



## 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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### DOCUMENT TITLE

Continuing Obligations for Environmental Protection: Responsibilities of Wisconsin Property Owners

### 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.*

Signature

September 4, 2019

Date



## Continuing Obligations for Environmental Protection Responsibilities of Wisconsin Property Owners

### Wis. Stat. § 292.12

#### Purpose

This fact sheet is intended to help property owners understand their legal requirements under s. 292.12, Wis. Stats., regarding continuing obligations that arise due to the environmental condition of their property.

#### Introduction

The term “continuing obligations” refers to certain actions for which property owners are responsible following a completed environmental cleanup. They are sometimes called environmental land use controls or institutional controls. These legal obligations, such as a requirement to maintain pavement over contaminated soil, are most often found in a cleanup approval letter from the state.

Less commonly, a continuing obligation may apply where a cleanup is not yet completed but a cleanup plan has been approved, or at a property owned by a local government that is exempt from certain cleanup requirements.

### What Are Continuing Obligations?

Continuing obligations are legal requirements designed to protect public health and the environment in regard to contamination that remains on a property.

Continuing obligations still apply after a property is sold. Each new owner is responsible for complying with the continuing obligations.

### Background

Wisconsin, like most states, allows some contamination to remain after cleanup of soil or groundwater contamination (residual contamination). This minimizes the transportation of contamination and reduces cleanup costs while still ensuring that public health and the environment are protected.

The Department of Natural Resources (DNR), through its Remediation and Redevelopment (RR) Program, places sites or properties with residual contamination on a public database in order to provide notice to interested parties about the residual contamination and any associated continuing obligations. Please see the “Public Information” section on page 3 to learn more about the database. (Prior to June 3, 2006, the state used deed restrictions recorded at county courthouses to establish continuing obligations, and those deed restrictions have also been added into the database.)

### Types of Continuing Obligations

#### 1. Manage Contaminated Soil that is Excavated

If the property owner intends to dig up an area with contaminated soil, the owner must ensure that proper soil sampling, followed by appropriate treatment or disposal, takes place. Managing contaminated soil must be done in compliance with state law and is usually done under the guidance of a private environmental professional.

## 2. Manage Construction of Water Supply Wells

If there is soil or groundwater contamination and the property owner plans to construct or reconstruct a water supply well, the owner must obtain prior DNR approval to ensure that well construction is designed to protect the water supply from contamination.

### Other Types of Continuing Obligations

Some continuing obligations are designed specifically for conditions on individual properties. Examples include:

- keeping clean soil and vegetation over contaminated soil;
- keeping an asphalt “cover” over contaminated soil or groundwater;
- maintaining a vapor venting system; and
- notifying the state if a structural impediment (e.g. building) that restricted the cleanup is removed. The owner may then need to conduct additional state-approved environmental work.

It is common for properties with approved cleanups to have continuing obligations because the DNR generally does not require removal of all contamination.

Property owners with the types of continuing obligations described above will find these requirements described in the state’s cleanup approval letter or cleanup plan approval, and *must*:

- comply with these property-specific requirements; and
- obtain the state’s permission before changing portions of the property where these requirements apply.

The requirements apply whether or not the person owned the property at the time that the continuing obligations were placed on the property.

### Changing a Continuing Obligation

A property owner has the option to modify a continuing obligation if environmental conditions change. For example, petroleum contamination can degrade over time and property owners may collect new samples showing that residual contamination is gone. They may then request that the DNR modify or remove a continuing obligation. Fees are required for the DNR’s review of this request and for processing the change to the database (\$1050 review fee, \$300/\$350 database fee). Fees are subject to change; current fees are found in Wis. Admin. § NR 749 online at [http://docs.legis.wisconsin.gov/code/admin\\_code/nr/700/749](http://docs.legis.wisconsin.gov/code/admin_code/nr/700/749).

### Public Information

The DNR provides public information about continuing obligations on the Internet. This information helps property owners, purchasers, lessees and lenders understand legal requirements that apply to a property. The DNR has a comprehensive database of contaminated and cleaned up sites, *BRRTS on the Web*. This database shows all contamination activities known to the DNR. Site specific documents are found under the *Documents* section. The information includes maps, deeds, contaminant data and the state’s closure letter. The closure letter states that no additional environmental cleanup is needed for past contamination and includes information on property-specific continuing obligations. If a cleanup has not been completed, the state’s approval of the remedial action plan will contain the information about

continuing obligations.

Properties with continuing obligations can generally be located in the DNR's *RR Sites Map*. RR Sites Map provides a map view of contaminated and cleaned up sites, including sites with continuing obligations, and links to BRRTS on the Web. *BRRTS on the Web* and *RR Sites Map* are part of the Wisconsin Remediation and Redevelopment Database (WRRD) at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>.

If a completed cleanup is shown in *BRRTS on the Web* but the site documents cannot be found in the documents section, the DNR's closure letter can still be obtained from a regional office. For assistance, please contact a DNR Environmental Program Associate (see the RR Program's Staff Contact web page at [dnr.wi.gov/topic/Brownfields/Contact.html](http://dnr.wi.gov/topic/Brownfields/Contact.html)).

### **Off-Site Contamination: When Continuing Obligations Cross the Property Line**

An off-site property owner is someone who owns property that has been affected by contamination that moved through soil, sediment or groundwater from another property. Wis. Stat. § 292.13 provides an exemption from environmental cleanup requirements for owners of "off-site" properties. The DNR will generally not ask off-site property owners to investigate or clean up contamination that came from a different property, as long as the property owner allows access to his or her property so that others who are responsible for the contamination may complete the cleanup.

However, off-site property owners are legally obligated to comply with continuing obligations on their property, even though they did not cause the contamination. For example, if the state approved a cleanup where the person responsible for the contamination placed clean soil over contamination on an off-site property, the owner of the off-site property must either keep that soil in place or obtain state approval before disturbing it.

Property owners and others should check the *Public Information* section above if they need to:

- determine whether and where continuing obligations exist on a property;
- review the inspection, maintenance and reporting requirements, and
- contact the DNR regarding changing that portion of the property. The person to contact is the person that approved the closure or remedial action plan.

### **Option for an Off-Site Liability Exemption Letter**

In general, owners of off-site properties have a legal exemption from environmental cleanup requirements. This exemption does not require a state approval letter. Nonetheless, they may request a property-specific liability exemption letter from the DNR if they have enough information to show that the source of the contamination is not on their property. This letter may be helpful in real estate transactions. The fee for this letter is \$700 under Chapter NR 749, Wis. Adm. Code. For more information about this option, please see the RR Program's Liability web page at [dnr.wi.gov/topic/Brownfields/Liability.html](http://dnr.wi.gov/topic/Brownfields/Liability.html).

#### **Legal Obligations of Off-Site Property Owners**

- Allow access so the person cleaning up the contamination may work on the off-site property (unless the off-site owner completes the cleanup independently).
- Comply with any required continuing obligations on the off-site property.

## Required Notifications to Off-Site Property Owners

1. The person responsible for cleaning up contamination must notify affected property owners of any proposed continuing obligations on their off-site property **before** asking the DNR to approve the cleanup. This is required by law and allows the off-site owners to provide the DNR with any technical information that may be relevant to the cleanup approval.

When circumstances are appropriate, an off-site neighbor and the person responsible for the cleanup may enter into a “legally enforceable agreement” (i.e. a contract). Under this type of private agreement, the person responsible for the contamination may also take responsibility for maintaining a continuing obligation on an off-site property. This agreement would not automatically transfer to future owners of the off-site property. The state is not a party to the agreement and cannot enforce it.

2. If a cleanup proposal that includes off-site continuing obligations is approved, the DNR will send a letter to the off-site owners detailing the continuing obligations that are required for their property. Property owners should inform anyone interested in buying their property about maintaining these continuing obligations. For residential property, this would be part of the real estate disclosure obligation.

## More Information

For more information, please visit the RR Program’s Continuing Obligations website at [dnr.wi.gov/topic/Brownfields/Residual.html](http://dnr.wi.gov/topic/Brownfields/Residual.html).

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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.

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