



## 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-19-5235-C

### DOCUMENT TITLE

Liability Clarification Letter for a Prospective Purchaser of Property with Off-site Contamination

### 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.*

Signature

September 4, 2019

Date

**Liability Clarification Letter for Off-Site Property:  
Prospective Purchaser of property affected by off-site contamination (RR-5235)**

PURPOSE: This letter should be used for cases where most, but not all the conditions of the off-site exemption have been met. Specifically for sites that are not yet owned by the party who is requesting the letter. If someone is considering acquiring a property that has contamination from off-site, you should use this model letter.

DIRECTIONS: Copy the text to regional letterhead. To complete the letter, click your cursor in front of each shaded box and add the necessary text, then click on the shaded box and delete it. Revise the headers & footers. To change the appearance of the text to full justification, mark all the text and click on the full line icon (in the Formatting toolbar) or go to Format/Paragraph/Justified.

Peer review by the regional LRT member is recommended.

Send the draft to Michael Prager at Brownfields Central Office for review.

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

BRRTS: #07-XX-XXXXXX

Name of applicant

Address

City, State ZIP

Subject: Liability Clarification for a Prospective Purchaser of Property Located at **property address, city, WI (of impacted site)** impacted by suspected contamination from another property  
**parcel #:**

Dear **Name of applicant:**

**Purpose**

The Department of Natural Resources ("the Department") has reviewed your request for an off-site exemption letter for **address, City**, referred to in this letter as "the Property." Please refer to the attached Figure **XX** for a site map of the Property. The purpose of this letter is to determine what provisions of the off-site exemption you presently satisfy as a potential purchaser of the Property and the conditions under which you ("the Applicant") would satisfy all the requirements of the off-site exemption in s. 292.13, Wis. Stats. Currently, **name of the applicant** is the potential purchaser of the Property. The Department received a \$700 fee for providing this letter pursuant to s. 292.13 (2) and (3), Stats, and ch. NR 749, Wis. Admin. Code,

**Summary Determination**

Other than owning the Property, the provisions in the off-site exemption statute are satisfied by **name of the applicant** for this Property and **name of the applicant** will not be held responsible for investigation or cleanup of the substances migrating from another property, if they continue to satisfy all conditions as described in this letter. When you acquire the Property, you would have limited responsibility under ss. 292.12 and 292.13, Stats, for the **soil/ groundwater and/or sediment** contamination that has migrated or is migrating onto the Property. **Note: if the Property is the source of other discharges, add: The Property**

owner is responsible for any discharges of hazardous substances whose source originates on the Property. The conditions for the off-site exemption would be fully satisfied when you acquire title to the Property.

### **Request**

On date, you requested or (name) requested on your behalf that the Department determine whether you are exempt from s. 292.11(3), (4) and (7)(b) and (c), Wis. Stats., commonly known as the "Spill Law," with respect to the existence of hazardous substances in the soil, groundwater or sediment that you believe are migrating onto the Property from a source on another property. Wisconsin's Spill Law includes an "off-site exemption," in s. 292.13, Wis. Stats., that limits the liability of a property owner. In particular, you have requested clarification as to whether or not you are eligible for the off-site liability exemption. Include if additional questions were asked; otherwise delete. You have also asked specific questions, which are answered in this letter.

The following documents were submitted to the Department with the request:

- The off-site application form dated. [ or; and]
- List any reports or information, author, and date.

### **Background**

The Department considered the information listed above in making the determinations presented in this letter.

Include a brief description of the Property location with respect to the contamination source and/or the movement of the GW plume, soil or sediment. State whether the contamination source is known & identify it, if known.

The determinations listed below state which provisions in the off-site exemption statute you presently satisfy for this Property, and whether or not, upon taking title to the Property, the conditions for the off-site exemption would be fully satisfied.

The off-site exemption in s. 292.13, Wis. Stats., limits the environmental liability of a person in possession, (i.e., who owns a property) or control of a property affected by the discharge of a hazardous substance, when the discharge originates from another source not on the Property. At the present time, you do not possess or control the Property, but it is the Department's understanding that you intend to purchase the Property. Because you do not currently possess or own the Property, the Department cannot issue a written determination that all the provisions in s. 292.13, Wis. Stats., have been satisfied. However, the Department does have the ability under s. 292.55, Wis. Stats., to clarify a person's present or future liability for the environmental pollution of a property.

### **Liability Determinations**

Based on the Department's review of technical information, including the off-site application form submitted in accordance with s. 292.13(2), Stats., the Department makes the following determinations under ss 292.13(3) and 292.55, Stats., regarding the presence of names of the hazardous substances (they are not capitalized) in the soil, sediment and/or groundwater at the Property:

1. The hazardous substance discharge(s) originated from a source on property that is not possessed or controlled by name of the applicant.

2. **Name of the applicant** did not possess or control the hazardous substances on the property on which the discharge originated.
3. **Name of the applicant** did not cause the discharge.
4. **Name of the applicant** will not have liability under the Hazardous Substance Spill Law for investigation or remediation of the soil or groundwater contamination originating from another site onto the Property, provided that **name of the applicant** does not take possession or control of the property on which the discharges originated.

Because you do not currently own the Property, the Department is not able at this time to issue you a letter determining that you qualify for all the provisions of the off-site liability exemption. However, when you acquire title to the Property, and the conditions in s. 292.13, Stats, are followed, you will fully qualify for the off-site liability exemption.

### **Exemption Conditions**

The Department's determination, as set forth in this letter, are subject to the following conditions being complied with, as specified in s. 292.13(1) and (1m), Wis. Stats:

1. The facts upon which the Department based its determination are accurate and do not change.
2. **Name of the applicant** agrees to allow the following parties to enter the Property to take action to respond to the discharges: the Department and its authorized representatives; any party that possessed or controlled the hazardous substances or caused the discharge; and any consultant or contractor of such a party. **Include any actions here.**
3. **Name of the applicant** agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharges.
4. **Name of the applicant** agrees to any other condition that the Department determines is reasonable and necessary to ensure that the Department and any other authorized party can adequately respond to the discharge. **Include any conditions here.**
5. **USE THIS SECTION FOR ALL SITES WITH OFF-SITE SOIL CONTAMINATION / IF GROUND WATER ONLY, TAKE OUT THIS SECTION** With respect to soil or sediment contamination only, **name of person with the exemption** agrees to take one or more specified actions directed by the Department, if the Department determines that the actions are necessary to prevent an imminent threat to human health, safety or welfare or to the environment. This would occur after the Department has made a reasonable attempt to notify the party who caused the hazardous substance discharge about that party's responsibilities to investigate and clean up the discharge. **Include any specified actions here if known at time letter is written (restrict access, cap, etc.)**

### **Responsibilities for Continuing Obligations**

**THIS SECTION SHOULD BE INCLUDED FOR ALL LETTERS HOWEVER IF THE SOURCE SITE IS CLOSED OR IF THE APPENDIX A LETTER WAS ALREADY SENT, THE TEXT SHOULD BE MODIFIED APPROPRIATELY**

In addition to the conditions above, after the contamination at the source property is remediated, the approval may include continuing obligations at the source property as well as your Property. Often residual contamination remains after an approved environmental cleanup is completed and sometimes

that approval includes requirements to maintain engineering controls, such as a cap or soil cover, to reduce the impact of the contamination. You may also be required to obtain DNR approval to construct a water supply well on your Property. If the request for cleanup approval includes requirements for your Property, the party conducting the cleanup is required to notify you before the DNR reviews the proposal.

### **Conclusion**

The Department may revoke the determinations made in this letter if it determines that any of the requirements under sections 292.13(1) or (1m), Wis. Stats., cease to be met.

With the exception of owning the Property, the provisions in the off-site exemption statute are satisfied by **name of the applicant** for this Property. The conditions for the off-site exemption would be fully satisfied if **Name of the applicant** takes title to the Property. A person who meets all the conditions of the off-site exemption is not responsible for investigating and cleaning up environmental contamination that migrates onto her or his property from a neighboring property, with certain limitations, if the statutory conditions are met.

### **List and Answer any additional questions with the request here.**

Also, future Property owners are eligible for the exemption under section 292.13, Wis. Stats., if they meet the requirements listed in that statute section. The determinations in this letter regarding a liability exemption, however, only apply to the Applicant, and may not be transferred or assigned to other parties. The Department will provide a written determination to future owners of this Property, if such a determination is requested in accordance with the requirements of section 292.13(2), Wis. Stats.

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for this activity is shown at the top of this letter. The Department tracks information on all determinations such as this in a Department database that is available on the Internet at:  
<http://dnr.wi.gov/topic/brownfields/botw.html>.

If you have any questions or concerns regarding this letter, please contact me at **(xxx) xxx-xxxx** by email at **firstname.lastname@wisconsin.gov** or at the address listed in the letterhead.

Sincerely,

### **Name**

Project Manager  
Remediation & Redevelopment Program

Attachments: Figure **XX**, **site map date/author**

cc: **Regional LRT member** (electronic)  
Michael Prager – RR/5 (electronic)