



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-20-5417-C

DOCUMENT TITLE

Model Certificate of Completion (COC) for Voluntary Party Liability Exemption (VPLE) Program - Natural Attenuation with Insurance Template

PROGRAM/BUREAU

Remediation and Redevelopment

STATUTORY AUTHORITY OR LEGAL CITATION

Wis. Stat. § 292.15, Wis. Admin. Code §§ NR 750 and 754

DATE SENT TO LEGISLATIVE REFERENCE BUREAU (FOR PUBLIC COMMENTS)

April 6, 2020

DATE FINALIZED

April 27, 2020

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.

April 20, 2020

Signature

Date



CERTIFICATE *of* COMPLETION *for* SPECIFIC HAZARDOUS SUBSTANCES

PER WIS. STAT. § 292.15(2)(ae)
QUALIFIED BY WIS. STAT. § 292.15(2)(am)

WHEREAS, [name of voluntary party] applied for an exemption from liability under Wis. Stat. § 292.15(2), for the property located at [address, city], Wisconsin, which is commonly referred to as the [site name] further described in the legal description found in Exhibit A (the Property);

WHEREAS, an environmental investigation of the Property was conducted and the Wisconsin Department of Natural Resources (DNR) determined that environmental contamination exists at the Property;

WHEREAS, [name of voluntary party] submitted to DNR certain investigation reports and a remedial action plan for the Property for specific hazardous substances listed in Exhibit B which comply with the requirements set forth in Wis. Admin. Code chs. NR 700-799 consisting of the documents and reports listed in Exhibit C;

WHEREAS, in accordance with Wis. Stat. § 292.15(2)(ae)1, the DNR has determined that an environmental investigation was conducted which adequately identified and evaluated the nature and extent of the release(s) of specific hazardous substances on the Property. DNR approved the environmental investigation of the Property on [most recent date SI was approved];

[Use if applicable – historic fill/abandoned landfill]

WHEREAS, DNR determined that the historic fill material brought onto or existing at the Property in the past does not qualify as exempt under Wis. Admin. Code § NR 500.08. On [date], DNR issued a Building on a Historical Fill Site Exemption Approval (Exhibit E);

WHEREAS, the Property contains groundwater that exceeds a groundwater quality standard under Wis. Admin. Code ch. NR 140 and soil contamination that exceeds residual contaminant levels (RCLs) for the [industrial or non-industrial direct contact pathway or groundwater pathway] under Wis. Admin. Code ch. NR 720. Therefore, the Property will be included on DNR's Bureau for Remediation and Redevelopment Tracking System (BRRTS) pursuant to Wis. Stat. § 292.12(3). [Name of voluntary party] submitted to the DNR all the information necessary to be included on BRRTS, pursuant to Wis. Admin. Code § NR 726.11;



WHEREAS, on [date closure letter(s) issued, list dates for each closure letter for property], DNR issued (a) case closure with continuing obligations letter(s) for the Property (Exhibit D). The closure letter(s) [if applicable] and cap maintenance plan(s) specify the continuing obligations and other requirements that the owner of the Property shall adhere to, abide by and maintain. Those continuing obligations are summarized below, and further details are found in the closure letter(s) and cap maintenance plan(s):

All continuing obligations of the closure letter(s) should be briefly listed here. The following two sentences should be used for most letters. This section should be amended as necessary; vapor intrusion obligations should be listed here, too:

- Maintain an engineering control to prevent direct contact with and/or infiltration through residual soil contamination that might otherwise pose a threat to public health and the environment. DNR must be notified and pre-approve any changes to this engineering control.
- If soil with residual contamination is excavated in the future, manage the soil in accordance with all applicable laws.

WHEREAS, [name of voluntary party] paid to DNR the appropriate insurance fee and submitted a complete insurance application form to obtain coverage for the Property under the state's master insurance contract in accordance with Wis. Stat. § 292.15(2)(ae)3m and Wis. Admin. Code ch. NR 754 based on their desire to use natural attenuation to remediate groundwater contamination that exceeds Wis. Admin. Code ch. NR 140 groundwater quality enforcement standards;

WHEREAS, DNR determined that response actions are complete for the specific hazardous substances that were analyzed for, listed in Exhibit B, and were based on the current Property zoning [list the current zoning e.g.: "Neighborhood Retail (C9C)"] and use for [describe land-use site was cleaned up for "industrial," "commercial," "multi-family residential," etc.]. The land use classification per Wis. Admin. Code § NR 720.05(5) is [select either "industrial" or "non-industrial"];

WHEREAS, with respect to the specific hazardous substances that were analyzed for, which are listed in Exhibit B, DNR determined, in accordance with Wis. Stat. §§ 292.15(2)(a)2 and (ae)2, that response actions necessary to restore the environment to the extent practicable and minimize the harmful effects were completed for those substances. DNR determined that groundwater contaminated with [substances above the ES] above the Wis. Admin. Code ch. NR 140 groundwater quality enforcement standards, will be brought into compliance through natural attenuation, in accordance with administrative rules promulgated by the DNR; and

WHEREAS, considering the proposed use and development of the Property, DNR determined that the conditions in Wis. Stat. §§ 292.15(2)(am)1m.a and b were met.



THEREFORE, based upon the information that was submitted, DNR hereby certifies that the response actions set forth in the DNR-approved remedial action plan for the Property and any other necessary response actions were completed for the specific hazardous substances that were analyzed for (listed in Exhibit B).

Upon issuance of this Certificate of Completion (Certificate), **[name of voluntary party]** and the persons qualified for protection under Wis. Stat. § 292.15(3) are exempt from the provisions of Wis. Stat. §§ 291.37, 292.11(3), (4), and (7)(b) and (c) with respect to the existence of the specific hazardous substances listed in Exhibit B, on or originating from the Property, the release of which occurred prior to the date DNR approved the environmental investigation required under Wis. Stat. § 292.15(2)(ae)1.

Any hazardous substances on or originating from the Property that were released after the date that the environmental investigation was approved, or releases of hazardous substances not listed in Exhibit B, will be the responsibility of the current Property owner and any other person who possesses or controls that discharge and any person who caused the discharge.

DNR may take actions under Wis. Stat. § 292.11 or 292.12 to ensure compliance with the specified requirements and the person who owns or controls the Property may no longer qualify for the liability protections under Wis. Stat. §§ 292.15(ae) and (am) if the person fails to meet requirements including but not limited to the following:

- Maintain or monitor the Property and comply with all continuing obligations as required by the conditions in this Certificate, the case closure with continuing obligation letter(s) dated **[date]**, cap maintenance plan(s) dated **[date]** (Exhibit D), Wis. Stat. § 292.12, and administrative rules promulgated by the DNR.
- **[Include if site needs evaluation if land use changes; edit as appropriate for the site; sites with multifamily residential use can add words “single family” before residential]** Because of the residual contamination, before use of the Property may be changed to a residential use, or use by certain sensitive populations, such as a day care center, school, a senior center, hospital or a similar use, notification to DNR is required at a minimum. DNR may require additional sampling and cleanup to ensure that the Property is protective for the proposed changes to the Property.
- In accordance with Wis. Stat. § 292.15(2)(am)1m.c., cooperate with DNR to address problems caused by hazardous substances remaining on the Property, if necessary; such cooperation shall include allowing access to the Property or allowing DNR or its authorized representatives to undertake activities on the Property, including placement of borings, equipment and structures on the Property.

[Use if applicable – historic fill/abandoned landfill] In addition, because of historic fill material on the Property, DNR issued (a) Building on a Historical Fill Site Exemption Approval(s) on **[date]** (Exhibit E) for the Property development. If anyone proposes to do any future construction work on the Property that was not included in the exemption(s), that person would also have to obtain approval for that work from



DNR prior to initiating any construction on the Property under the authority under Wis. Admin. Code § NR 500.08(4) to receive an exemption from the prohibition in Wis. Admin. Code § NR 506.085.

If natural attenuation of contaminated groundwater fails, the insurance coverage under Wis. Stat. § 292.15(2)(ae)3m. may be used by the state to cover the costs of complying with Wis. Stat. § 292.11(2) with respect to groundwater quality.

The protection from liability provided under Wis. Stat. § 292.15(2)(am) does not apply to any person who obtained a Certificate by fraud or misrepresentation, or by knowingly failing to disclose material information or under circumstances in which **[name of voluntary party]** knew or should have known about more discharges of hazardous substances than was revealed by the investigation approved by DNR.

Nothing in this Certificate or in Wis. Stat. § 292.15 affects the authority of DNR to exercise any powers or duties under applicable laws other than Wis. Stat. §§ 291.37, 292.11(3), (4), and (7)(b) and (c) and 292.31(8) with respect to any release or threatened release of contaminants at the Property, or the right of DNR to seek relief available against any person who is not entitled to protection from liability under Wis. Stat. § 292.15 with respect to such release or threatened release.

SIGNED AND CERTIFIED this _____ day of _____, 202X.

Christine Haag, Director
Remediation and Redevelopment Program
Wisconsin Department of Natural Resources

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.

EXHIBIT A
Legal Description
[site name]

For most legal descriptions, you should attach a copy of the deed or Certified Survey Map that has a clear legal description.

A reference to the attached document should be listed here, for example:

Lots 1 and 2 of CSM No., 13176 recorded on October 25, 2011 in vol. 84, pages 303-308 of certified survey maps as Document No. 4804316 by the Dane County Register of Deeds (see attached map).

EXHIBIT B
List of Hazardous Substances Analyzed
[site name]

Exemption from liability under Wis. Stats. § 292.15(2) is limited to these specific substances addressed in the cleanup:

This is a list from a recent site, the PM should work with the consultant to prepare a list for the site

SOIL ANALYTES

Gasoline Range Organics (GRO)	1,2-Dibromoethane (EDB)
Diesel Range Organics (DRO)	Dibromomethane
	1,2-Dichlorobenzene
	1,3-Dichlorobenzene
	1,4-Dichlorobenzene
	Dichlorodifluoromethane
	1,1-Dichloroethane
	1,2-Dichloroethane
	1,1-Dichloroethene
	cis-1,2-Dichloroethene
	trans-1,2-Dichloroethene
	1,2-Dichloropropane
	1,3-Dichloropropane
	2,2-Dichloropropane
	1,1-Dichloropropane
	cis-1,3-Dichloropropane
	trans-1,3-Dichloropropane
	Di-isopropyl ether
	Ethylbenzene
	Hexachlorobutadiene
	Isopropylbenzene
	p-Isopropyltoluene
	Methylene Chloride
	Methyl-tert-butyl-ether
	Naphthalene
	n-Propylbenzene
	Styrene
	1,1,1,2-Tetrachloroethane
	1,1,2,2-Tetrachloroethane
	Tetrachloroethene (PCE)
	Toluene
	1,2,3-Trichlorobenzene
	1,2,4-Trichlorobenzene

Metals

Arsenic
Barium
Cadmium
Chromium
Lead
Mercury
Selenium
Silver
Zinc

Volatile Organic Compounds (VOCs)

Benzene
Bromobenzene
Bromochloromethane
Bromodichloromethane
Bromoform
Bromomethane
n-Butylbenzene
sec-Butylbenzene
tert-Butylbenzene
Carbon Tetrachloride
Chlorobenzene
Chlorodibromomethane
Chloroethane
Chloroform
Chloromethane
2-Chlorotoluene
4-Chlorotoluene
1,2-Dibromo-3-Chloropropane

1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethene (TCE)
Trichlorofluoromethane
1,2,3-Trichloropropane
Trichloromethane
1,2,4-Trimethylbenzene
1,3,5-Trimethylbenzene
Vinyl Chloride
Xylenes (Total)

Polycyclic Aromatic Hydrocarbons (PAHs)

Acenaphthene
Acenaphthylene
Anthracene
Benzo(a)anthracene
Benzo(a)pyrene
Benzo(b)fluoranthene
Benzo(g,h,i)perylene
Benzo(k)fluoranthene
Chrysene
Dibenzo(a,h)anthracene
Fluoranthene
Fluorene
Indeno(1,2,3-cd)pyrene
Naphthalene
1-Methylnaphthalene
2-Methylnaphthalene
Phenanthrene
Pyrene

GROUNDWATER ANALYTES

Metals

Arsenic
Barium
Cadmium
Chromium
Lead
Mercury
Selenium
Silver
Sodium
Zinc

Volatile Organic Compounds (VOCs)

Benzene
Bromobenzene
Bromodichloromethane
Bromoform
sec-Butylbenzene
n-Butylbenzene
tert-Butylbenzene
Carbon Tetrachloride
Chlorobenzene
Chloroethane
Chloroform
Chloromethane
2-Chlorotoluene
4-Chlorotoluene
1,2-Dibromo-3-Chloropropane
1,2-Dibromoethane (EDB)
Dibromomethane
1,2-Dichlorobenzene
1,3-Dichlorobenzene
1,4-Dichlorobenzene
Dichlorodifluoromethane
1,1-Dichloroethane
1,2-Dichloroethane
1,1-Dichloroethene
cis-1,2-Dichloroethene
trans-1,2-Dichloroethene
1,2-Dichloropropane
1,3-Dichloropropane
2,2-Dichloropropane
cis-1,3-Dichloropropene

trans-1,3-Dichloropropene
Di-isopropyl ether
Ethylbenzene
Hexachlorobutadiene
Isopropylbenzene
p-Isopropyltoluene
Methylene Chloride
Methyl-tert-butyl-ether
Naphthalene
n-Propylbenzene
1,1,1,2-Tetrachloroethane
1,1,2,2-Tetrachloroethane
Tetrachloroethene (PCE)
Toluene
1,2,3-Trichlorobenzene
1,2,4-Trichlorobenzene
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethene (TCE)
Trichlorofluoromethane
1,2,4-Trimethylbenzene
1,3,5-Trimethylbenzene
Vinyl Chloride
Xylenes (Total)

Polycyclic Aromatic Hydrocarbons (PAHs)

Acenaphthene
Acenaphthylene
Anthracene
Benzo(a)anthracene
Benzo(a)pyrene
Benzo(b)fluoranthene
Benzo(g,h,i)perylene
Benzo(k)fluoranthene
Chrysene
Dibenzo(a,h)anthracene
Fluoranthene
Fluorene
Indeno(1,2,3-cd)pyrene
1-Methylnaphthalene
2-Methylnaphthalene
Naphthalene
Phenanthrene
Pyrene

VAPOR ANALYTES

Benzene
Toluene
Ethylbenzene
Total Xylene
Tetrachloroethene
Trichloroethene
Cis-1,2-Dichloroethene
Trans-1,2-Dichloroethane
Vinyl Chloride
Methane

EXHIBIT C
Investigation and Remedial Action Reports
[site name]

1. Insert list of documents submitted and used to make completion determination, list should include title of report, date of report, and who prepared it. Example: Remedial Action Plan, RHI Holdings, Inc., West Milwaukee Center, dated January 7, 2013 by Gannett Fleming
- 2.
- 3.
- 4.

EXHIBIT D
Closure Letter(s) and Cap Maintenance Plan(s)
[site name]

See Attached **[date closure letter was sent]**, Case Closure with Continuing Obligations letter and Cap Maintenance Plan for the **[site name]** site.

EXHIBIT E
Building on a Historical Fill Site Exemption Approval
[site name]

See attached Building on a Historic Fill Site Exemption Approval dated **[date]**.