



Guidance for Sediment-Related Continuing Obligations for Environmental Protection, Wis. Stat. § 292.12(5m)

Introduction

Continuing obligations are limitations or conditions placed on a property when contamination remains at a site following an environmental cleanup. Continuing obligations are sometimes called environmental land use controls or institutional controls. Certain legal obligations, such as a requirement to maintain a sediment cap or other engineered control in a waterway, are referred to as “engineering controls.” Engineering controls are imposed by the Wisconsin Department of Natural Resources (DNR) under Wisconsin Statute (Wis. Stat.) § 292.12 following approval of a remedial action at a site or at the time of case closure.

Purpose

This fact sheet is intended to help property owners understand their obligations under Wis. Stat. § 292.12 regarding continuing obligations that are imposed due to residual contamination remaining on their property.

For sites with contaminated sediment, the person who was required to conduct the environmental cleanup – the responsible party (RP) – is required to ensure compliance with continuing obligations is met while contamination remains in place. Riparian owners may not interfere with the continuing obligations.

Continuing Obligations at Sediment Cleanup Sites

When a property is contaminated due to a hazardous substance discharge or environmental pollution, the RP is required to restore the environment to the extent practicable. In some situations, contaminants may remain in place if measures are implemented that protect public health and the environment (e.g., sediment cap).

While property owners are responsible for complying with continuing obligations for most environmental cleanup sites, the situation is different for sites with sediment cleanups. Under Wis. Stats. § 292.12(5m)(a) and (a)(1), the responsibility for the maintenance of an engineering control (e.g., sediment cap) at a sediment cleanup site belongs to the RP; a riparian owner is not responsible for maintaining the engineering control (unless they are the RP).

Under Wisconsin Administrative (Wis. Admin.) Code § NR 725.02(1), if a continuing obligation is required on an off-site property as part of a remedial action, the RP must notify affected property owners of the continuing obligations on their off-site property before the site can be submitted for case closure. The DNR will send a letter to the off-site property owners detailing the continuing obligations that are required for their property before the site receives closure. In addition, responsible parties should be aware of Wis. Admin. Code § NR 756.04 and Wis. Stat. § 292.12(2)(d); the DNR may require submittal of a plan and compliance schedule and proof of financial responsibility for the maintenance of an engineering control or for the investigation and remediation of residual contamination following the removal of a structural impediment as part of a continuing obligation.

Changing a Continuing Obligation

An RP or property owner has the option to modify a continuing obligation if environmental conditions change. For example, petroleum contamination can degrade over time and property owners may collect new samples demonstrating that residual contamination is no longer present. They may then request that the DNR modify or remove a continuing obligation. Fees are required for the DNR’s review of this request and for processing the change to the database. For more information, visit dnr.wi.gov, search “RR Services.”

A Riparian Owner's Responsibilities When Contamination Crosses the Riparian Line

An off-site property owner, including a riparian owner, is someone who owns property affected by contamination that originated from a different property. For example, a factory discharged contamination into a waterway and the contaminated sediment traveled downstream and deposited in another person's riparian zone. Wis. Stat. § 292.13 provides an exemption from environmental cleanup requirements for affected off-site property owners. The DNR will generally not require off-site property owners to clean up contamination that originated from a different property, as long as the property owner allows the RP access to the property to complete the cleanup and maintain any continuing obligations.

Under Wis. Stat. s. 292.12(5m), the RP that conducted the cleanup of contaminated sediments remains responsible for maintenance of continuing obligations, typically sediment engineered controls, such as a sediment cap. However, as required under Wis. Stat. § 292.12(5m)(ar), riparian property owners and occupants may not interfere with the cleanup actions taken by the RP. For example, a property owner or occupant may not disturb a sediment cap placed in their riparian zone by dredging or any other means.

Liability Exemption Letters

In general, owners of off-site properties have an exemption from environmental cleanup requirements under Wis. Stat. § 292.13. An off-site property owner may request a property-specific liability exemption letter from the DNR if there is adequate information to document that the source of the contamination is not on their property and the owner did not cause the contamination. For more information about this option, see the Offsite Contamination-Contamination that Crosses Property Lines web page at <https://dnr.wisconsin.gov/topic/Brownfields/Offsite.html>.

Public Information

The DNR provides information about contaminated and cleaned up sites, including continuing obligations in the Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web (BOTW). Site-specific information available in BOTW includes maps, contaminant data and if applicable, the site case closure letter. Continuing obligations information provides notice to interested parties about residual contamination and any associated continuing obligations. Interested parties include riparian and waterfront property owners, prospective purchasers, lessees, lenders and the general public.

The DNR's RR Sites Map application (RRSM) provides a map view of contaminated and cleaned up sites, including sites with continuing obligations. Find BOTW and RRSM in the Wisconsin Remediation and Redevelopment Database (WRRD) at <https://dnr.wisconsin.gov/topic/Brownfields/WRRD.html>.

If a completed cleanup is shown in BOTW but the site documents are not linked, contact a DNR Environmental Program Associate (EPA) on the RR Program Staff Contacts web page at <https://dnr.wisconsin.gov/topic/Brownfields/Contact.html>.

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 provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Chief, Public Civil Rights, Office of Civil Rights, U.S. Department of the Interior, 1849 C. Street, NW, Washington, D.C. 20240.

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