



WISCONSIN DEPARTMENT OF NATURAL RESOURCES NOTICE OF FINAL GUIDANCE & CERTIFICATION

Pursuant to ch. 227, Wis. Stats., the Wisconsin Department of Natural Resources has finalized and hereby certifies the following guidance document.

DOCUMENT ID

RR-19-0661-C

DOCUMENT TITLE

Insurance for Voluntary Party Liability Exemption Sites Using Natural Attenuation - Information and Fee

PROGRAM/BUREAU

Remediation and Redevelopment

STATUTORY AUTHORITY OR LEGAL CITATION

Wis. Stats. ch. 292; Wis. Admin. Code ch. NR 700

DATE SENT TO LEGISLATIVE REFERENCE BUREAU (FOR PUBLIC COMMENTS)

November 4, 2019

DATE FINALIZED

November 25, 2019

DNR CERTIFICATION

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

A handwritten signature in black ink that reads 'Andrew Haeg'.

November 25, 2019

Signature

Date



Insurance for Voluntary Party Liability Exemption Sites Using Natural Attenuation - Information and Fee Schedule

The Voluntary Party Liability Exemption (VPLE) process allows eligible parties that conduct an environmental investigation and cleanup of a property to receive a Certificate of Completion (COC). A COC limits future environmental liability.

If a voluntary party is relying on natural attenuation to restore groundwater quality, and they want to receive a COC prior to achieving compliance with the enforcement standards, they are required to pay an environmental insurance fee. This insurance fee is in addition to the required VPLE application and oversight fees.

Environmental Insurance Fee

Wis. Admin. Code ch. NR 754, describes the environmental insurance requirements that voluntary parties must comply with for sites where the voluntary party elects to rely on natural attenuation as a final remedy. This rule requires voluntary parties seeking a COC to obtain environmental insurance through a state program to cover the cleanup cost of the site should natural attenuation fail.

How to Receive a COC Using Natural Attenuation

In order to meet the insurance requirements, you must do the following:

- after investigation and cleanup is complete, submit a request for case closure;
- if the department determines that the conditions for closure are met, submit an application form and the appropriate insurance fee to the DNR Madison office; and
- when it has been determined that all the requirements have been met, the department will issue a Certificate of Completion pursuant to Wis. Stat. § 292.15(2)(ae)(3).

Frequently Asked Questions

Does every site need to get the insurance?

If a party wants to obtain a Certificate of Completion for a site relying on natural attenuation before groundwater enforcement standards are met, they are required to obtain this insurance. If a voluntary party does not want to pay the insurance fee, another option would be to continue monitoring contamination at the site, wait until groundwater enforcement standards are met, and then apply for the COC or to ask for a site closure letter instead of a COC.

What does the insurance policy cover?

The state has entered into a master insurance policy to provide security for the state when issuing a Certificate of Completion for sites relying on natural attenuation. If the site needs to be re-opened due to the failure of natural attenuation, the insurance will cover certain state cleanup and investigation costs, if those are incurred at the site.

Will the state's insurance cover third party claims?

No, the insurance policy is only available for the state to cover cleanup expenses and does not provide coverage for the property owner for potential claims by a third party. A voluntary party may choose to obtain their own separate insurance on the private market if they are concerned about the risk of third party claims.

Do I have to participate in the state's master policy, or can I get my own insurance policy?

To obtain a COC when relying on natural attenuation at a site, a voluntary party must obtain insurance under the state's master policy. The insured party under the master policy is the state of Wisconsin. The voluntary party may obtain their

own additional insurance policy, but it does not replace the required VPLE insurance.

After the one-time fee, will I need to do anything to continue insurance coverage?

No, the one-time payment of the insurance fee is all that is necessary to obtain the required insurance coverage. The voluntary party will not be required to pay for any of the deductible if a claim is made in the future.

How does the insurance work?

The voluntary party and any successors or assignees are protected from future liability under the spill law (Wis. Stat. § 292.15) after the Certificate of Completion is issued. If the department suspects that natural attenuation has failed, the department may choose to use the insurance to finance further investigation or cleanup at the property. The voluntary party will not have to file a claim or pay any additional costs if the department determines that natural attenuation has failed.

Will the fees change?

The department will publish a fee schedule every year. Fees apply to the date that the COC is issued, not the date requested. Please consult the schedule on page 3 to determine the most current fees.

How are fees calculated?

Fees are based on the size of the property and the former use of the property. Please see the current fee schedule on page 3 for size ranges, former use descriptions and current fees. Based on the information submitted, the DNR will make a determination as to the appropriate fee.

How do I determine the size of the property?

The size of the property is the total combined acreage of a single, legally defined parcel, or multiple contiguous legally defined parcels, subject

to a combined investigation and remedial action approved by the department, for which one or more Certificates of Completion will be issued.

For example, a former heavy industrial site was divided into two legally defined parcels, three acres each, and the investigation and cleanup of the two parcels were conducted together. In this case, the combined size of the property would be six acres, so one fee of \$18,266 would be required and the department would issue two Certificates of Completion (see page 3).

What if a property had more than one former use?

If a property had more than one former use, the highest fee is required. For example, if you have a property that was used as a farm and then was used as a chemical manufacturing facility, you would need to pay the fee for the property's use as a Heavy Industrial Property (see former use definitions on pages 3-4).

Contacts and More Information

For more information, please contact the DNR project manager assigned to your site, or [Michael Prager](#), Land Recycling Team leader, (608) 261-4927.

Other helpful publications include:

- [Voluntary Party Liability Exemption fact sheet \(RR-506\)](#)
- [Voluntary Party Liability Exemption Insurance Application \(4400-224\)](#)

To print these and any other publications, or to find out more information about the Remediation and Redevelopment Program, see the DNR's website at: dnr.wi.gov and search "Brownfields".

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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Voluntary Party Liability Exemption Insurance Fees NOVEMBER 2, 2018 TO AUGUST 24, 2020

Pursuant to Wis. Admin. Code § NR 754.11(3), the department has published this schedule of insurance fees. This published schedule of fees applies to voluntary parties receiving a Certificate of Completion after November 1, 2018. Please see information below describing property use and size.

PREVIOUS USE OF PROPERTY	TOTAL ACREAGE OF PROPERTY	
	0 to 4.99 acres	5 acres and above
Residential	\$5,438	\$6,178
Agricultural	\$9,234	\$10,544
Commercial	\$9,987	\$11,381
Light Industrial	\$12,210	\$13,905
Heavy Industrial	\$16,028	\$18,266

Former Use Definitions:

Agricultural Properties include: dairy, pig, turkey or chicken farms; ranches; agricultural services; forestry services; fish farms; granaries; or grain or seed agricultural cooperatives. Agricultural chemical manufacturing, blending, mixing, storage and distribution of fertilizers, pesticides, insecticides or fungicides are considered heavy industrial properties, not agricultural properties (see below).

Residential Properties include: homes; townhomes; condominiums; and apartment buildings. If a dry cleaning operation with an on-site plant is or was located in an apartment complex, then the site is deemed a light industry property (see below).

Commercial Properties include: sites that provide business or retail services that have never been utilized for any type of fabrication, manufacturing, mining or waste management activity. Examples of commercial properties include shopping centers; auto repair shops; strip malls; retail and wholesale businesses; gasoline stations; hospitals; nursing homes; medical offices; warehousing of non-chemical products; educational services; museums; motion picture and film processing locations; lumber yards; auto sales dealers; communication services; TV stations; motels, hotels or office complexes.

Light Industrial Properties include: chemical warehouses; food product preparation plants; textile mill product manufacturing firms; furniture or fixture manufacturing; tobacco manufacturing; leather goods fabrication; dry cleaners that had a dry cleaning plant on premises; fabricated metal products; electric or electronic equipment (e.g. computers, semi-conductor, lighting, etc.); instruments or related scientific test equipment; consumer goods manufacturing, or printing or publishing activities.

Heavy Industrial Properties include: manufacturing of chemical or allied products; rubber or related products (e.g. tire inner tubes, rubber footwear, etc.); lumber or wood products; stone; clay; or glass products; primary metal industries (e.g. blast furnaces, primary or secondary metal reclaiming, foundries or battery recycling facilities); machinery (e.g. generators, engines, construction equipment, etc.); foundry fill or fly ash landfills; salvage yards; manufactured gas plant sites; electroplating facilities; wastewater treatment facilities; military sites or bases; rail yards; transportation equipment (e.g. autos, etc.); paper or allied products (e.g. pulp mills, paper mills, wood treating firms); leather tanning; petroleum, coal aggregate or metal mining extraction or related services; fuels storage; utilities; pipeline operations; refining of petroleum or its derivatives; waste disposal, transfer and treatment (including landfills, incineration, recycling, reclamation, land treatment and underground injection); midnight dumping; or agricultural chemical manufacturing, blending, mixing, storage or distribution of fertilizers, pesticides, insecticides, or fungicides.