manage material 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 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.		

<sup>5</sup> If the residual concentrations of contaminated soil attain or exceed the Wis. Admin. Code ch. 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. Code § NR 718.12(1) and (2).

Questions	Approvals under NR 718.12(1) for Immediate Actions Involving Contaminated Soil	Approvals under NR 718.12(1) & (2) for Interim or Remedial Actions Involving Contaminated Soil	Approvals under NR 718.15 for Interim or Remedial Actions Involving Other Solid Waste
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”	Maybe, depending on the interim or remedial actions.	Maybe, 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"> <li>• RP who excavated material</li> <li>• Owner of property where material was disposed of</li> <li>• Hauler in limited situations</li> </ul>	<ul style="list-style-type: none"> <li>• RP who excavated material</li> <li>• Owner of property where material was disposed of</li> <li>• Hauler in limited situations</li> </ul>	<ul style="list-style-type: none"> <li>• Person who excavated material</li> <li>• Owner of property where material was disposed of</li> </ul>

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

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