



# Guidance: Voluntary Party Liability Exemption

## Wis. Stat. § 292.15

### Purpose

The purpose of this guidance is to provide information about the voluntary party liability exemption (VPLE), which was created by the Wisconsin State Legislature in 1994 when Wisconsin Statutes (Wis. Stat.) § 292.15 was enacted to aid in the redevelopment of brownfield properties.

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## VPLE Fundamentals

The VPLE program is a process by which a person conducts an environmental investigation and cleanup of a property voluntarily and then receives limits on their liability for historical contamination on that property.

### What are the benefits of the VPLE program?

Many developers, lenders, and prospective purchasers of brownfields choose this route because the VPLE program provides certain liability assurances helpful to investors and future property owners. Benefits of participating in the VPLE program may include:

- Assurance that contamination on a property was cleaned up to the satisfaction of the state.
- Transferability of the exemption to future owners.
- Liability protection in the event the cleanup standards change, the remedy fails, or the hazardous substance discharge that was the subject of the cleanup is discovered to be more extensive than originally thought.

### What is a brownfield?

Brownfields are properties where the expansion, redevelopment, or reuse of the property may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant. Brownfield cleanups are often key to a successful community redevelopment project.

### How is the VPLE process different than traditional cleanup processes?

Successful completion of the VPLE process provides an exemption from future liability which is not provided by a traditional case closure letter. The VPLE certificate of completion (COC) applies to the entire property that is the subject of the cleanup, while a case closure letter applies to a specific hazardous substance discharge site. Table 1 provides an overview of the differences between the VPLE program and the traditional cleanup processes.

## **What is required to receive a Certificate of Completion (COC) under the VPLE program?**

An environmental investigation and cleanup of a property must be approved by the DNR to receive a COC. An environmental investigation includes Phase I and Phase II environmental site assessments (ESAs), followed by a site investigation for the entire property, including any discharges that have or may have migrated off the property. At a minimum, the DNR recommends that the Phase I and Phase II ESAs are conducted in accordance with the U.S. Environmental Protection Agency's (EPA's) All Appropriate Inquiries and the current ASTM Standard Practices for Phase I and Phase II ESAs.

A Phase I ESA/AAI investigates current and past property uses and other conditions that may indicate the possibility of environmental contamination. A Phase II ESA includes targeted sampling and analysis of media at the property to confirm the presence or absence of contamination.

The voluntary party will then conduct a site investigation, followed by a remedial action options report and remedial action plan. Once the DNR approves the cleanup, and the property receives case closure under Wis. Admin. Code ch. NR 726, the voluntary party will receive a COC outlining the voluntary party's exemption. The COC may be subject to requirements, such as maintaining an engineered barrier or operating a vapor mitigation system. The COC provides coverage for discharges that occurred prior to the date the environmental investigation of the property was approved by the DNR.

## **Who is eligible for the VPLE?**

The VPLE program is an elective cleanup program. Interested persons who meet the definition of "voluntary party" under Wis. Stat. § 292.15(1)(f) - any person who submits an application and pays all necessary fees - are eligible to apply. The voluntary party may be the person who caused the contamination, current owner or operator of a facility, or it may be a new purchaser.

## **What types of sites are eligible for the VPLE program?**

Most properties with a discharge of a hazardous substance are eligible for the VPLE program; however, there are some exclusions. Properties with no known hazardous substance discharges are not eligible. Some solid and hazardous waste sites are also excluded from the VPLE program, as described in Wis. Stat. § 292.15(7).

To receive the VPLE protections, properties with waste sites (e.g., a landfill) must obtain case closure under Wis. Admin. Code ch. NR 726 and the case closure may not rely on any active remedial system, such as active treatment or collection systems relating to groundwater, leachate or gas, to ensure compliance with environmental and public health standards.

Sites with contaminated sediments that meet eligibility requirements may also enter the VPLE program. In addition to receiving case closure, the voluntary party must obtain insurance if additional cleanup is needed for the contaminated sediment (Wis. Admin. Code ch. NR 758). Sediment sites in the VPLE program may not use an engineering control as a remedy for contaminated sediment (Wis. Stat. § 292.15(6m)).

## **Types of COCs**

Voluntary parties who choose to enter the VPLE program may pursue one of five available COCs based on property-specific conditions. The DNR has statutory discretion in deciding which type of COC to issue under Wis. Stat. § 292.15(2). The five types of COCs are:

1. **Wis. Stat. § 292.15(2)(a) General** – This COC provides liability protection where the voluntary party has completed, and the DNR has approved, a comprehensive investigation of the entire property, including sampling for all likely hazardous substance discharges, and the voluntary party has cleaned up the property to the extent practicable. For the general exemption to apply, natural attenuation may not be selected as a remedy to groundwater contamination.

2. **Wis. Stat. § 292.15(2)(ae) Natural Attenuation** – This COC provides liability protection for cleanups where groundwater contamination will remain at the property, the concentration of the hazardous substance(s) is above an enforcement standard, and natural attenuation is selected as the remedy. The DNR requires the voluntary party to obtain insurance to cover the costs of future investigation and cleanup should natural attenuation fail as the selected remedy.
3. **Wis. Stat. § 292.15(2)(af) Contaminated Sediment** – This COC applies to sites with contaminated sediment and provides liability protection when the voluntary party cleans up the contaminated sediment to the extent practicable.
4. **Wis. Stat. § 292.15(2)(ag) Property Affected by Off-site Discharge** – This COC provides liability protection for cleanups where the voluntary party has cleaned up the property and there is also contamination on the property that originated from another property.
5. **Wis. Stat. § 292.15(2)(am) Partial Cleanup** – This COC provides liability protection for partial cleanups. Liability protection may extend only to the hazardous substances that were sampled for during the investigation. This type of COC may state that “not all of the property has been satisfactorily restored or that not all of the harmful effects from a discharge of a hazardous substance have been minimized.” This COC may also provide liability protection for cleanups that only address specific areas of a property.

### When VPLE may be useful for a property

**Situation #1:** A company is considering purchasing a former industrial property to build a new office and is willing to conduct an environmental cleanup. To ensure the cleanup meets state cleanup requirements, company officials participated in the VPLE program. If additional cleanup work related to discharges that occurred on the property prior to the date the environmental investigation was approved is needed in the future, the company will not be required to conduct the work.

**Situation #2:** A business owner is selling property that they 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 completing the VPLE program and receiving a COC, the seller can assure the new owner that the owner will have environmental liability protection for discharges that occurred prior to the date the environmental investigation was approved.

**Situation #3:** A company that owns a contaminated property is looking to remove the liability for this site from its balance sheets. After the environmental cleanup is completed, the company works with the DNR through the VPLE process and receives a COC. The COC provides the assurance that the company completed the cleanup at the property, allowing the company to remove the environmental liability from its financial statements.

The DNR may grant a COC only after the voluntary party has demonstrated completion of all applicable requirements set forth in Wis. Admin. Code chs. NR 700-799 and Wis. Stat. § 292.15(2) for the voluntary party's desired COC.

### When should I apply for the VPLE program?

Parties may apply at any point in the investigation and cleanup process to participate in the VPLE program. It may be more cost-effective for the voluntary party to seek DNR review and input from the beginning of the process. If the voluntary party enters the VPLE program after work was conducted, it is possible that additional site investigation or remedial action may be needed to meet the requirements of the VPLE program. To avoid remobilization costs, the DNR encourages parties to apply for the program early.

### Are there fees to participate in the VPLE?

Fees are required under Wis. Admin. Code ch. NR 750. Voluntary parties must submit a non-refundable application fee and pay DNR oversight fees to participate in the program. The level of DNR oversight depends on the complexity of the site and the level of technical review needed.

Voluntary parties submit an advance deposit to the DNR of \$2,000 (properties one acre or less) or \$4,000 (properties larger than one acre) (Wis. Admin. Code § 750.07(3)). The voluntary party will receive a refund for fees not incurred during DNR oversight. However, the advance deposit does not always cover total fees for DNR oversight. If the advance deposit is depleted and additional DNR oversight is needed, the DNR will invoice the voluntary party on a quarterly basis, charging at an hourly rate (Wis. Admin. Code § 750.07(4)).

## How to Participate in the VPLE Program

Interested parties may follow these steps to participate in the VPLE program.

1. Send a completed *Voluntary Party Liability Exemption Application* (Form 4400-178) and all required attachments to the DNR, including the non-refundable \$250 application fee, for the “property” for which the voluntary party seeks enrollment in the VPLE program. The DNR will send a letter acknowledging the application. To access the form, visit [wi.dnr.gov](http://wi.dnr.gov), and search “4400-178.”
2. Submit an advance deposit of \$2,000 for properties one acre or less in size, or \$4,000 for properties larger than one acre. The DNR must receive the advance deposit within 30 days of the applicant receiving the DNR’s letter acknowledging receipt of the application. The advance deposit and application fees can be sent together with the application; however, please include separate payments for each fee.
3. Submit the Phase I and Phase II ESA reports. If a person causes, possesses or controls a hazardous substance discharge (e.g., owns or operates the property where a hazardous substance discharge has occurred), immediately notify the DNR of any hazardous substance discharges in accordance with Wis. Stat. § 292.11(2) and Wis. Admin. Code ch. NR 706. See <https://dnr.wisconsin.gov/topic/Spills/report.html> for more information.
4. After the DNR approves the Phase I and Phase II ESAs, complete the site investigation of all areas of concern identified from the ESAs on the property, in accordance with Wis. Admin. Code ch. NR 716. The investigation should address any hazardous substance discharges on or migrating from the property.
5. After receiving approval of the site investigation, submit a remedial action options report in accordance with Wis. Admin. Code ch. NR 722 and a remedial action plan in accordance with Wis. Admin. Code ch. NR 724.
6. Upon receiving DNR approval of the environmental investigation, remedial action options report, and remedial action plan, conduct a cleanup of the property and any contamination that may have migrated off the property.
7. After completing the cleanup and meeting all requirements for case closure in Wis. Admin. Code ch. NR 726, submit a case closure request (use Form 4400-202, with applicable fees) and request a COC in accordance with the appropriate paragraph under Wis. Stat. § 292.15(2). To access Form 4400-202, go to [dnr.wi.gov](http://dnr.wi.gov), and search “4400-202.” Pay any remaining fees.
  - a. If natural attenuation is part of the cleanup, and the COC is needed before the groundwater has met enforcement standards for groundwater quality under Wis. Admin. Code ch. NR 140, submit the insurance fee and application as required by Wis. Admin. Code ch. NR 754. For more information, please see *Insurance for Voluntary Party Liability Exemption Sites Using Natural Attenuation – Information and Fee Schedule* (RR-661) (go to [dnr.wi.gov](http://dnr.wi.gov), and search “RR-661”)
  - b. If there is contaminated sediment, provide proof of insurance (or qualification for a waiver) as required by Wis. Admin. Code ch. NR 758, in addition to the case closure and COC request.
8. The DNR will issue a COC if the applicant has met all appropriate requirements, including final fee payment. The voluntary party must maintain and monitor the property as required by any continuing obligations listed in the closure letter and the COC.

**Table 1 – Comparison of the VPLE and traditional cleanup processes**

<b>Component</b>	<b>Traditional Process (§§ 292.11 &amp; 292.31)</b>	<b>VPLE Program (§ 292.15)</b>
Is participation required for contaminated sites?	Yes, responsible parties must follow Wis. Stat. ch. 292 and Wis. Admin. Code ch. NR 700-799	No, participation is voluntary
Party who conducts investigation and cleanup	Responsible party	Voluntary party
Application process	No; however, reporting the discharge to the DNR is required.	Yes, including \$250 application fee
Scope of environmental investigation	Site or facility, as defined in Wis. Stat. § 292.01(18), including off-site migration	Property, as defined in Wis. Stat. § 292.15(1)(c), including off-site migration
Phase I ESA	Optional	Required
Phase II ESA	Optional	Required
Site investigation work plan	Required, unless NR 716.05(2) applies	Required
Site investigation	Required, unless NR 716.05(2) applies	Required
Remedial action options report	Required, unless NR 716.05(2) applies	Required
Remedial action plan	Required when cleanup actions are needed	Required when cleanup actions are needed
Cleanup standards	Both processes follow the same applicable cleanup standards	Both processes follow the same applicable cleanup standards
Case closure request	Optional	Required
Case closure letter	Optional	Required
Certificate of Completion	Not applicable	Issued to the voluntary party when requirements of Wis. Stat. § 292.15 are met. COC applies to future owners as successors or assignees.
Continuing Obligations	Maintain and monitor the property as required by any continuing obligations. Any applicable continuing obligations are transferred with property ownership.	Maintain and monitor the property as required by any continuing obligations. Any applicable continuing obligations are transferred with property ownership.
Post-Closure Modifications	Notification and approval required as designated in Wis. Admin. Code § NR 727.07 and Wis. Stat. § 292.12(6)	Notification and approval required as designated in Wis. Admin. Code § NR 727.07 and Wis. Stat. § 292.12(6)
Insurance Fees	Not required	Required for sites using natural attenuation to clean up groundwater with contamination over an enforcement standard (Wis. Admin. Code ch. NR 140)
Financial responsibility	Required for sites with contaminated sediment cleanups that use engineering controls	Required for sites with contaminated sediment cleanups (unless waived by the DNR)

\*Table 1 continued on following page

**cont. Table 1 – Comparison of the VPLE and traditional processes**

Component	Traditional Process (§§ 292.11 & 292.31)	VPLE Program (§ 292.15)
DNR oversight	Required for certain elements (e.g., closure approval) or when technical assistance is requested (with fee)	Required during entire process (i.e., all submittals undergo technical review by DNR)
DNR Fees	Required for closure submittals and database fees, or when other technical assistance is requested.	\$250 application fee Hourly oversight fees (\$2,000 or \$4,000 advanced deposit required) Database fees
Assurance after cleanup is complete	Responsible party is not required to conduct further investigation or remediation after closure unless site or facility poses a threat to public health, safety, or welfare or the environment (see reopener criteria in Wis. Admin. Code § NR 727.13); if a contaminated sediment engineering control is used, the DNR may require responsible party to take certain actions under Wis. Admin. Code § NR 756.04.	Voluntary party has liability exemption and is not responsible for additional environmental work at the property due to releases that occurred prior to the date of environmental investigation approval, even if: environmental standards change; the cleanup action fails to fully restore the environment; or the contamination is found to be more extensive than originally defined.

## Frequently Asked Questions

### Q1. Can a party that buys a property where a cleanup occurred enter the VPLE program?

Yes. However, additional work may be needed to meet VPLE requirements, such as an “environmental investigation of the property” (as defined in Wis. Admin. Code § NR 750.03(2m)).

### Q2. If a party already qualifies for a liability exemption, such as the lender liability exemption or the local government unit exemption, can the party participate in the VPLE program?

Yes.

### Q3. Can a COC be issued to more than one party for a single property?

Yes. Two or more voluntary parties can receive a COC for one property. Each voluntary party must submit a separate VPLE application to the DNR and explain to the DNR who is paying the technical review fees.

### Q4. How does the VPLE program define “property?”

According to Wis. Stat. § 292.15(1)(c), a “property” is “the area of real property that is included in an application to obtain an exemption under [Wis. Stat. § 292.15], made up of a legally identifiable parcel or legally identifiable contiguous parcels created in compliance with applicable laws.”

### Q5. How many applications, fees, and advance deposits are required if a party wants to enroll multiple, contiguous properties in the VPLE program?

- If a party seeks VPLE protection for multiple legally identifiable contiguous parcels, the party may submit an application form and non-refundable application fee for each such parcel, or the party may combine multiple legally identifiable contiguous parcels into a single VPLE application.

- If a voluntary party is conducting site investigations and cleanup work at multiple properties at the same time, the voluntary party may be able to submit a single advance deposit, based on the aggregate size of the various properties, rather than multiple deposits. Contact the DNR Project Manager to discuss this option.

**Q6. What environmental standards must be followed to receive DNR approval of a cleanup?**

The cleanup standards for a VPLE property are the same as for any other type of contaminated site. All applicable federal, state, and local environmental laws and regulations must be followed. Cleanup standards are described in Wis. Admin. Code chs. NR 700-799.

**Q7. Can I bring in soil or other fill material to a property in the VPLE program?**

If the voluntary party has not received a COC for the property, the voluntary party should test the soil or fill material, obtain DNR approval prior to placing it on the property, and follow all applicable regulatory requirements, including Wis. Admin. Code ch. NR 718. An environmental investigation of the property must be completed and approved by DNR before a COC may be issued; the DNR may consider the environmental investigation of the property to be incomplete and no longer approved if the DNR learns that soil or fill material of unknown characteristics or quality was placed on the site after an environmental investigation was approved. Additional information is available in 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.

If the voluntary party received a COC for the property, the voluntary party must follow any continuing obligation requirements in the closure letter, including any cap maintenance plans. The voluntary party must also follow all applicable regulatory requirements, including Wis. Admin. Code ch. NR 718. Prior DNR approval may be required before placing soil or other fill material on the property. The voluntary party should test the soil or fill material prior to placing it on the property. An existing COC does not provide an exemption from liability for contaminated soil or fill material imported to the property after the date the DNR approved the environmental investigation of the property.

**Q8. How long does it take to obtain a VPLE COC?**

It has taken voluntary parties from five months to several years to receive a COC. The length of time varies depending on property-specific circumstances. Larger, more complicated properties may take longer to investigate, and different remediation techniques require different lengths of time to work. How expeditiously a voluntary party undertakes a project also affects completion times.

**Q9. If a VPLE COC is issued and some contamination was missed during the site investigation and cleanup, who is responsible for conducting any further cleanup work?**

- The DNR would attempt to identify parties who caused the contamination and are not covered by the VPLE. If located, the DNR would direct them to take responsibility for the remaining contamination.
- If there are no viable responsible parties who caused the contamination, the DNR would evaluate the public health and environmental impacts at the site to determine if the state should remediate the newly identified contamination. The voluntary party or the voluntary party’s successor or assignee may choose to conduct additional cleanup on a voluntary basis.
- If residual contaminated media that was approved for management on site (e.g., residual soil contamination that is under a cap) is disturbed in the future as part of a construction project, safe management of that media is required in accordance with continuing obligations and DNR approval may be required.

**Q10. Once a COC is issued, is the voluntary party exempt from all state and federal environmental liability at the property?**

- No. The VPLE exempts parties only from portions of Wis. Stats. §§ 292.11 and 292.31, and portions of state solid waste and hazardous waste laws.
- The VPLE program, as set forth in Wis. Stat. § 292.15, does not exempt parties from any federal laws or regulations. However, the DNR and the EPA operate in Wisconsin under a One Cleanup Program Memorandum of Agreement (MOA) that clarifies the role of federal cleanup programs in Wisconsin's voluntary cleanups. In addition, the federal Small Business Liability Relief and Brownfields Revitalization Act generally restricts federal action at sites in a state cleanup program like the VPLE program. Generally, the EPA will not take action at a property where the responsible or voluntary party is undertaking or has completed a cleanup in accordance with Wisconsin laws.

**Q11. Can a voluntary party sell a VPLE property before receiving a COC?**

Yes. Anyone may own the property, as long as the requirements of the VPLE are met. In some cases, parties enter an agreement where a purchaser agrees to buy a property that is going through the VPLE program.

Buyers and sellers of VPLE properties may be able to enter into third party agreements that contractually assign responsibility for completing the cleanup. Depending on the site circumstances and the type of remediation required, purchasers may be able to construct a building or use part of the property for some productive use while the cleanup continues. The DNR is not a party to these agreements and still retains its authority over the person who caused or possesses or controls the hazardous substance discharge.

**Q12. May a COC be obtained if some of the contamination on a VPLE property originated from a source on a different property?**

Yes. Voluntary parties may receive a COC if there is a hazardous substance on the VPLE property that originates from a source on a different property that is not possessed or controlled by the voluntary party, if all VPLE requirements are met.

The voluntary party must obtain a written DNR determination that the voluntary party meets all requirements of the off-site discharge exemption set forth in Wis. Stat. § 292.13. To be eligible for the off-site discharge exemption, the voluntary party cannot have owned, or currently own, the property that is the source of the migrating contamination.

**Q13. How is a VPLE COC assigned to a new property owner?**

- The liability exemption conveyed by a COC runs with the land, is transferrable, and applies to any successor or assignee of the voluntary party.
- If someone purchases the property covered by the liability exemption after a COC is issued, the purchaser is a successor and will be protected by the VPLE for discharges covered by the COC that occurred prior to the date of the DNR approval of the environmental investigation.
- The liability exemption is statutory; no specific action or documentation is needed to transfer this exemption to successors or assigns. Purchasers may download a copy of the COC and may record the COC with the property deed. The DNR does not reissue a COC to the new owner.

**Q14. What responsibilities exist for someone who purchases a property with a VPLE COC?**

Purchasers of property with a COC are required to comply with all conditions and requirements specified in the DNR closure letter and COC. These continuing obligations may include maintenance and monitoring required to address residual contamination on the property. Copies of closure letters and other information related to cleanup sites are available online in the Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web (BOTW) database on the DNR website (go to [wi.dnr.gov](http://wi.dnr.gov), and search "BOTW").



**Q15. What must I do if I want to build a new building, landscape an area, or make other changes to my property after a COC is issued?**

Property owners should carefully review the closure letter and COC to determine if the actions proposed are allowed by the continuing obligation requirements. Depending on the information included in the closure letter and COC, the owner may need prior written approval from the DNR. Closure letters for VPLE sites often outline requirements for DNR approval before modifying a cap over residual contamination, constructing a new building, installing a well, excavating soil, and other actions. If the property owner fails to meet these requirements, the liability exemption could be revoked by the DNR. Contact the DNR project manager for information about the post-closure modification review process before undertaking any action.

**Q16. May a voluntary party withdraw from the VPLE program?**

Yes. A voluntary party may withdraw from the VPLE program at any time by providing written notification of withdrawal to the DNR. Withdrawing from the VPLE program does not exempt responsible parties from any legal requirements related to investigating and conducting an environmental cleanup. Anyone who caused the hazardous substance discharge or possesses or controls the property where a hazardous substance discharge occurred (such as the property owner), and is not covered by another liability exemption, is required to address contamination on the property in accordance with Wis. Stat. § 292.11 or Wis. Stat. § 292.31.

**Q17. May the DNR withdraw a voluntary party from the VPLE program?**

Yes. In accordance with Wis. Stat. § 292.15(2)(av) and Wis. Admin. Code § NR 750.05(4), if a voluntary party fails to make reasonable progress on the investigation and cleanup, the voluntary party may be withdrawn from the VPLE program by the DNR.

**Q18. Will the VPLE fees and deposits be refunded if a party voluntarily withdraws from the program or is withdrawn by DNR?**

- Upon receiving or providing written notification of withdrawal from the VPLE program, the DNR will return any remaining, unused funds from the advance deposit after all funds due to the DNR are paid.
- The VPLE application fee is nonrefundable. A new application fee will be required to reenter the VPLE program should the interested party choose to do so.

**DNR Contacts**

Please direct questions about the VPLE program to the brownfield specialist in your region. Contact information may be found at [dnr.wi.gov/topic/Brownfields/Contact.html](https://dnr.wi.gov/topic/Brownfields/Contact.html).

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