

Voluntary Party Liability Exemption

DNR-RR-506

October 2013

Voluntary Party Liability Exemptions in Wisconsin

The cleanup and redevelopment of contaminated properties has become a critical land use issue for public and private entities across the country. These brownfields – abandoned or underused properties where redevelopment is hindered by real or perceived contamination – are often the key to a successful community redevelopment project.

In 1994, the Wisconsin State Legislature created the Voluntary Party Liability Exemption (VPLE), under Section 292.15, Wis. Stats., of the Hazardous Substance Discharge Law, also known as the Spill Law.

The VPLE is a process by which a person – including a local government – can voluntarily conduct an environmental investigation and cleanup of a property and then receive limits on their liability for historical contamination on a property.

More than 130 parties have received a COC since the VPLE was created in 1995. Many developers, lenders and prospective purchasers of brownfields choose this route versus a traditional cleanup path, since the exemption provides certain liability assurances helpful to investors as well as future property owners.

What are the benefits of the VPLE?

- Clear and certain assurance that all contamination on a property has been cleaned up to the satisfaction of the state.
- Liability exemption is transferable to future owners.
- Protects owner if remedy fails or environmental standards change.



How is VPLE different than traditional closure process?

Generally, VPLE provides an exemption from all future liability which, unlike a closure letter, cannot be reopened. Also, the VPLE applies to the entire property and a closure letter only applies to a specific discharge or contamination area on a property. In addition, Sites part of the VPLE process usually have closer DNR oversight throughout the cleanup process. The differences are described in detail in the table on page five.

What is the Voluntary Party Liability Exemption?

If you successfully complete an investigation and cleanup of a property – i.e. DNR determines the investigation and cleanup of the property, and any hazardous substances that have migrated off the property are complete – you will receive protection from historic, pre-existing contamination under Wisconsin environmental laws.

An investigation and cleanup of a property, under ch. NR 750, Wis. Adm. Code, includes Phase I and Phase II environmental site assessments followed by a full site investigation. The DNR recommends that the Phase I and Phase II environmental site assessments be conducted in accordance with EPA's and ASTM's All Appropriate Inquiry standards.



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dnr.wi.gov, search "brownfield"



A Phase I Environmental Site Assessment (ESA) “may include, but is not limited to, reviewing records, interviewing persons, and conducting physical inspections of the site.” A Phase II ESA assessment is conducted to “physically confirm that contamination exists” in areas identified in the Phase I ESA. This assessment may include “field sampling of media, laboratory analysis of samples and visual confirmation of environmental contamination at the site.”

Under NR 750, Wis. Adm. Code, an “Environmental investigation of the property” means a study of the entire property, including any discharges that have or may have migrated off the property, and approved by the department, consisting of a Phase I and Phase II environmental assessment and a site investigation, based on information documented in these environmental assessments.

A voluntary party will submit a cleanup plan, which is reviewed and approved by the DNR. Once the DNR approves a completed cleanup, the voluntary party will receive a Certificate of Completion (COC). The COC exempts a voluntary party from liability under most provisions of the Spill Law, as well as certain provisions of other state laws.

What is the Hazardous Substance Spill Law?

The Hazardous Substance Spill Law, also known as the Spill Law, s. 292.11, Wis. Stats., requires that persons who "possess," "cause" or "control" a hazardous substance discharge take actions necessary to restore the environment to the extent practicable and minimize harmful effects from the discharge.

Agency oversight is required and conducted by the DNR’s Remediation and Redevelopment (RR) Program. The certificate assures that no additional environmental work will be required of the party with respect to hazardous substance discharges that occurred prior to the approval of the site investigation, even in the future if:

1. environmental standards change;
2. cleanup action fails; or
3. the hazardous substance contamination that was the subject of the cleanup is discovered to be more extensive than originally thought.

The COC also applies to future owners of the property as a successor or assignee of the voluntary party. In order to maintain the liability exemption, however, the future owner must continue any required maintenance and monitoring of the property.

Who is eligible for the VPLE?

This process is an elective, rather than a mandatory, environmental cleanup process. Interested businesses, individuals or local governments, even the party who caused the contamination, are eligible to participate in the program.

What type of sites are eligible for the VPLE?

Properties with a discharge of a hazardous substance are eligible for VPLE, including certain landfills. Some solid and hazardous waste sites are excluded from the VPLE process, as described in s. 292.15(7), Wis. Stats.

To access the VPLE application form, go to dnr.wi.gov/files/PDF/forms/4400/4400-178.pdf

Are there fees to participate in the VPLE?

Yes, voluntary parties must submit an application and pay the appropriate fees to participate in the process. Fees are required under ch. NR 750, Wis. Admin. Code, and help cover DNR technical oversight costs.

To begin the VPLE process, voluntary parties must submit their application with a nonrefundable \$250 application fee per legally described property. In addition, an advance deposit is required before the DNR can begin providing technical oversight. The advance deposit for VPLE properties is \$2,000 if the property is one acre or less and \$4,000 if the property is larger than one acre.

***Please Note!** The advance deposit does not always cover total DNR oversight costs.*

If the DNR oversight costs are less than the advance deposit, the voluntary party will receive a refund from the DNR. However, if the advance deposit is depleted and additional cleanup work needs DNR review, the DNR will bill the voluntary party on a quarterly basis for the agency's oversight costs, charging at an hourly rate.

The amount of oversight costs depend on the complexity of the site and the level of technical review that is necessary. While some voluntary parties have received refunds after the DNR issues their Certificate of Completion, the amount of oversight costs can be higher than the advance deposit.

Situations when the Voluntary Party Liability Exemption could help you.

Situation #1: *A company is considering purchasing a former industrial property to build a new office and is willing to conduct an environmental cleanup. As a way to ensure the property has met state DNR cleanup requirements, company officials applied for a Certificate of Completion (COC), so when they complete the cleanup the DNR will not come back at a later date and make the company do additional work for these pre-existing discharges.*

Situation #2: *A business owner is selling her property that she used to operate as a gas station. However, the bank for the prospective buyer will not allow the buyer to purchase the property unless the buyer is protected from environmental liability. By applying for and receiving the VPLE exemption, the seller can assure the new owner he/she would have the appropriate liability protection.*

Situation #3: *A company that owns a contaminated property is looking to move the liability for this site off its balance sheets. After the environmental cleanup is completed, the company applies for a Certificate of Completion (COC), works with the DNR through the VPLE process and receives the COC. The COC provided the assurance that the company took care of any liability issues at the property, allowing the company to remove this risk from their financial statements and greatly increasing the chance the property could be redeveloped and/or sold in the future.*

How to Participate in the VPLE Process

In order to participate in the Voluntary Party Liability Exemption (VPLE) process, please take the following steps.

(1) Send a completed [VPLE application form \(4400-178\)](#), to the DNR staff contact and DNR region where the property is located – please see map on page 6 of the form to find the correct DNR region and staff contact. The application form can be downloaded from the RR Program’s website at: dnr.wi.gov/topic/Brownfields/Pubs.html, or contact your regional DNR office for an application form. Please submit the required \$250 application fee for each legally described property, payable to the “Wisconsin Department of Natural Resources,” with your application. This application fee is non-refundable.

(2) Submit to DNR an advance deposit of \$2,000 for properties smaller than 1 acre, or \$4,000 for properties 1 acre or larger. The DNR must receive the advance deposit within 30 days of the applicant receiving a letter from the DNR acknowledging receipt of the application. *While the advance deposit and application fee can be sent together with the application, please include separate checks for the deposit and fee.*

(3) Submit to DNR Phase I and Phase II Environmental Assessment reports. If you own the property or caused the discharge, immediately notify the DNR of any hazardous substance discharges in accordance with s. 292.11(2), Wis. Stats., and ch. NR 706, Wis. Adm. Code.

(4) After the DNR approves the Phase I and Phase II Environmental Site Assessments, complete the environmental investigation of all areas of concern on the property, in accordance with ch. NR 716, Wis. Adm. Code. The investigation should address any hazardous substance discharge on or migrating from the property.

(5) Submit a remedial action options report that is prepared in accordance with ch. NR 722, Wis. Adm. Code.

(6) Upon receiving DNR approval of the environmental investigation and remedial action options report, conduct a cleanup of the property and any contamination which may have migrated off the property.

(7) Upon completing the cleanup and having met all requirements for case closure in ch. NR 726, Wis. Adm. Code, request a Certificate of Completion in accordance with the appropriate paragraph under s. 292.15(2), Wis. Stats. All applicable fees including the fee to add the site to the BRRTS database, must be paid before the Certificate of Completion can be issued.

(8) If natural attenuation is part of the cleanup, and you want the Certificate of Completion before the groundwater has met enforcement standards (under Chapter NR 140, Wis. Adm. Code for groundwater quality), you should also submit the insurance fee and application as required by ch. NR 754, Wis. Adm. Code, in order to obtain the Certificate of Completion. Please see the RR Program fact sheet on VPLE insurance at: dnr.wi.gov/files/PDF/pubs/rr/RR661.pdf, for more information.

(9) The DNR will issue a Certificate of Completion if the applicant has met all appropriate requirements, including fine fee payment.

(10) As necessary, maintain and monitor the property as required by any conditions listed in the Certificate of Completion.

(11) If the cost to provide oversight is less than the advance deposit, you will receive a refund from the DNR.

Differences Between the VPLE and the Traditional Closure Process

	Voluntary Party Liability Exemption Path (s. 292.15, Wis. Stats.)	Traditional Closure Path (s. 292.11, Wis. Stats.)
Participation	<ul style="list-style-type: none"> • Elective • Application required 	<ul style="list-style-type: none"> • Required by law • “Responsible Party” letter received from DNR requiring environmental investigation and response action
DNR Involvement, Fees	<ul style="list-style-type: none"> • DNR reviews and approves Phase I and II environmental site assessments, site investigations, clean-up plans and case closures • DNR fees: \$250 application fee; oversight fees (billed hourly): \$2,000 or \$4,000 advance deposit required; fee to add site to database at closure per ch. NR 749. 	<ul style="list-style-type: none"> • When requested by the responsible party, DNR may provide written review as well as technical and redevelopment assistance for a fee, per ch. NR 749, Wis. Adm. Code • DNR will approve case closure
Responsibility for Environmental Response	<ul style="list-style-type: none"> • Any party may conduct an environmental investigation and cleanup of property • Voluntary party is responsible to ensure the investigation and cleanup are approved by the DNR 	<ul style="list-style-type: none"> • Person who possesses, controls or causes hazardous substance discharge must conduct all necessary response actions • Voluntary action may be taken by other parties
Scope of Response	<ul style="list-style-type: none"> • Phase I & II environmental site assessments required • Requires environmental investigation of entire property, including contamination that has migrated beyond property boundaries • Response actions must be conducted in accordance with NR 700 rule series 	<ul style="list-style-type: none"> • Requires investigation and cleanup of known or suspected contamination at the site • Investigation and cleanup includes contamination that has migrated beyond property boundaries • Response actions must be conducted in accordance with NR 700 rule series
Future Liability After DNR Approval, Closure	<ul style="list-style-type: none"> • Voluntary party receives closure letter from DNR, per ch. NR 726, Wis. Adm. Code • Voluntary party receives “Certificate of Completion” (COC) or partial COC • Voluntary party not responsible for additional environmental work at the property due to past releases, even if: <ul style="list-style-type: none"> ○ environmental standards change; ○ cleanup action fails to fully restore the environment; or ○ the contamination is found to be more extensive than anticipated. • “Certificate of Completion” applies to future owners as successor or assignees 	<ul style="list-style-type: none"> • Voluntary party receives closure letter from DNR, per ch. NR 726, Wis. Adm. Code • Closure letter and any applicable conditions are transferred with property • If additional contamination found, case may be reopened and further action required from current property owner or person who caused discharge, per s. NR 727.13, Wis. Adm. Code

For More Information

Please visit the following RR Program web page for more information about voluntary cleanups in Wisconsin: dnr.wi.gov/topic/brownfields/vple.html. A detailed VPLE question and answer section is available on the web site.

DNR Contacts

Please direct questions about the Voluntary Party Liability Exemption to the brownfield specialist in your regions - dnr.wi.gov/topic/Brownfields/Contact.html.