



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-19-5380-C

DOCUMENT TITLE

Model Letter: Notification of Closure Approval (with Continuing Obligations)

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

**DNR Remediation & Redevelopment
RR-5380, Notification of Closure Approval (with Continuing Obligations), June 2017**

INSTRUCTIONS: Copy/paste the applicable continuing obligations from the "Closure Conditions" section of the closure letter. You need to add the entire continuing obligation.

Use figure number, name and date for all attachments.

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]

[Affected off-source property owner name and address]

SUBJECT: Continuing Obligations and Property Owner Requirements for [property address]
Parcel Identification Number: (Parcel Identification Number)
Final Case Closure for [BRRTS site name and address], WI
DNR BRRTS Activity #: DNR BRRTS Activity number

Dear [name of affected off-source property owner]:

The purpose of this letter is to notify you that certain continuing obligations apply to the property at [insert address of off-source property this letter pertains to], (referred to in this letter as the "Property") due to contamination remaining on the Property. The continuing obligations are part of the cleanup and case closure approved for the above referenced case, located at [insert address of source property]. (The case is referenced by the location of the source property, i.e. the property where the original discharge occurred, prior to contamination migrating to the Property.) The continuing obligations that apply to the Property are stated as conditions in the attached closure approval letter, and are consistent with s. 292.12, Wis. Stats., and ch. NR 700, Wis. Adm. Code, rule series. They are meant to limit exposure to any remaining environmental contamination at the Property. These continuing obligations will also apply to future owners of the Property, until the conditions no longer exist at the Property.

It is common for properties with approved cleanups to have continuing obligations as part of cleanup/closure approvals. Information on continuing obligations on properties can be found by using the Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web (BOTW). This database is found at dnr.wi.gov and search "WRRD". This page also provides information on how to find further information about the closure and residual contamination, and how to use the map application, RR Sites Map, which shows environmental cleanup sites, including those closed with residual contamination and continuing obligations.

The department reviewed and approved the case closure request regarding the [describe the type of contamination] in [describe the contaminated media, e.g., soil, groundwater, other media] at this site, based on the information submitted by [list the name(s) of the party/consultant who conducted the cleanup action]. As required by state law, you received notification about the requested closure from the person conducting the cleanup. No further investigation or cleanup is required at this time. However, the closure decision is conditioned on the long-term compliance with certain continuing obligations, as described below.

Continuing Obligations Applicable to Your Property

A number of continuing obligations are described in the attached case closure letter to [closure letter addressee name], dated [date of the closure letter]. However, only the following continuing obligations apply to your Property.

Insert, from the closure letter, a copy of all the conditions applicable to this specific property.

If a cover or vapor mitigation condition applies, make sure to include the Prohibited Activities section as well.

Within the conditions, replace "property" with "Property", as applicable.

- Residual soil contamination
- Structural impediment
- Industrial residual soil standards
- Cover or barrier
 - Prohibited activities
 - Identify maintenance actions required
 - Maintain inspection log on-site, or identify frequency of inspection log submittal to DNR
- Language regarding use of an existing soil vapor mitigation system
- Residual groundwater contamination
- Vapor migration (potential for) Add the following sentence at the beginning of the paragraph:
"Vapor migration is the movement of vapors originating from volatile chemicals in the soil or groundwater, into buildings or other areas where people may become exposed by breathing air contaminated by the vapors."
- Monitoring wells could not be properly abandoned
- Monitoring wells to be kept, need to be inspected annually and maintained

DNR Database – Well Construction Approval Needed

Because of the residual type of media contaminated contamination and the continuing obligations, this site, which includes your Property, will be listed on the Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web (BOTW), at dnr.wi.gov and search "WRRD". If you intend to construct or reconstruct a well on the Property, you will need to get department approval in accordance with s. NR 812.09 (4) (w), Wis. Adm. Code. To obtain approval, Form 3300-254 needs to be completed and submitted to the DNR Drinking and Groundwater program's regional water supply specialist. A well driller can help with this form. This form can be obtained online at dnr.wi.gov and search "3300-254". If at some time, all these continuing obligations are fulfilled, and the remaining contamination is either removed or meets applicable standards, you may request an update to the database regarding the Property.

Property Owner Responsibilities

The owner (you and any subsequent property owner) of this Property is responsible for compliance with these continuing obligations, pursuant to s. 292.12, Wis. Stats. You are required to pass on the information about these continuing obligations to anyone who purchases this property from you (i.e. pass on this letter), in accordance with s. NR 727.05. For residential property transactions, you are required to make disclosures under Wis. Stats. s. 709.02. You may have additional obligations to notify buyers of the condition of the property and the continuing obligations set out in this letter and the closure letter.

If you lease or rent the property to an occupant who will be responsible for maintaining a continuing obligation, you will need to include that responsibility in a lease agreement, in accordance with s. NR 727.05, Wis. Adm. Code.

Please be aware that failure to comply with the continuing obligations may result in enforcement action by the DNR. The DNR intends to conduct inspections in the future to ensure that the conditions included in this letter, including compliance with referenced maintenance plans, are met.

These responsibilities are the property owner's. A property owner may enter into a legally binding agreement (such as a contract) with someone else (the person responsible for the cleanup) to take responsibility for compliance with the continuing obligations. If the person with whom any property owner has an agreement fails to adequately comply with the appropriate continuing obligations, the DNR has the authority to require the property owner to complete the necessary work.

A legal agreement between you and another party to carry out any of the continuing obligations listed in this letter does not automatically transfer to a new owner of the property. If a subsequent property owner cannot negotiate a new agreement, the responsibility for compliance with the applicable continuing obligations resides with that Property owner.

When maintenance of a continuing obligation is required, the Property owner is responsible for inspections, repairs, or replacements as needed. Such actions should be documented by the Property owner and the records kept accessible for the DNR to review for as long as the department directs.

You and any subsequent Property owners are responsible for notifying the department at least 45 days before making a change to a continuing obligation, and obtaining approval, before making any changes to the property that would affect the obligations applied to the Property. Send all written notifications in accordance with the above requirements to (Regional RR Program Office for the location), to the attention of (Regional RR Program contact, as determined by the Region; could be the PM for the county, or the Environmental Program Associate).

The DNR fact sheet, RR-819, "Continuing Obligations for Environmental Protection" helps explain a property owner's responsibility for continuing obligations on their property. This fact sheet should have been sent to you when you received a notification letter before the closure request was submitted to the DNR. You may obtain a copy at dnr.wi.gov and search "RR-819".

Do NOT use the following paragraph if the person conducting the cleanup also owns the off-source property.

Under s. 292.13, Wis. Stats., owners of properties affected by contamination from another property are generally exempt from investigating or cleaning up a hazardous substance discharge that has migrated onto a property from another property, through the soil, groundwater or sediment pathway. However, the exemption under s. 292.13, Wis. Stats., does not exempt the property owner from the responsibility to maintain a continuing obligation placed on the property in accordance with s. 292.12, Wis. Stats. To maintain this exemption, that statute requires the current property owner and any subsequent property owners, to meet the conditions in the statute, including:

- Granting reasonable access to the DNR or responsible party, or their contractors;
- Avoiding interference with response actions taken; and

- Avoiding actions that make the contamination worse (e.g., demolishing a structure and causing or worsening the discharges to the environment).

The DNR appreciates your efforts. If you have any questions regarding this closure decision or anything outlined in this letter, please contact (Staff Name) at (Staff phone number).

Sincerely,

Team Supervisor Name
Region Team Supervisor
Remediation & Redevelopment Program

Attach. (Attach a copy of the closure letter, maintenance plan, location map and any other attachments to the letter.)

cc: [RP (the person who conducted the cleanup)]
[RP's consultant name/address and/or other cc's]

(Note: A copy of this letter is placed in the CO packet along with the closure letter.)

Enclosure: If included as an attachment; RR-819 – Continuing Obligations Fact Sheet