



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-19-5234-C

DOCUMENT TITLE

No Action Required/General Liability Clarification Template Letter

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

DNR – Remediation and Redevelopment
RR-5234 No Action Required/General Liability Clarification Template Letter
November 2018

PURPOSE: Use this letter to respond to a fee-based request when minimal contamination is reported and no more site investigation is needed under the authority in Wis. Adm. Code § NR 716.05, or if no contamination is identified. Wis. Adm. Code § 716.05 requires that the DNR make this determination based on the criteria in Wis. § NR 708.09(1) and (2).

In some cases, this letter should be used if a Phase II Environmental Assessment was conducted and submitted. This is not a closure letter or a No Further Action Letter. If an ERP or LUST activity was created when this discharge was reported, it should be changed into a 09 No Action Required activity.

Letter should be put on regional letterhead.

NOTE: The regional team supervisor will determine the appropriate review process. Peer review by the regional Land Recycling Team member is recommended. No Central Office review is needed if the standard liability language in this model letter is not modified. The letter should be signed by the project manager.

Yellow highlighted text contains notes/directions to the DNR staff writing the letter.
Grey highlighted text contains areas where DNR staff need to fill in the information.

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.

[DATE]

File Ref BRRTS: XX-XX-XXXXXX
09-XX-XXXXXX

Name of applicant
Company name
Address
City State ZIP

Subject: Liability Clarification and “No Action Required” Determination, per Wis. Admin. Code NR § 716.05(2).
Property name, address, City, Wisconsin
Parcel #: PARCEL ID #

Dear Name of applicant:

Purpose

The purpose of this letter is to provide you with clarifications as to environmental liabilities and current environmental conditions at address, city, Wisconsin (“the Property”). The Property consists of approximately # acres of land located in county name County, identified by tax parcel number(s) tax parcel number or numbers. Refer to the attached Figure X for a site map of the Property. **If available, a map provided with the request may be attached.**

Summary Determination

Choose one of the following:

Option 1 IF THERE IS DISCHARGE OR ENVIRONMENTAL POLLUTION BUT NO ACTION IS REQUIRED

Hazardous substance discharges or environmental pollution have occurred on the Property. However, the Wisconsin Department of Natural Resources (“the department”) has determined that no response actions are required. The department has made this determination based on the data made available to the department and the criteria in Wis. Admin. Code § NR 716.05.

Option 2 NO DISCHARGE OF A HAZARDOUS SUBSTANCE OR ENVIRONMENTAL POLLUTION

Based on the data provided, there is no evidence that hazardous substance discharges have occurred on the Property and the Wisconsin Department of Natural Resources (“the department”) has determined that that no response actions are required.

Request

On date of the request letter, you requested / (name of consultant) requested on your behalf that the department issue a liability clarification letter under Wis. Stat. § 292.55. The letter contains a determination as to whether response actions are needed under the Wis. Admin. Code NR 700 rule series based on the discharge of one or more hazardous substances or presence of environmental pollution at the Property. The department received the fee for providing assistance, in accordance with Wis. Admin. Code § NR 749.04(1).

For the department to make this determination, you have requested a review of the following documents:

Include the documents and reports that you used to prepare the determination

- Discharge notification form submitted to the department on [date];
- List the title of reports or information, date, and name of the consultant who prepared it;

- Department files for [name of facility or site].

The department examined the reports listed above and provides the following summary of the case and opinions concerning environmental conditions at the Property.

Background and Summary of Environmental Conditions

Include a summary of env. conditions. The typical sequence is:

- Provide a general description of past/current land uses, and relationship between requestor and property and why letter is requested.
- A summary of the sampling conducted and the contaminants found.
- State which areas are known to have been sampled or investigated and which portions have not.

Evaluate information considering the criteria in Wis. Admin. Code §§ NR 708.09(1) and (2), and compare the levels of contamination on the Property to reference values.

For groundwater contamination, refer to NR 140.

For soil contamination, compare the concentrations present to soil RCLs and background threshold values.

See the following example of summary of environmental conditions, other examples are available from Land Recycling Team member or Central Office Contact.

The Property has been developed to include a multi-unit apartment structure and a parking garage with paved surfaces. The apartment building has an inner grass covered courtyard. The Property is bounded by North Kincaid Avenue to the east, East Kenwood Avenue to the south, and residential properties to the west and north. Beach Park, LLC is the property owner.

The Property was historically undeveloped until approximately 1950 when the current structures were built as part of a larger residential complex.

A Phase I ESA conducted by SAP Engineering in 2016 identified waste ash emissions from a nearby municipal incinerator as a possible environmental condition. The incinerator operated from the 1950s to the 1990s. SAP Engineering collected three samples to assess soil quality within the limits of the Property. The samples were collected from within the courtyard at a depth of 0" to 6" below ground surface (bgs) and was submitted for laboratory analysis of polycyclic aromatic hydrocarbons (PAHs), Resource Conservation and Recovery Act (RCRA) metals and polychlorinated biphenyls (PCBs). No PCBs were detected above laboratory detection limits in the submitted soil samples. Tested RCRA metals (arsenic, barium, cadmium, chromium, lead, mercury and selenium) were below respective state Background Threshold Values (BTVs) for naturally-occurring concentrations in soil with the exception of lead. However, the lead concentration was only slightly above the BTV and appears to be similar to background levels reported for other investigated areas of the Parcel. All metal concentrations were below non-industrial direct contact Residual Contaminant Levels.

Numerous PAH compounds were detected in the collected soil samples. As defined in s. NR 722.11, Wis. Adm. Code, a risk-based standard can be developed to address residual impacts if the attainment of NR 720 residual contaminant levels is not practicable. As described in the No Action Required Request, a modified RCL calculator was used to determine a risk-based standard using the cumulative assessment for carcinogenic PAHs. The use of the cumulative assessment included the analyzed carcinogenic PAH compounds and any non-PAH compounds in comparison to the maximum allowable cumulative risk. Based upon the calculated risk-based standards, PAH concentrations detected in this sample do not pose a direct contact risk. Although benzo(b)fluoranthene was detected above the protection of groundwater RCL, the low concentration and relative

shallow depth of impact does not appear to pose a significant risk to groundwater. No action is required by the department to further investigate contamination identified within this sample.

Liability Determination

Wis. Stat. ch. 292 and Wis. Admin. Code chs. NR 700-754 require those who are responsible for a hazardous substance discharge or environmental pollution to take actions necessary to respond to the contamination. Wis. Stat. § 292.55, authorizes the department to issue clarification letters concerning liability for environmental pollution.

Include one of the following:

Option 1 THERE IS DISCHARGE OF A HAZARDOUS SUBSTANCE AND/OR ENVIRONMENTAL POLLUTION BUT NO ACTION IS REQUIRED

The data summarized above indicates that one or more hazardous substance discharges or environmental pollution has been discovered on the Property. However, based on the criteria in Wis. Admin. Code § NR 716.05(2)(a) and Wis. Admin. Code §§ NR 708.09 (1) and (2), the department has determined that no response actions, including further site investigation activities, are required under Wis. Admin. Code chs. NR 700-754 to respond to these identified discharges or environmental pollution.

Option 2 NO DISCHARGE OR ENVIRONMENTAL POLLUTION WAS FOUND

Information you submitted to the department indicates that no hazardous substance discharge or environmental pollution has occurred on the Property. Therefore, further site investigation activities are not required and no response action is required under Wis. Admin. Code chs. NR 700-754.

Include the next section only if the Property includes a historic fill site/ solid waste is on the property, otherwise delete it.

General Fill Sites

Because the site meets the statutory definition of a site or facility in Wis. Stats. § 292.01, prior to any redevelopment, the Property owner will need to submit an Exemption Application (Forms 4400-226 and 4400-226A) and receive department approval for development at a historic fill site or licensed landfill (as required by Wis. Admin. Code, § NR 506.08). Any impacted soil or fill material graded or excavated from the subsurface will need to be disposed of in accordance with local, state and federal laws. Please refer to the following guidance documents regarding development at Historic Fill Site or Licensed Landfill for further information. They can be found online at dnr.wi.gov and search “Development at Historic Landfill”.

- [Development at Historic Fill Sites and Licensed Landfills: What You Need to Know \(RR-683\) \[PDF\]](#)
- [Development at Historic Fill Sites and Licensed Landfills: Guidance for Investigation \(RR-684\) \[PDF\]](#)
- [Development at Historic Fill Sites and Licensed Landfills: Considerations and Potential Problems \(RR-685\) \[PDF\]](#)

Copies of the fact sheets on historic fill sites may be included with the letter.

Include the following paragraphs in all letters

As with any environmental assessment, all areas of the Property were not assessed, the numbers of samples collected were limited based on professional judgment and financial considerations, and samples were not analyzed for all parameters. This letter relates and refers only to those conditions described above and to information and data you submitted to the department in your request for this letter. The department makes no determination concerning the presence or absence of hazardous substances or environmental pollution, other than those identified in the documents and reports listed above, which you submitted to us. In the future, if the

department becomes aware of new information concerning the contaminants referenced above, or the presence of other contaminants on the Property, the department will evaluate that data at that time to determine if any response actions are required. Whenever possible, the department requires the person who caused the discharge to take the appropriate response actions.

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for this activity is shown at the beginning of this letter. The department tracks information on all case determinations such as this letter in a department database that is available online at dnr.wi.gov and search: "BOTW". Since there is no action required for this case, the department will identify this site activity as a "No Action Required" determination.

If you have any questions, please contact me at (xxx) xxx-xxx, by writing to the address at the top of this letter or by email to firstname.lastname@wisconsin.gov.

Sincerely,

[PM_NAME]
[PM_TITLE] - Remediation & Redevelopment Program
[Name of region] Region

Attach: Figure XX, site map, date/author

cc: Regional LRT member & others as needed