



## 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-19-5242-C

### DOCUMENT TITLE

Instructions for Completing the Continuing Obligations Audit Form

### 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

# Instructions for Completing the Continuing Obligations Audit Form (4400-232)

---

## Purpose

The DNR receives funding from U.S. EPA pursuant to s. 128(a) of CERCLA to help in the development and enhancement of our state cleanup program. The 128(a) grant funding is used to audit sites with continuing obligations, to determine if the controls are still functioning as intended. These audits are evaluated to determine compliance, changes needed to the database, and changes to the review and closure processes to ensure that such controls remain effective over the long term.

This document provides guidance for staff on how to select sites for the annual continuing obligations (COs) audit process; how to prepare for, conduct and follow up on CO audits, and how to update BRRTS with the appropriate action codes (ACs) and documents. **Read all instructions prior to filling out Form 4400-232.**

Correctly and consistently updating the ACs in BRRTS after the audit is completed is essential to tracking and reporting our progress to EPA, as well as for evaluating the data for program purposes, including performance measures. This is most consistently accomplished by:

- The auditor reviewing the closure letter and/or applicable deed restrictions to correctly identify the continuing obligations to be audited; and
- The auditor using the action code table on page 1 of the Form 4400-232 to show both additions and corrections and to allow the reader to easily identify which COs apply.

## Site Selection

Project managers (PM) should select sites using the criteria and priorities laid out in the following subsections. The region's list of chosen sites to audit should be sent to the Policy and Technical Resources Section Chief by April 1. A list of potential sites can be obtained from the BRRTS report titled "COA01-L CO Audit Report by Region of Management and County." This report can be exported to Excel. Site contact information should be updated on this list prior to sending to central office.

### **1. Age of Remedy**

- For sites closed with closure letter option 7F (occupancy based – Vapor Mitigation System (VMS) required upon change in use from unoccupied to occupied); occupancy should be checked yearly, starting upon closure.

- For other sites, concentrate on sites that have been closed for 3 or more years.
- In addition, consider conducting an audit near the end of the life expectancy of remedies with more limited lifespans.

## 2. Liability

Consider sites where the state has liability (for future work) or land use is restricted:

- VPLE sites with a Certificate of Completion (COC) and a continuing obligation (AC 56); or
- Green Space Grant sites (AC 605), as a deed restriction was required that the land be used for public green space, typically for 20 years. Note that Green Space Grants were awarded between 2003 and 2009.

## 3. Type of Restriction (ACs 52 and 56)

Focus on sites with residual contamination and a deed restriction (AC 52), or a continuing obligation in the closure letter (AC 56), requiring maintenance of:

- AC 226 - a vapor mitigation system (**higher priority**);
  - highest priority, for a yearly audit, are sites closed with the requirement for installation of a VMS prior to occupancy of buildings (closure letter option 7F), to check on building occupancy status. If occupied without notice to DNR or installation of a VMS, the site may meet the reopening criteria of Wis. Adm. Code § NR 727.13.
- AC 220 - industrial land use, as industrial soil standards were applied (*if industrial land use is specified for use of a cover, the cover CO applies, but not AC 220*);
- AC 222 - a cover, barrier or other soil performance standard;
- AC 224 - a structural impediment prohibited completion of a site investigation or remedial action; or
- AC 228 - a site-specific continuing obligation (check the closure letter for specifics).

## 4. Regional Priority

Selection based on regional priority may consider such factors as where a complaint was received, sites that have previously been identified for compliance follow-up, or sites with other specific concerns.

## 5. Proximity

When staff time is a factor, “clumping” sites will allow for less time in the field. Internet mapping services (Google, etc.) allow you to add several destinations and determine the fastest route.

### General Form Instructions

If you have any questions on these instructions or the Continuing Obligation Audit form, contact Jane Lemcke at (608) 267-0554 ([Jane.Lemcke@Wisconsin.gov](mailto:Jane.Lemcke@Wisconsin.gov)).

- Always ensure you have the most recent version of these instructions and the Continuing Obligations Audit Form. Both can be found on the [Case Closure and Continuing Obligations Resource Module](#).
- The Continuing Obligation Audit form is fillable. Once the BRRTS number is entered into the Header, it is automatically repeated on each page.
- Not all questions will apply to a site. Certain questions are starred to denote where either DNR or RP follow-up is needed. When a comment field is applicable, the PM should provide details. The PM should use the “NOTES” area within each section of the form to add important information and for comments not otherwise addressed within the form.
- If there is additional information pertinent to the audit, but not included on the form, include it within the audit packet PDF. Do NOT duplicate materials from the CO packet in the audit packet.
- If auditing a VPLE site, use the applicable LUST or ERP BRRTS code.
- When auditing a Green Space Grant site, use the 07-general property number.
- When conducting an audit of a site where an exemption for a historic fill site has been approved (AC 402 or 404), check for and inspect any conditions imposed under that approval, as well as COs imposed under the closure letter. Note the exemption and conditions in the audit, and make sure that the applicable action codes are in BRRTS.

### Section Specific Instructions

The form has three major sections. Photographs and follow-up responses are attached at the end of the form or PDF.

#### **Section 1: File Review and Preparation for Site Inspection**

**Step 1:** Check BRRTS (actions and documents) to get the majority of the background information, including closure letters, deed restrictions, certificates of completion, maps, maintenance plans, figures, previous audits, photos and inspection logs. Review any paper site file materials if the

necessary information is not yet in BRRTS, especially if a copy of the closure letter or deed restriction has not been included in BRRTS.

- Review BRRTS, the closure letter, any deed restrictions, and the COC for VPLE sites to identify the applicable continuing obligations. Determine whether any action code deletions or additions are appropriate. Cross-check the closure letter or deed restriction with BRRTS to make sure the continuing obligations have been correctly tracked.
- Fill out the table on page 1. Identify if any action code additions or deletions are necessary. Provide any updates needed to the BRRTS action codes to your EPA upon conclusion of the audit, noting any ACs that were missing or were incorrect.
  - If there is an inconsistency between the closure letters or deed restrictions and the COC, contact your Land Recycling Team member to discuss the enforceable continuing obligations. See step 10 for more information on tracking and common action code changes.
  - NOTE: It is important to complete this table, as it identifies exactly what COs apply to the site per the audit findings, without having to repeat the review of BRRTS/BOTW, the closure letter or a deed restriction.
- Identify the current property owner. RR Sites Map provides a county tax parcel layer, with links to the applicable county treasurer sites. You can also search the county land records web site if you need more specific information. If this information is not available via a public access site, please contact the RR GIS Specialist who can assist you in accessing property records with the support of the DNR’s real estate section.
  - If you cannot determine the current property owner, discuss the merits of proceeding with the audit with your Team Supervisor.
- Use the following steps to find contact information in the case of a corporation or LLC, from the Department of Financial Institutions web page:
  - go to <http://www.wdfr.org>
  - click on the link to “I want to Search...” then click on “Corporate Records”
  - once at the search page, insert your search criteria and complete your search.
- The County Register of Deeds Office can be a great resource for information on any recorded deed restrictions or deed notices, or information on properties in the process of bankruptcy or in probate. Check the specific county office, at the Wisconsin Register of Deeds Association’s website (<https://www.wrdaonline.org/>). If you are not able to access a recorded deed restriction or notice, please contact the RR GIS Specialist who can assist you in accessing property records with the support of the DNR’s real estate section.
- Provide updated contact information to your EPA at the end of the audit, for entry into BRRTS.

- Note on page 2 of the audit form whether a maintenance plan was available at closure. If a maintenance plan was not required at closure, and the closure condition(s) would now require a maintenance plan, offer the property owner a copy of the applicable maintenance plan template along with an inspection log for their use. This can be part of the information sent to the property owner prior to conducting the audit, with a follow-up discussion during the audit. The goal is to provide an explanation of which maintenance activities would be most useful for that particular site. Highlighting the applicable sections of the maintenance plan template may be a useful way to quickly and easily personalize the plan.
- If the site has not been geolocated, request that the regional GIS staff person provide coordinates.
- Contact the property owner to set up a time for the inspection and request a copy of their most recent inspection log, if applicable. You can send a letter or call to set up a time for an inspection, and/or to get access if the owner will not be available for the inspection.
- It's helpful to provide the property owner with information about the upcoming audit when you call. Include a copy of the closure letter, maintenance plan, site location map (with monitoring wells) and inspection log, as appropriate.
- Where applicable, make a copy of the site map (showing monitoring well locations) to bring to the site inspection.
- For Green Space Grant sites (AC 605) and structural impediment sites (AC 224), use up-to-date air photos to help determine if the site is still used in compliance with the condition or deed restriction. A drive-by inspection may be all that's needed on sites that appear to be in compliance. Make sure to check the date of the air photos.

## Section 2: Site Inspection

**Steps 2-4:** This section of the form includes a number of questions that should be asked and completed during inspection of the site. The purpose of the inspection is to evaluate current conditions of the site against the closure approval, deed restriction or interim or remedial action approval to determine if there have been any changes that affect previously established restrictions or performance standards and/or exposure pathways.

- For information on what to look for when conducting an audit of an asphalt cover, see the Asphalt Institute's "CL-15 Maintenance & Repair of Asphalt Parking Lots", at: <http://www.asphaltinstitute.org/engineering/maintenance-and-rehabilitation/asphalt-pavement-maintenance-rehabilitation-documents-information/>.
- If a maintenance plan was not required at closure, provide a copy of the maintenance plan template and a paper copy of the inspection log (Form 4400-232) with a link to electronic version of both at or prior to the site visit, as applicable.

- This scenario is typically for older sites where a cover was required in the deed restriction or closure letter, but no maintenance plan was provided.
- During the site visit, explain why a maintenance plan is useful for documentation of actions taken, for future audits, property transfers, etc. and provide the common goals for following standard maintenance practices and documenting inspections (including decreased risk of exposure, compliance with closure conditions, increased longevity, etc.).
- Take photographs during the site visit to document site conditions. Attach these photos at the end of the form (starting on page 5), two photos/page. If the photos document an unusual condition/circumstance, note that within the audit. Label photos with:
  - Site name
  - Date
  - Location
  - Clearly label any unusual conditions or circumstances, identifying the pertinent feature/s on the photo.
- When walking the site, check whether any monitoring wells remain, or if they have all been abandoned per Wis. Adm. Code § NR 141.25. Note this in the audit form.
- Take note of any changes to site conditions that may have been made that are not consistent with the conditions of closure, including those that may allow for an increased risk of exposure.
- Where applicable, go over the key aspects of the maintenance plan with the property owner, to enable a better understanding of what they need to be inspecting and documenting on the inspection log.
- When the site inspection is completed, acknowledge that the audit was conducted by entering “Audit conducted by (signature) on (date).” on the inspection log for the site ([Form 4400-305](#)). Follow-up comments can also be included but need to be documented in the audit form as well (Form 4400-232).
- Offer a copy of the completed audit to the property owner. Follow up as appropriate.

### **Section 3: Compliance and Follow-up**

**Steps 5-11:** This section covers the determination of compliance, and identification and documentation of any follow-up actions needed.

- **Step 5** focuses on the determination of compliance. If a maintenance plan was not required at closure, *the response in the second question of step 5 should be ‘Not Applicable’*. However, make sure to offer the property owner a copy of the maintenance plan template/inspection log, and explain which parts of the maintenance plan would be

most useful at their site, so that the property owner knows what should be maintained. Highlight the pertinent sections of the template plan given to the property owner.

- **Step 6** focuses on property owner follow-up, including maintenance, repair or replacement. In this step, identify what actions are needed to return the site to compliance with the conditions of closure. If wells are located, note that abandonment is needed on the audit form, and document in the follow-up letter. AC 186 is used for property owner follow-up.
  - Document follow-up on lack of inspections/documentation within the audit (p. 4). Do NOT use AC 186 for this.
- **Step 7** focuses on DNR follow-up, including making contact or taking enforcement action, updating BRRTS or reopening a case:
  - When addressing a lack of documentation of required RP inspections, contacts via e-mail, telephone, a letter or providing a copy of the completed audit are typically used. The contact should include the steps necessary to return to compliance with the conditions of closure (i.e. what should be inspected, what to look for in the inspections, typical repairs that might be necessary, etc.).
  - Document the required action request, via email or letter, as well as any responses received in return. Within the communication, allow a reasonable period of time for the property owner to regain compliance, and note this date in the letter or email. Request that the documentation be submitted electronically and in paper.
  - The stepped enforcement process, starting with the notice of noncompliance (NON), is used after initial follow-up actions are not completed by the property owner. Discuss the use of a Notice of Noncompliance with your Team Supervisor first. Using the enforcement process is also appropriate when there is a clear health risk.
  - If a site is not in compliance with the conditions of closure, and the follow-up actions requested were not taken within the reasonable timeframe provided, discuss further actions with the Team Supervisor. These may include further enforcement or reopening the site, depending on site specifics. Document the actions taken in BRRTS.
  - Add the documentation of the contact with the property owner to the case file in BRRTS.
- **Step 8:** Attach photographs at the end of the form. In the title/description, use the site name or BRRTS number, the feature of interest, and the direction you are looking from or towards. If a photo indicates something unusual, provide an explanation with the photograph. This can be especially helpful in cases of vapor mitigation systems and for future audits. Formal records naming conventions do not apply to these photos.
  - Remove any empty photo slots or empty pages before saving the completed audit.

- **Step 9:** Save the audit, and any other attachments, in a single PDF, using the naming convention: yearmonthdate\_185\_CO\_AUDIT.pdf (example: 20170713\_185\_CO\_AUDIT.pdf)
  - The PM can save the audit by using the Save button at the top of the form, save as type 'Adobe PDF files'.
  - Send a copy of the completed audit form to your Environmental Program Associate (EPA) or let them know the file location/name if you saved it to a common drive. Identify under which site/BRRTS number it is located, as this is no longer in the audit title. The EPA will then need to save the form as a "print to image" format for uploading into the BRRTS Document module.
  - **If follow-up action was required of the property owner**, send follow-up documents to the EPA, as appropriate. The EPA will upload the applicable documents to either AC 186 (follow-up required, typically an email or short letter to the property owner) or AC 187 (documentation of completion of follow-up activities received).
- **Step 10:** Once the audit has been completed, work with your Regional EPA to make sure that the action codes in BRRTS are updated. Use the BRRTS chart on p. 1 to identify action code changes needed. In some cases, a CO PDF may also need to be put together and uploaded to BRRTS.

To track the audit in BRRTS:

- Enter AC 185 for every audit conducted, using the date the audit was conducted. Load the audit to BRRTS with AC 185.
- Enter AC 186 if follow-up is required of the property owner (p. 4, question 6). Load any document requesting the follow-up action (email or letter) with AC 186.
- Enter AC 187 upon completion and receipt of documentation of the follow-up action. Load documentation received to BRRTS with AC 187 (photos, maps, letters).
- If follow-up is required by DNR rather than the property owner, note this in the audit, and document actions by using the applicable ACs. Do NOT use AC 186 for DNR follow-up.
- Use AC 99 to track receipt of inspection reports, where submittal of the inspection report was NOT required in the closure letter. Add "submittal of inspection report/s" in the comment field for AC 99.
- Add AC 238 if submittal of an inspection report was required in the closure letter.
- If submittal of the inspection report was required in the closure letter (AC 238), use AC 188 if the inspection report for the continuing obligation was received. AC 188 was set up for use with AC 238. Note the reason in the comment field; for example, "audit conducted".

Add all applicable action codes that have not been entered (pre-2006 mostly). Provide these changes to your EPA for updating BRRTS.

Common action code changes include:

- Corrections to continuing obligations (AC 220-238)
    - Please note that if AC 222 or 224 are used, AC 232 for residual soil contamination (above standards) should also be used.
  - AC 46 to indicate any residual contamination and COs for a ROW, if this hasn't already been added.
  - AC 52 for soil deed restrictions; *AC 52 was often entered before a deed restriction was recorded and submitted. However, for sites closed in 2006 the deed restriction was often not recorded. If letters in the CO PDF or file indicate that a deed restriction was required and recorded, make sure to locate a copy and to have it added to the CO PDF. If you cannot find any evidence that a deed restriction was recorded, remove AC 52. In a few cases, someone may need to go to the County Register of Deeds office to make this determination.*
  - AC 730 (use when a groundwater use restriction is in the file or PDF), and
  - AC 51 (typically titled “deed notice”, “deed affidavit”, or “notice of contamination”). “Warranty deeds” are not tracked, and do not contain continuing obligation requirements.
  - AC 48 for Wis. Adm. Code § NR 140.28 exemptions provided in the closure letter, and
  - AC 805 for a licensed landfill or historic fill site.
- **Step 11:** Notify Central Office/Jane Lemcke regarding completion of the audit (name, BRRTS #). Verify that the audit has been uploaded to BRRTS. A copy uploaded to BRRTS is sufficient for the file. You do not need to add a paper copy to the file if one is loaded to BRRTS.
    - Optional: Send a copy of the completed audit to the property owner, if they requested a copy, or if they accepted the offer made while conducting the audit.