



## 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-19-0619-C

### DOCUMENT TITLE

General Liability Clarification Letters

### 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



## General Liability Clarification Letters

### Purpose

This fact sheet describes when general liability clarification letters as defined in § 292.55 Wis. Stats. may be helpful and how parties can request these letters from the DNR's Remediation and Redevelopment (RR) Program.

### Background

Businesses and individuals who own, plan to purchase, redevelop or sell contaminated property are often concerned about environmental liability. Wisconsin state laws and regulations describe situations in which a business or individual can be held responsible for the investigation and cleanup of a contaminated property, as well as when they would be exempt from that responsibility.

### Related Documents

- [Form 4400-237](#) | Technical Assistance and Environmental Liability Clarification Request form
- [RR-620](#) | Lease Letters

### Other Resources

- Environmental Liability
- RR Program Services and Fees

Questions should be directed to the brownfield specialist in your local [DNR regional office](#).

Investigations and cleanups of contaminated property in Wisconsin are subject to the Hazardous Substance Spill Law, under § 292.11, Wis. Stats. This law requires persons who cause, possess (i.e. own) or control a hazardous substance to take the necessary actions to minimize any harmful effects from the discharge, and to restore – to the extent practical – the environment. This law applies not only to those individuals, but also to any owner of the property, even if the owner did not cause the discharge.

In some cases, parties want additional clarification regarding their potential responsibility and liability for contamination on a property. State law gives the Department of Natural Resources (DNR) specific authority to clarify who is responsible for environmental pollution at a property.

Upon request, the DNR can assist an individual determine whether he/she is, or may become, liable for the environmental contamination of a property and to issue letters concerning the liability for environmental contamination to a person owning, planning to purchase, or leasing a property. These general liability clarification letters help clarify, for a specific person and property, the person's liability for investigation and cleanup of environmental contamination on the property.

### What Are The Benefits Of A General Liability Clarification Letter?

- Help ease the liability concerns of a lender, seller, developer, or purchaser;
- Provide reassurance that parties fully understand their responsibilities during the redevelopment of an environmentally impaired piece of property;
- Identify specific cleanup requirements for different environmental concerns at a property;
- assisting in securing a loan; and
- helping parties proceed with redevelopment.

Please keep in mind that a party requesting a general liability clarification letter does not receive any special liability protection when he/she receives a letter. The letter simply explains the DNR's interpretation of a person's liability at a specific property, given the facts presented to the DNR.

## **Who Can Request A General Liability Clarification Letter?**

General liability clarification letters are usually requested by local governments, lenders, businesses and individuals who are buying, selling or redeveloping brownfield properties.

The DNR also provides other types of clarification letters regarding liability exemptions for local governments, individuals who lease property, and for property owners who are affected by off-site contamination. Please see the [Environmental Liability webpage for more information](#).

## **When Would Someone Request A General Liability Clarification Letter?**

People often request a general liability clarification letter when they want to know the liability status or learn about the cleanup requirements for a property.

There are a variety of situations where a clarification letter is helpful. Common questions that may assist an individual determine if they want a clarification letter include:

- What is my liability if I take title to this property?
- What is my liability when neighbors won't allow me access for investigation or clean-up activities?
- What investigations and cleanups have already taken place on the property and how does that affect my liability?
- What is my liability if a previous owner is conducting the cleanup?
- When can the DNR re-open a closed case?
- What is the U.S. Environmental Protection Agency's (EPA) potential interest in my property?

## **How Do I Request A General Liability Clarification Letter?**

To request a general liability clarification letter, parties should first download the [Technical Assistance and Environmental Liability Clarification or Post-Closure Modification Request form \(Form #4400-237\)](#). The form can be used to help clarify liability on a wide range of liability issues affecting local governments, lenders and other parties.

After completing the request form, individuals should attach any relevant documentation and the appropriate fee (see below for fee information), and mail the documents to the Remediation and Redevelopment (RR) program assistant in the DNR regional office where the property is located. Please check the map at on [the staff contact webpage](#) to locate the DNR region and office where your property is located. Include as much information as you feel is relevant to your questions. However, please note that determinations by the DNR may depend on adequate environmental data.

## **Does The DNR Charge A Fee For General Liability Clarification Letters?**

Yes. The DNR was given authority to charge fees for assurance letters, including general liability clarification letters, per s. 292.55, Wis. Stats.

Persons requesting a general liability clarification letter are required to pay in advance a fee of \$700 – in a check made out to the DNR – that accompanies the application form.

Current information on fees is available on the following [Remediation & Redevelopment \(RR\) Program services and fee webpage](#).

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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.