



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.

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RR-19-0683-C

DOCUMENT TITLE

Development At Historic Fill Sites And Licensed Landfills: What You Need to Know

PROGRAM/BUREAU

Remediation and Redevelopment

STATUTORY AUTHORITY OR LEGAL CITATION

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

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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



Development at Historic Fill Sites and Licensed Landfills: What You Need to Know

Purpose

This publication is the first of three fact sheets in an exemption application packet for development at historic fill sites and licensed landfills. A historic fill site is a landfill that was established before 1970 and was not licensed by the DNR. Applicants are urged to carefully read all three documents before completing the Exemption Application Form.

Many property owners are aware that the disposal of waste materials or solid waste was a matter of convenience in the past. Municipal solid waste, ashes, demolition debris, foundry sand, and other wastes were placed in wetlands, marshes, ravines, or other depressions, or were used to adjust the grade on properties. Any deposit of waste material, other than by homeowners on their own property, meets the statutory definition of a landfill. Landfills that were established before 1970 and were never licensed by the Wisconsin Department of Natural Resources (DNR) are called **historic fill sites**. The DNR's administrative codes prohibit the placement of structures or other development on buried waste without an exemption to Wis. Admin. Code § NR 506.085, because of legitimate and documented concerns about leachate, generation of methane and past disposal practices.

Related Documents

- [Development at Historic Fill Sites and Licensed Landfills: Guidance for Investigation \(RR-684\)](#)
- [Development at Historic Fill Sites and Licensed Landfills: Considerations and Potential Problems \(RR-685\)](#)
- [Development at Historic Fill Site or Licensed Landfill - Exemption Application \(Forms 4400-226 and 226A\)](#)

Historic fill sites that are discovered during site development or construction activities will require some assessment work by the owner or developer. The services of an environmental professional may be required. The DNR has established an expedited exemption process for those historic fill sites where the proposed development activities present minimal concerns about safety and impacts to the environment. This packet of publications explains the administrative process for development at a historic fill site beginning with the discovery of the

fill materials. The purpose of these documents is to help applicants comply with Wisconsin's solid waste laws and provide an adequate review to protect public health and welfare. It is the DNR's intent to provide a level of review that corresponds to the expected impact of the fill materials on the proposed development, and the environment.

This packet will also allow property owners, environmental professionals, developers, contractors, and members of the public to complete an application, required by the DNR, for an exemption to the prohibition of structures and other improvements placed above waste materials.

By understanding what information needs to be collected and evaluated, an applicant can minimize delays in the development of the site.

What's in the application package?

The application packet for an exemption to the prohibitions to development in Wis. Admin. Code § NR 506.085, consists of three fact sheets and two application forms:

- Development at Historic Fill Sites and Licensed Landfills: What You Need to Know (RR-683) {this document};
- [Development at Historic Fill Sites and Licensed Landfills: Guidance for Investigation \(RR-684\)](#);
- [Development at Historic Fill Sites and Licensed Landfills: Considerations and Potential Problems \(RR-685\)](#); and
- [Development at Historic Fill Site or Licensed Landfill - Exemption Application \(Forms 4400-226 and 226A\)](#).

Development at Historic Fill Sites and Licensed Landfills: What You Need to Know describes the situations when an exemption is required, explains how to follow the process, and the information that an application must contain. Certain characteristics of the site and its proposed development determine the type of review and the specific DNR program staff who conduct the review. The key characteristics that determine which administrative option is available are described in this document, and summarized on the flow diagram on pages 10 through 12.

Development at Historic Fill Sites and Licensed Landfills: Guidance for Investigation is written for the professional engineer or geologist who will conduct the waste and site characterization. The guidance goes through a series of steps to evaluate the relative risk to human health and environment. Analytical testing is not automatically required to complete the application. It is up to the environmental professional to decide how much testing is appropriate in order to evaluate whether the proposed development can be conducted safely at the historic fill site. The intent of the process is to correlate the level of investigation to the site's relative risk. Small sites with innocuous wastes will need the minimal information that will still ensure safe development.

Development at Historic Fill Sites and Licensed Landfills: Considerations and Potential Problems provides general information on the specific factors that must be considered when development takes place over fill materials. It also describes engineering controls, but clarifies that the responsibility for safe development of the site resides with the property owner, developer, and professionals who are responsible for the work at the site. The environmental professional should use this guidance in completing the application.

Development at Historic Fill Site or Licensed Landfill - Exemption Application (Forms 4400-226 and 226A) are submitted to the DNR along with the necessary information that documents and supports the proposed development. The application process covers many sites from very simple historic fill sites to large and complex landfills. The type of development on any given site can vary from a simple structure to commercial or residential structures.

The amount of information that will be included with the application form depends on the nature of the site as well as the proposed development. Applications for the simplest sites that qualify for an expedited review will need to complete Sections I through VI of Form 4400-226 and complete Form 4400-226A. **Sites that are more complex will need to provide more information as supplements to the application form.** Applications submitted to the DNR must include a fee for technical review, in accordance with Wis. Admin. Code ch. NR 520.

Under what circumstances do I need to apply for an exemption?

If you are proposing development on a property that contains solid waste, state statutes prohibit "any activities on the land which interfere with the closed facility causing a significant threat to public health, safety, or welfare," as stated in Wis. Stats. § 289.46(2). More specifically, solid waste regulations in Wis. Admin. Code § NR 506.085, prohibit development under the following three circumstances:

- use of the waste disposal area for agricultural purposes;
- establishment or construction of any buildings over the waste disposal area; and
- excavation of the final cover or any waste materials.

If additional cover is to be placed over buried waste for the purpose of development or construction, such as soils, asphalt, or concrete, an exemption is required. If a new or additional cover is to be placed solely for the purposes of remediation under the Wis. Admin. Code ch. NR 700 rule series, and the existing cover and waste are not disturbed, then there is no requirement for an exemption. Examples of a new remediation cover are a soil cover for protection against direct contact or a new multilayer cover for prevention of infiltration. Should it be necessary to excavate an existing cover or waste in order to install a cover solely for the purposes of remediation, then an exemption is required and can be incorporated into the remediation approval.

Please keep in mind that even though some development activities may not fall under one of the three criteria listed above, they could still violate the statutory prohibition. For example, building a structure next to a landfill that is producing methane could expose the structure to a public safety concern.

Even if buried materials will be completely removed by excavation and disposed of at another landfill, an exemption is required. For small amounts of low risk wastes, this would be an expedited exemption.

In some circumstances, an exemption will not be necessary because of the nature of the waste. The most common wastes in this category include brick, building stone, concrete, reinforced concrete, broken pavement, and untreated, unpainted wood. Please refer to the Waste Characterization section in the fact sheet *Development at Historic Fill Sites and Licensed Landfills: Guidance for Investigation* (RR-684) for a discussion of these circumstances.

What are examples of situations when the exemption process would be used?

The exemption is needed when one of the activities described in the previous question is proposed to take place over an historic fill site. Commonly, municipal solid waste, foreign or non-soil materials are discovered:

- during a Phase I or II site assessment; or
- during excavation or site preparation activities.

Another example of when an exemption is needed is if new development or expansion of existing development is being considered for:

- a site known to contain fill materials (such as demolition waste, foundry sand, fly ash, etc.);
- a site that is a closed landfill or operated as some type of landfill in the past, possibly unlicensed;
- a site that is known to contain buried waste; or
- a property that contains buried waste and has been issued a Certificate of Completion (COC) or partial COC under the Voluntary Party Liability Exemption (VPLE) process.

What types of exemptions are available?

All applicants for an exemption must submit the Exemption Application (Form 4400-226) and required supplementary information. The DNR grants conditional exemptions following one of three levels of review:

1. the expedited exemption,
2. the case-by-case evaluation, or
3. as part of the investigation or remediation action under the NR 700 rule series process.

The three levels of review differ in the following ways:

- amount of information that the applicant must submit,
- level of technical review by DNR staff, and
- time needed to issue the exemption.

Expedited Exemption

Simple, low risk sites where there is no significant environmental pollution will be eligible for an **expedited exemption**. The responsibility for the evaluation of potential health and safety risks, if the development of the property is not compatible with the waste disposed at the site, lies with the individuals who provide the evaluation and sign the application form. Sites that are eligible for an expedited exemption will be given a minimal review by DNR staff. For an expedited exemption, Sections I through VI of the Exemption Application (Form 4400-226) must be completed. In addition, an Expedited Exemption Application Form (Form 4400-226A) must be signed by an environmental professional, the owner, and the site developer. An applicant can expect to receive an expedited exemption approximately two weeks after submittal of the application forms.

Exemption Following a Case-by-Case Evaluation

Sites where a hazardous substance discharge has occurred (or is likely to have occurred) as well as sites that are suspected to contain certain types of wastes require a more detailed evaluation to assess the safety of development and reuse. Environmental professionals who work with waste sites are familiar with these submittals.

Examples include:

- sites with more than 50,000 yd³ of municipal solid waste or
- sites containing wastes that have unique concerns such as:
 - regulated hazardous waste;
 - polychlorinated biphenyls (PCBs);
 - dioxins or furans; or
 - manufactured gas plant wastes.

Exemption Within the Remediation and Redevelopment Program

If the property is currently undergoing investigation or remedial action under the Wis. Admin. Code. ch. NR 700 rule series, the review and the granting of an exemption can take place as part of the NR 700 activities.

I know I have some contaminated soils on my property. Does the presence of that contamination make my property a landfill?

If a site does not contain buried waste materials but only contains hazardous substances discharged to the environment (such as leakage from an oil or gasoline storage tank), the site is not considered an historic fill site or landfill. It would be regulated as a hazardous substance spill site. For additional information, contact the Remediation and Redevelopment Program.

Is an exemption different from a closure or no further action letter?

Yes. The exemption is needed in order to disturb the cap, excavate the waste materials, or build on the abandoned landfill. At the site of the excavation, there may be additional requirements to test the remaining soils or groundwater or other remediation and report requirements under the Wis. Admin. Code. ch. NR 700 rule series, before the excavated site can be given either a No Further Action (NFA) or a closure letter.

Is there a fee for either the expedited exemption or the case-by-case evaluation?

Yes. Under the provisions of Wis. Admin. Code chs. NR 520, NR 749 or NR 750, exemption applications (including expedited requests) must include a check for the appropriate amount. For submittals to the RR Program, the fee is \$700, and for submittals to the Waste Program, the fee is \$550. If an exemption request or an expedited exemption request is submitted with a remedial design report, fees will be charged for review of both the Wis. Admin. Code ch. NR 506 exemption request (\$700) and for the Wis. Admin. Code ch. NR 724 remedial design report (\$1050). Separate approvals are provided for each action.

Which DNR program do I call if I have questions about a specific site or property?

The DNR's Remediation and Redevelopment (RR) and Waste Management (WA) Programs jointly implement the exemption process. **STEP 2** on the flow diagram describes the screening questions that are useful for determining which program will take the lead in the review process. For complex sites, staff from both programs may jointly review the exemption application.

Remediation and Redevelopment Lead

The staff in the Remediation and Redevelopment program will review sites that were never licensed as landfills. The RR Program will also be the lead if a NR 700 rule series investigation or remediation activities are ongoing at licensed landfills.

Waste Program Lead

In general, if a site has ever been licensed as a landfill, and the landfill is not undergoing an NR 700 rule series investigation or remediation, the exemption request is reviewed by staff in the Waste Program.

If the landfill was initially licensed in or after 1978 (these are modern landfills that are highly engineered), an exemption application will need a thorough, case-by-case review. This type of exemption application **cannot** be expedited and must have a **case-by-case evaluation**.

What do I do once I determine that I need an exemption to develop my site?

First read the fact sheets carefully to help you complete and submit an exemption application with the appropriate fee and necessary information about the site and the proposed development. All applicants must complete Sections I through VI of the Exemption Application (Form 4400-226). Sections VII through XI are optional, but applicants are encouraged to complete them in order to facilitate the DNR's review. Form 4400-226 must be completed for both the expedited exemption and case-by-case evaluation.

The key steps in the exemption application process are shown in the diagram on pages 10 through 12. The following discussion relates to the steps identified on the flow chart diagram.

STEP 1 - Complete parts I, II and III of the application form to identify the site where development is proposed. Skip the check boxes at the top of the page temporarily; these will be completed later after the site is better characterized.

Gather information about the site using the fact sheet *Development at Historic Fill Sites and Licensed Landfills: Guidance for Investigation* (RR-684). At a minimum, an evaluation of the waste must be done. Depending on the findings, site characterization and assessment may be needed. The intent of the investigation is to gather sufficient information so that the owner, developer and environmental professional can determine the effects of the waste on the proposed development, as well as the potential impacts that the development will have on the waste.

STEP 2 - Determine which DNR program will review the exemption application. The two questions under STEP 2 are screening criteria that indicate which program should receive the application.

Sites that are currently undergoing investigation or remedial actions due to the release of hazardous substances will have their exemption handled as part of the NR 700 rule series process. Applicants should discuss the exemption with their DNR project manager, and proceed under his or her direction.

Applicants will find it helpful to discuss the circumstances at specific sites with the staff who will conduct the review in order to reduce delays caused by incomplete applications.

Question 2B on the flowchart checks if the site is or was a licensed landfill. The DNR Waste Program will handle the review of exemption requests for these sites, unless they are currently undergoing an NR 700 rule series investigation or remediation. If the site was never licensed as a landfill, i.e., it is a historic waste site, then the Remediation and Redevelopment Program will review the application.

STEP 3 - The applicant and environmental professional evaluate the proposed development and the site conditions as part IV of the Exemption Application (Form. 4400-226). The *Guidance for Investigation* (RR-684) and *Considerations and Potential Problems* (RR-685) fact sheets are useful resources for the applicant. Complete Section IV and include any necessary supplementary materials.

STEP 4 - The applicant should now have enough information to determine whether the site may be eligible for an expedited exemption. The applicant should answer questions 4A, 4B, and 4C on the flow chart diagram for the site.

Eligibility for expedited exemptions. If the answers to the three questions about the presence of wastes with special concerns under STEP 4 are "No," the site should qualify for an expedited exemption. The applicant should go back and check the box on page one of the application form for **Expedited Exemption**. Complete Sections I through VI on Form 4400-226 and Form 4400-226A. The two forms are mandatory for expedited exemptions. A check for the \$700 fee for submittals to the RR Program should be included with the application, unless the fee has already been paid under ch. NR 749 or NR 750. Submittals to the Waste Program require a fee of \$550.

Minimal impact from proposed development. If the answer to one or more of the screening questions under STEP 4 is "Yes," it is still possible that the level of information required will be similar to that required for an expedited exemption. Examples include sites where the proposed development is not an enclosed structure, or will not significantly disrupt the cap or the waste. The applicant should contact the DNR program that has jurisdiction over the site and ask whether a simplified case-by-case exemption is justified. Follow the instructions of the DNR program member.

Case-by-case evaluation exemption. These sites require detailed discussion and information submitted under the seal of a qualified professional. The applicant should check the box for **Case-by-Case Evaluation** on the application form and include the appropriate fee. A DNR staff member will conduct a detailed technical review of the materials and make a determination whether an exemption can be granted. In many cases, exemptions can be granted if specified conditions are followed.

STEP 5 - All applicants must provide a clear description of the proposed development as well as a summary of existing and potential impacts due to the proposed development that is sufficient for the nature of the site included with the application.

STEP 6 - The applicant should send the application form or forms and supplementary materials to the proper program in the region where the site is located. Refer to the map of the state and the addresses listed in the application and in this fact sheet.

STEP 7 – The DNR will send its decision on the exemption or conditional exemption to the applicant. An expedited exemption will take approximately two weeks, with up to 65 business days for a case-by-case review.

Are there other permits that must be obtained prior to developing on a property containing waste?

The exemption to develop on a site containing waste does not remove the applicant's obligation to comply with other applicable state and local permit requirements. For example, storm water, construction site erosion control, zoning and building permits may be necessary. In addition, if the landfill was licensed in the past, it may have been issued a conditional approval. It is important that the landfill is in compliance with its approval and landfill regulations in order for development to proceed.

Who do I contact for more information?

Phone the DNR supervisor from the appropriate program in your area listed on the next page, or check the DNR's [Waste Management](#) or [Remediation and Redevelopment](#) Programs for more information. Mailing addresses for the completed application are also listed on the next page.

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.

This publication is available in alternative format (large print, Braille, etc.) upon request. Please call for more information. Note: If you need technical assistance or more information, call the Accessibility Coordinator at 608-267-7490 / TTY Access via relay - 711

Contact Information

Locate the affected site on the state map below to find the DNR region where the site is located. Use the flow chart on pages 10 through 12 to determine which program will conduct the review of the exemption application. Direct any questions to the appropriate region and program.

NORTHERN REGION

Remediation & Redevelopment
Team Supervisor - (715) 359-8932

-OR-

Waste Program Manager – (920) 662-5486 or
(715) 839-2788

Department of Natural Resources
107 Sutliff Avenue
Rhineland, WI 54501

NORTHEAST REGION

Remediation & Redevelopment
Team Supervisor – (920) 662-5120

-OR-

Waste Program Manager -
(920) 662-5486

Department of Natural Resources
2984 Shawano Avenue
Green Bay, WI 54313-6727

SOUTHEAST REGION

Remediation & Redevelopment
Team Supervisor – (414) 263-8565 or (414) 263-8697

-OR-

Waste Program Manager – 262-547-2143

Department of Natural Resources
P.O. Box 12436
Milwaukee, WI 53212-0436

WEST CENTRAL REGION

Remediation & Redevelopment
Team Supervisor – (715) 839-3710

-OR-

Waste Program Manager
715- 839-2788

Department of Natural Resources
1300 West Clairemont Avenue
Eau Claire, WI 54701

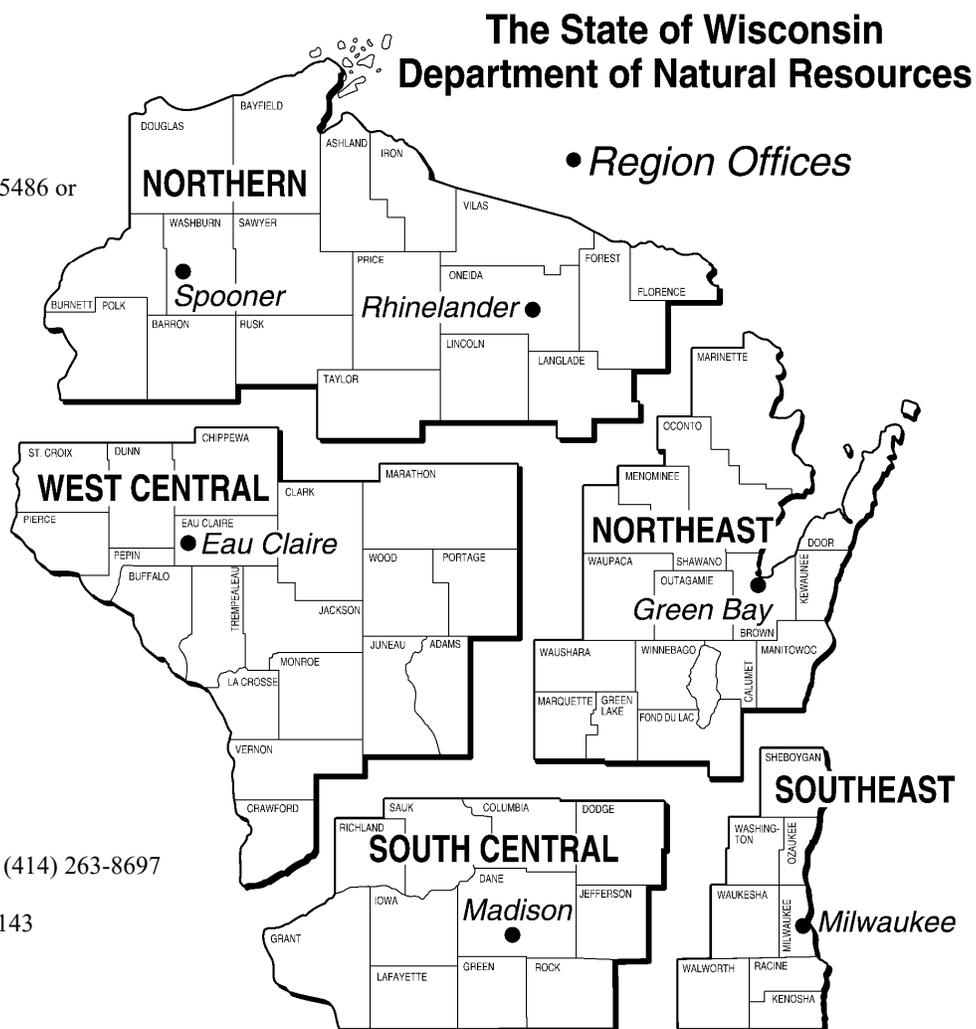
SOUTH CENTRAL REGION

Remediation & Redevelopment
Team Supervisor – (608) 275-3310

-OR-

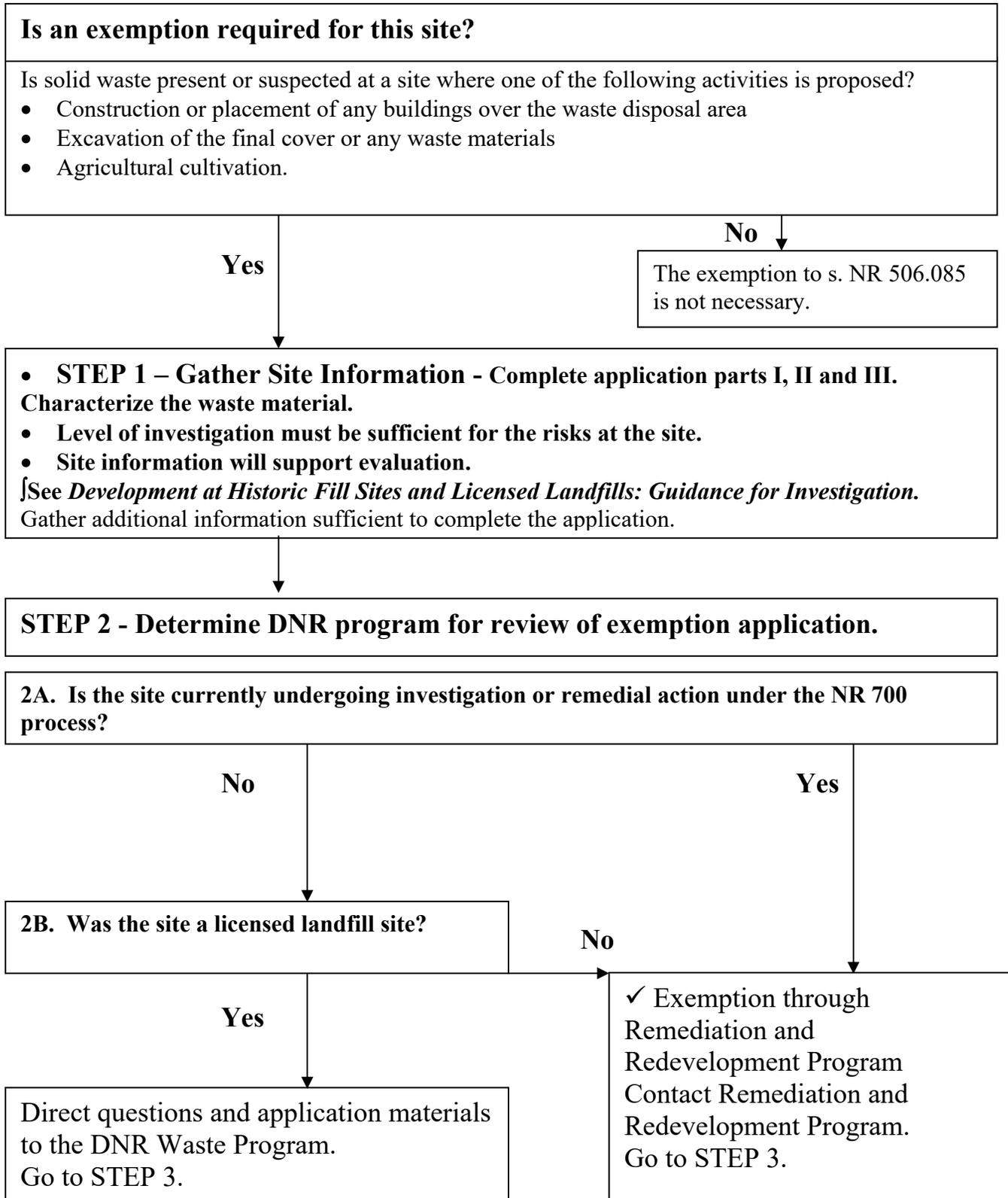
Waste Program Manager – 608- 275-3466

Department of Natural Resources
3911 Fish Hatchery Road
Fitchburg, WI 53711



Exemption Process for Development at Historic Fill Sites and Licensed Landfills

A historic fill site is a landfill that was established before 1970 and was not licensed by the DNR



Exemption Process for Development at Historic Fill Sites and Licensed Landfills (continued)

A historic fill site is a landfill that was established before 1970 and was not licensed by the DNR

STEP 3 - Evaluate the proposed development & site conditions.

Complete application part IV.

[See *Development at Historic Fill Sites and Licensed Landfills: Considerations and Potential Problems*.

STEP 4 – Determine if the site is eligible for an expedited application.

4A. Does this historic fill site contain regulated hazardous waste, PCBs, dioxin/furans, Manufactured Gas Plant wastes, or > 50,000 yd³ municipal solid waste?

4B. Have any hazardous substances been released from the buried waste mass?

4C. Based on the potential for the release of hazardous substances, is an investigation needed to define the degree and extent of contamination?

Answers are No
For all three
questions

One or more answers are Yes

Site qualifies for an Expedited Exemption, unless site or operator is out of compliance with existing NR 500 or NR 700 regulations.

✓Expedited Exemption on the Application

- Complete application Form 4400-226 pages 1 and 2.
- For submittals to the RR Program, include a check for \$700 unless a fee is already paid under NR 749 or NR 750.
- For submittals to the Waste Program, include a check for \$550.
- Complete Form 4400-226A with signatures by:
 - Qualified environmental professional
 - Owner
 - Developer

Go to STEP 5

Continue on next page

Yes

Exemption Process for Development at Historic Fill Sites and Licensed Landfills (continued)

A historic fill site is a landfill that was established before 1970 and was not licensed by the DNR

