



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-19-0059-C

DOCUMENT TITLE

Wis. Stat. § 75.106 Agreement Template

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)

26-Aug-19

DATE FINALIZED

02-Sept-19

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 statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance 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 "Jennifer Haeg".

Signature

September 4, 2019

Date



Wis. Stat. § 75.106 Agreement

Assignment of right to tax foreclosure acquisition of contaminated properties

Wis. Stat. § [75.106](#) authorizes the governing body of a county (and the city of Milwaukee) to assign to a person the county's right to: a) take judgment to any brownfield parcel that is subject to foreclosure under Wis. Stat. § [75.521](#); or b) take a tax deed to any brownfield parcel subject to Wis. Stat. § [75.14](#).

A person seeking to obtain title to a tax delinquent brownfield property through the Wis. Stat. § 75.106 process must conduct an environmental assessment of the property and submit the assessment report to Department of Natural Resources (DNR), using the appropriate DNR form, before a court judgment occurs or a tax deed is granted.

If the property is contaminated and needs further investigation or remedial action the person must also enter into an agreement with the DNR to appropriately attend to the property. The DNR will generally use language similar to that found in the example agreement provided with this publication for informational purposes, unless the overall cleanup activity is determined by the DNR to be complex. Complexity can occur when, for example, there are overlapping state and federal jurisdictional issues at a property involving federal environmental laws such as TSCA, CERCLA, RCRA. In these situations, a [Wis. Stat. § 292.11\(7\)](#) negotiated agreement may be created and proposed by the DNR. Please contact DNR at 608-267-3120, before requesting a § 75.106 agreement, to discuss the complexity of your site.

The DNR will review the request for a Wis. Stat. § 75.106 agreement to ensure all necessary information and payments have been submitted. If everything is in order, the DNR will create a draft agreement for the person to review and comment on. The DNR will then review all comments and proposed changes to the agreement and reply to the person with a final agreement proposal. The DNR's review time may be extended if the person requests significant changes to the original draft.

If a county, or the city of Milwaukee, is willing to assign its right to take title to a tax delinquent brownfield parcel to a person, and the parcel is contaminated, the person must provide the following information and documents to DNR to be eligible to obtain a Wis. Stat. § 75.106 Agreement with the DNR:

- **A completed DNR agreement request form, [Form 4400-237](#), and the proper fee;**
- **Professional Phase I and Phase II environmental site assessment reports; and**
- **A copy of the subject property's deed containing a correct legal description.**

Definitions of words and terms used in this publication

"Person" means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency. Wis. Stat. § 292.01(13).

"Brownfields" means abandoned, idle or underused industrial, commercial or residential facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

TSCA refers to the federal Toxic Substances Control Act of 1976. CERCLA refers to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, known also as Superfund. RCRA refers to the federal Resource Conservation and Recovery Act of 1976.

Wis. Stat. § 75.106 Agreement Example (For Informational Purposes Only)

**STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**

IN THE MATTER OF:

**AN AGREEMENT BETWEEN THE DEPARTMENT OF NATURAL RESOURCES AND
(INSERT PARTY NAME)**

**TO INVESTIGATE AND CLEAN UP ENVIRONMENTAL CONTAMINATION AT (ADDRESS),
(CITY), WISCONSIN, PURSUANT TO WIS. STAT. § 75.106, and Ch. 292.**

WHEREAS, before a judgment is issued under Wis. Stat. § 75.521 or a tax deed is executed under Wis. Stat. § 75.14, Wis. Stat. § 75.106 authorizes the governing body of a County, (and the City of Milwaukee), to assign to a person the county's right to take judgment with respect to any parcel that is subject to foreclosure under Wis. Stat. § 75.521 or to take a tax deed with respect to any parcel subject to Wis. Stat. § 75.14, if all of the following apply:

- A. The governing body of the county (or city) provides written notice to the governing body of the city, town or village in which the parcel that is subject to the county's (or city's) foreclosure action is located at least fifteen (15) days before the governing body of the county (or city) meets to consider the approval of the assignment.
- B. The governing body of the county (or city) produces a written assignment that is signed on behalf of the county (or city), the assignee and the city, town or village in which the parcel that is subject to the county's (or city's) foreclosure action is located.
- C. The assignment identifies the parcel for which the judgment is assigned.
- D. The parcel for which a judgment is assigned is a brownfield.
- E. The assignment requires an environmental assessment of the parcel and requires that the Department of Natural Resources (the "Department") be provided the results of that assessment before a final judgment under Wis. Stat. § 75.521 or a tax deed under Wis. Stat. § 75.14 related to the parcel is granted to the assignee.

Wis. Stat. § 75.106 Agreement Example (For Informational Purposes Only)

- F. The assignment requires that, if the parcel is contaminated by the discharge of a hazardous substance, as determined by the assessment under par. (e), and if the assignee elects to accept the judgment or deed assigned under this subsection regardless of the contamination, the assignee enter into an agreement with the department, before a final judgment is issued under Wis. Stat. § 75.521 or a tax deed is issued under Wis. Stat. § 75.14 related to the parcel, to clean up the parcel to the extent practicable; to minimize any harmful effects from the hazardous substance pursuant to rules the department promulgates; and to maintain and monitor the parcel pursuant to rules the department promulgates.
- G. The assignment and an affidavit from the county treasurer that attests to the county governing body's approval of the assignment are filed with the court that is presiding over the county's foreclosure action under Wis. Stat. § 75.521 or, in the case of a tax deed issued under Wis. Stat. § 75.14, with the register of deeds.

WHEREAS, PARTY NAME is attempting to acquire real property located in the **NAME OF MUNICIPALITY, NAME OF COUNTY** County, Wisconsin, which together consists of property described as: **ADDRESS**; Tax Key/Parcel Number **TAX PARCEL NUMBER**, with the following legal description:

INSERT FULL LEGAL DESCRIPTION

The real property identified above, and further identified visually in **a map included as Addendum A to this Agreement**, is hereinafter known as "the Property."

WHEREAS, the Department has reviewed DNR INSERTS NAMES OF DOCUMENTS, REPORTS, MAPS, ETC., THAT THE AGENCY HAS REVIEWED.

WHEREAS, in consideration of, and in exchange for, the promises and mutual understandings contained herein, and intending to be bound legally hereby, PARTY NAME and the Department, by their authorized representatives, have agreed to the execution of this Agreement.

Wis. Stat. § 75.106 Agreement Example (For Informational Purposes Only)

NOW, THEREFORE, based upon the above recitals and the terms and conditions set forth below, **PARTY NAME** and the Department agree as follows:

I. PARTIES BOUND

The Department and **PARTY NAME** each have consented to the following Agreement, entered into pursuant to Wis. Stat. § 75.106.

II. WORK TO BE PERFORMED

All work to be performed by **PARTY NAME** pursuant to this Agreement shall be conducted in accordance with Wis. Stat. Chapters 289, 291, and 292, especially §§ 292.11, 292.12, and 292.31, and the Wis. Admin. NR 700 rule series, especially Wis. Admin. §§ NR 716, 720, 722, 724, 725, 726 and 727, as well as any other applicable Administrative Rules and Statutes. In addition, all work shall be conducted in compliance with timeframes identified in the Wis. Admin. Ch. NR 700 rule series, which are further outlined in **Department publication RR-967 (attached as Addendum B)** and, as needed, in site-specific correspondence from the Department.

- A. **PARTY NAME** agrees to undertake site investigation and remedial actions due to the presence of hazardous substances on or originating from the Property and, accordingly, **PARTY NAME** agrees to restore the environment to the extent practicable and minimize the harmful effects from the discharges of hazardous substances on or originating from the Property consistent with the requirements of all applicable state and federal laws; and
- B. **PARTY NAME**, after acquiring the Property, agrees to maintain and monitor the Property as required under all applicable statutes and rules and any contract entered into under those authorities.
- C. If **PARTY NAME**, or its successors and assigns, fail to perform Wis. Admin. Ch. NR 700 rule series response actions at the Property in accordance with timelines set forth in this Agreement or applicable Administrative Rules and Statutes, the Department reserves the right to initiate enforcement action against **PARTY NAME**, or its successors and assigns, to compel action. Penalty determinations will be referred to the Wisconsin Department of Justice.

Wis. Stat. § 75.106 Agreement Example (For Informational Purposes Only)

III. SUBMISSION OF DOCUMENTS

Documents, including reports, plans and correspondence, submitted pursuant to this Agreement shall be submitted to the Department in accordance with Wis. Admin. § NR 700.11 and the other applicable chapters of Wis. Admin. § NR 700 rule series.

IV. SITE ACCESS

The employees and authorized representatives of the Department shall have the authority to enter the Property to inspect the project and shall have access to all project records at all reasonable times for any purpose relating to the implementation of this Agreement. These may include, but are not limited to inspecting progress of the site work by **PARTY NAME**, conducting environmental testing, verifying data, reviewing records, and more. **PARTY NAME** shall honor all reasonable requests for such access by the Department or their authorized representatives.

V. SCHEDULE OF RESPONSE ACTIONS

Pursuant to Wis. Stat. § 292.11(7)(d), **PARTY NAME** has provided a schedule for undertaking and completing the non-emergency Response Actions in Exhibit E. **PARTY NAME** shall be responsible for taking the Response Actions at the Site consistent with the schedule.

VI. FEES

PARTY NAME has paid a \$700 fee to the Department for preparation and review of this Agreement and agrees to reimburse the Department for any costs incurred by the Department for its oversight activities under this Agreement. Fees shall be paid as authorized by Wis. Stat. Ch. 292, and as specified in Wis. Admin. §§ NR 749-750.

VII. EFFECTIVE DATE

This Agreement shall be executed by **PARTY NAME** prior to being executed by the Department. The effective date of the Agreement shall be the later of the dates on which the Department signs and

Wis. Stat. § 75.106 Agreement Example (For Informational Purposes Only)

dates the Agreement and the date **PARTY NAME** acquires the property. This Agreement supersedes all previous agreements entered into by **PARTY NAME** and the Department with respect to the Property.

VIII. CONDITIONS UNDER WHICH AGREEMENT IS VOIDED

This Agreement shall be null and void and the parties shall not be bound by the terms and conditions of the Agreement if **PARTY NAME**, does not take judgment to the Property under Wis. Stat. §§ 75.106 and 75.521, within six (6) months of the effective date of this Agreement.

IX. STIPULATED PENALTIES FOR FAILURE TO COMPLY WITH SCHEDULE OF RESPONSE ACTIONS

Pursuant to Wis. Admin. Code § NR 728.07(2), which requires that this Agreement include a provision for stipulated penalties if the response action is not completed in accordance with the Agreement schedule, **PARTY NAME** agrees to the following penalties for failure to complete the non-emergency Response Actions in Exhibit E: for failure to complete a scheduled response action by a respective deadline, **PARTY NAME** shall forfeit \$100 for each violation. Each day of continued violation is a separate offense.

X. AMENDMENT OF THE AGREEMENT

In addition to procedures set forth above, this Agreement may be amended by mutual written agreement of the Department and **PARTY NAME**.

XI. DISPUTE RESOLUTION

- A. Any dispute regarding this Agreement shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is extended by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.
- B. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding

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paragraph, then PARTY NAME shall have thirty (30) days after the conclusion of the informal negotiation period to invoke the formal dispute resolution procedures of this section by serving on the State of Wisconsin a written Statement of Position on the matter in dispute, including but not limited to any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the PARTY NAME.

- C. Within thirty (30) days after receipt of Statement of Position, the Department will serve on PARTY NAME its Statement of Position, including but not limited to any factual data, analysis or opinion supporting that position and all supporting documentation relied upon by the Department. Within twenty (20) days after receipt of the Department's Statement of Position, PARTY NAME may submit a Reply.
- D. Following receipt of PARTY NAME's Statement of Position, the Secretary of the Department will issue a final decision under Wis. Stat. § 227.47.
- E. The invocation of formal dispute resolution procedures under this section shall not extend, postpone or affect in any way any obligation of PARTY NAME under this Agreement, not directly in dispute, unless the Department agrees otherwise.

XII. VIOLATIONS

Pursuant to Wis. Stat. 292.11(7)(e), the Department may refer violations of this Negotiated Agreement to the Wisconsin Department of Justice for enforcement under Wis. Stat. § 299.95.

XI. TERMINATION AND SATISFACTION OF THE AGREEMENT

The provisions of this Agreement shall be deemed satisfied upon receipt by **PARTY NAME** of written notice of completion from the Department that **PARTY NAME** has demonstrated that the Response Actions, including any modified or additional Response Actions, or amendments, was completed in accordance with applicable local, state and federal statutes and regulations and the terms of this Agreement to the satisfaction of the Department. The termination and satisfaction of this Agreement

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shall be provided to **PARTY NAME** in writing upon the Department issuing case closure of the entire Site under the appropriate provisions of Wis. Stat. ch. 292 and the Wis. Admin. Code chs. NR 700 through NR 754 rule series.

The written notice of completion and termination and satisfaction of this Agreement may exclude those provisions which, by their express terms, provide rights to the Department or impose obligations on the **PARTY NAME** beyond such date. **PARTY NAME** may request a determination from the Department that the Work is complete under Wis. Admin. Code ch. NR 749. Any such request shall contain supporting documentation necessary to support such a determination along with the required fee. If the Department determines that the Work is not complete, the Department shall specify the actions necessary to be undertaken by **PARTY NAME** to complete the Work. A determination by the Department that the Work is not complete shall be subject to the Dispute Resolution provision.

The Department reserves the right to terminate any approval issued under this Agreement in the event the Department determines that **PARTY NAME** obtained the approval by fraud, misrepresentation or a knowing failure to disclose material information. The Department further reserves the right to terminate this Agreement if the Department determines that **PARTY NAME** failed to make reasonable progress in undertaking the Response Actions or Response Action required under the terms of this Agreement.

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By: _____

Date: _____

Darsi Foss, Director
Remediation and Redevelopment Program
101 S. Webster Street, PO Box 7921
Madison WI 53707-7921

PARTY NAME

By: _____

Date: _____

CONTACT PERSON, TITLE
PARTY NAME : ADDRESS, CITY, STATE ZIP CODE

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.