



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-19-5236-C

DOCUMENT TITLE

Post-Closure Liability Clarification - Conditions for Reopening (Sample GLC 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.

Signature

September 4, 2019

Date

RR 5236 Revised June 2017

Post Closure Liability Clarification Letter - use this letter to clarify liability for a property where a closure was approved under either NR 708 (NFA) or under NR 726.

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

Name
Address
City State ZIP

BRRTS #: BRRTS #
FID #: FID #

Subject: Liability Clarification Letter Concerning Environmental Liability for
address, City, Wisconsin

Dear Name of applicant:

Purpose

The purpose of this letter is to provide you with clarifications regarding the environmental liability that a **purchaser, current owner or lessee** may have for a property located at **address & city, Wisconsin** ("the Property"). The Property consists of approximately acres of land **delete previous text if this is a municipal lot** located at **address** in County, Wisconsin. According to **county** County Land Records the Property is owned by **name of owner(s)** and is designated as parcel number **parcel number**. The Department of Natural Resources ("the Department") has agreed to provide you with a letter clarifying the environmental liability associated with contaminants detected at the Property and respond to your specific concerns.

Summary Determination

Insert the summary determination here, change if appropriate. Hazardous substance discharges have occurred on the Property. However, after an investigation and remediation was completed the Department has approved a site closure and determined that no additional actions are required.

Request

On **date, you requested or name of consultant requested on your behalf** that the Department address the environmental liability that a **current owner/purchaser or lessee** of the Property may have related to any existing contamination at the Property. You also asked that the Department answer the following questions:

- What assurances does a party receive from the Department once a cleanup is complete?
- What cleanup responsibility does a purchaser of the Property have if contamination is subsequently discovered on or beneath the Property?
- **AND insert questions asked by requestor**

The Department received the \$700 fee for providing assistance on **date**, as required by s. NR 749.04(1), Wis. Adm. Code.

Summary of Environmental Conditions

Insert the summary here. *Example: ThermoTreat, Inc., operated a thermal roasting facility at the Property located at 142 First Street in Stratford, Wisconsin. This facility accepted excavated soil containing petroleum constituents from various sources for on-site thermal treatment. Following permit violations related to the operation of the facility, ThermoTreat ceased operations and removed its equipment from the Property. In the process, ThermoTreat abandoned an estimated 18,000 tons of treated and untreated stockpiled soil at the Property.*

As part of the litigation, the Department oversaw the characterization, removal and proper management of the stockpiled soil, as well as a subsurface soil and groundwater investigation within the footprint of the former stockpiles. On August 12, 2002, the Department issued a Conditional Case Closure – GIS Soil Registry for the ThermoTreat Soil Storage Facility.

Include the following text in all letters**Liability Clarification**

This letter will clarify the Department's position on environmental liability associated with the Property in the following situations:

- circumstances under which the Department would "reopen" cases that were previously "closed," and require further investigation or cleanup; and
- liability of a new purchaser or lessee of the Property.

1. What assurances does a party receive from the Department once a cleanup is complete?

The State issues what is commonly referred to as a closure letter once the site investigation and cleanup have been completed. It indicates that the State has determined that no further environmental response action is necessary at the site, based upon the information available to the State at that time. The Department can only require further action to address a previously closed case if certain criteria are met, including if information regarding the site or facility conditions indicates that contamination on or from the site or facility poses a threat to public health, safety, welfare or the environment, or if the property owner has not complied with the continuing obligations applied in the closure approval (s. NR 727.13, Wis. Adm. Code). Approximately 17,000 clean-up cases have been closed by the Department, but fewer than 50 have been reopened in the past 15 years.

Thus, before the Department can require further action to address residual contamination in existence at the time that the site (i.e., the area of contamination at the Property that was the subject of the closure letter) was closed, the Department must make a determination that information meets the reopening criteria and that further action is required.

2. What cleanup responsibility does a purchaser of the Property have if contamination is subsequently discovered on or beneath the Property?

The known areas of contamination on the Property have been closed, and thus the State will not require current or future Property owners to take any additional action to investigate or remediate the residual contamination, unless the case would need to be reopened, as described in the response to Question #1. However, you should be aware that the State's hazardous substance spill law, s. 292.11, Wis. Stats., imposes liability on anyone who possesses or controls contaminated property where hazardous substances are continuing to discharge to the environment. This liability exists even if another person, such as a prior owner or tenant caused the contamination.

Mr./Ms. Name

Date

Whenever possible, the Department requires the person who caused the hazardous substance discharge to take the appropriate response actions. However, if these persons cannot be located or are unable to pay, the owner of the Property is responsible for taking the appropriate actions. The Department will take the steps available to it through state law to compel the person that the Department believes to have caused the discharge on the Property to take the response action necessary to address that threat. The Department would only require the person in current possession or control of the Property to address that threat if the Department were unable to compel the person who caused the discharge to take the appropriate response action.

Include the following paragraph only if the Property is a historic fill site: Because the site meets the statutory definition of a solid waste facility or waste site, 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. Any impacted soil or fill material graded or excavated from the subsurface will need to be disposed of in accordance with 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 on the internet at:

<http://dnr.wi.gov/files/PDF/pubs/rr/RR685.pdf>

<http://dnr.wi.gov/files/PDF/pubs/rr/RR684.pdf>

<http://dnr.wi.gov/files/PDF/pubs/rr/RR683.pdf>

Please understand that this letter clarifies a new owner's liability related to residual contamination on the Property based only on the information presently available to the Department. The Department has made no determination concerning the presence or absence of hazardous substance discharges other than those identified in the reports provided. In the future, if the Department becomes aware of new information concerning the contamination referenced above, or the presence of other contaminants on the Property not previously identified, the Department will need to evaluate that data to determine if response actions may be required.

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, "BRRTS on the Web," that is available on the Internet at <http://dnr.wi.gov/topic/Brownfields/botw.html>.

The Department hopes that this letter helps clarify what known areas of residual contamination on the Property may require further environmental response action under Wisconsin law, and who is responsible for conducting these actions. If you have any questions please contact **name of project manager** at PM phone number, by writing to the address at the top of this letter, or by email at **firstname.lastname@wisconsin.gov**.

Sincerely,

Name

Team or Subteam Supervisor, **Region**
Remediation and Redevelopment Program

cc: **Project manager**