



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.

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Records Management and Digitizing Guidance

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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

Records Management and Digitization Guidance

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Wisconsin Department of Natural Resources
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Records Management and Digitizing Guidance

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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.

Overview

The purpose of this guidance is to provide staff with direction on how to maintain the public records associated with the Remediation and Redevelopment Program's core functions. Staff should follow the procedures laid out in this guidance with respect to records management. Helpful resources include the following:

- [DNR's Records Management Web Page](#)
- [DNR's Open Records Web Page](#)
- [RR Program's Records Core Module](#)
- [RR Program's Retention Disposition Authorization \(RDA\)](#)

Definitions

- **Record** – Any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved which is being kept by an authority that is **subject to open records access**. "Record" includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts and optical disks [s. 19.32(2), Wis. Stats.].
- **Document** - a written, printed, or electronic item, such as guidance, publication, letter, report, etc., that provides information especially of a factual or informative nature.
- **File** – A file is a collection of data stored in one unit.

BRRTS as the Official Site File Location

The RR program has determined that the **official repository for storing the permanent site file records – as defined in the RR Program's Retention Disposition Authorization (RDA) is BRRTS.**

- Secure folders on the central e-files shared drive - [\\central\efiles\Staging](#) - (not a regional share drive) will be used for *staging* site file records for upload to BRRTS only.
- Once a final record is in BRRTS, it is the official copy. Therefore, any other exact version, in any other form, is a duplicate.
- Paper records should be recycled once available electronically in BRRTS. The exception to immediately recycling the paper copy is where a staff person is using the paper copy as a working draft for review and/or for their personal notes. These copies should be clearly marked as duplicates using a "BRRTS Duplicate" stamp. This guidance is not be interpreted to suggest that project managers relinquish paper versions of submittals they are reviewing.
- Records associated with NAR and closed sites are generally scanned into multi-document, single PDFs.
- Records associated with open sites are generally to be scanned and/or received as individual PDFs.

Digitization Priorities

The program has set the following priorities for scanning/digitizing records, in this order:

1. **Open records requests:** Records compiled to fulfill open records requests;
2. **No Action Required site files;**
3. **New record submittals for spill and non-spill sites;**
4. **Closed case files,** with less than 4” of records;
5. **Open sites with elevated public interest** where numerous requests are being made for simple, straightforward information (e.g., technical reports).

The following types of records are lower priority, but can be addressed based on progress made on items (1) through (5) above:

6. Closed case files, with greater than 4” of records;
7. Other open sites
 - a. Open Sites Near Closure
 - b. Open Sites with staff who are close to retirement
 - c. All other open sites; and
8. Historical spill sites no longer open.

What Types of Records Constitute a “Site File”?

General Criteria for what Records Constitute a “Site File” in RR Program

The following general criteria should be used to determine which public records should be made part of the permanent site file as established in the RR Program’s RDA:

- Any email, letter or other type of DNR correspondence that provides guidance, shows action, gives direction (See [Email BMPs](#) on [Records Core Module](#));
- Records which are unique to the circumstances at the site (e.g., bankruptcy documents; superior liens; tax cancellation agreements, etc.);
- Written determinations of how policy or guidance applies to the site;
- Records that document steps the RP and/or consultant were directed to follow;
- Records that show actions by the DNR, RP, consultants or others;
- Records that documents site-specific, written decisions or approvals; and
- All relevant records that tell the story of a site from a regulatory perspective.

Note: Not every document and record associated with a site or project belongs in the “site file”.

These criteria were developed after consideration of the State of Wisconsin's laws and guidance on state records, found at: <http://intranet.dnr.state.wi.us/itworks/records/>

Specific Records that are Part of the Permanent Site File

The program's RDA and the following general criteria should be used to determine which public records associated with a specific property/project should be made part of the permanent site file and reside in BRRTS:

- NR 700 regulatory submittals from externals and corresponding department responses (e.g., records that state DNR action, give approvals, provide direction);
- Anything on DNR letterhead that is an approval, gives regulatory direction, etc.;
- State-generated NR 700 comments on regulatory submittals;
- Financial items (e.g., liens, grants, and loan documents);
- Site-specific contractor selection records for state-lead project;
- Enforceable records – see NR 728.07 and 728.09 (e.g., orders, agreements, etc.);
- Certain types of site-specific emails – rule of thumb: Will DNR need it later to carry on the agency's business? Does it give direction; give approval; or record DNR actions? (See [Email BMPs](#) on [Records Core Module](#) for additional clarification.)
- Records dealing with potential litigation and enforcement (e.g., NONS, NOVs, push letters, etc.);
- Site-specific correspondence from the public; responsible parties, consultants, etc. (e.g., letters and emails);
- Wis. Stats. 292 submittals not part of NR 700 process (e.g., 292.35 umpire process; superior liens; tax agreements under Wis. Stats. 75, etc.);
- Phase I and II environmental assessments, even if not part of a NR 700 determination;
- Tank system assessments;
- Cost recovery records (e.g., letters, liens, etc.);
- Other environmental approvals in possession of RR program (not intended to require that the RR program find all other regulatory approvals, permits, licenses, etc. from other state or federal programs; if available, include them);
 - Access agreements; special inspection warrants; etc.; and
 - RCRA, TSCA or Superfund-specific records (refer to DNR Publication RR-5194 for Superfund records and confidentiality) that meet the general criteria for a record belonging in the site file.

Records & Documents NOT Included in “Site File”

The following records and documents should NOT be included in the site file maintained on BRRTS:

- **PECFA Claims files:** The PECFA claim files will be located separately (in the PECFA Electronic Mailbox) from site file records, due to the differing record retention timeframes. Retention expiration for PECFA claims files is seven years after the date of final payment of a claim and last official action taken to close the file. All technically relevant records located in the PECFA Electronic Mailbox (including Cost Cap Approval (505), Cost Cap Denial (506), Additional Information (507), and Cost Cap Adjustment (508) letters) are considered duplicates for use by the claims staff and should be officially captured in BRRTS.
- **Emails that do not meet the criteria for including in the permanent site file** – including transitory (delete immediately) and operational (2-year retention) emails. (See [Email BMPs](#) on [Records Core Module](#) and [DNR manual code](#) for additional clarification.)
- **Documents that do not generally meet the definition of a public record and do not need to be retained, including:**
 - Appointment confirmations;
 - Duplicate copies;
 - Internal, DNR draft copies if not relied on or are replaced with a final version;
 - Documents that have no documentary or evidentiary value;
 - Outdated meeting notices;
 - Phone logs;
 - Threads repeated in more recent emails; and
 - Drafts, notes, preliminary computations and like materials prepared for the originator’s personal use or prepared by the originator in the name of a person for whom the originator is working.

However, at a certain point in time, these documents can be subject to open records law if they are not appropriately destroyed and kept separate from the site file.

Displaying Records on BOTW

BOTW: Defining our Business Needs

The RR Program’s **business needs** associated with displaying records on BOTW are identified as:

- Address RRMT decision in June 2010 to display a subset of brownfields documents;

- Display statutorily required information (e.g., 292.12, 292.31, and 292.57);
- Reduce open records requests (ORRs) by displaying most common records requested as part of open record requests:
 - NARs; Phase I and Phase II EAs; Closure letters; latest SI results on open sites; tank assessment/closure;
- Display documents needed to conduct ASTM Phase I EA (e.g., liens). ASTM allows 20 days as reasonable time period to receive documents;
- Display records that describe site progress (e.g., semi-annual reports; O&M reports);
- Display records that show NR 700 compliance approval/status (may include NR 500 historic fill approvals); but no other regulatory compliance documents (WPDES, Air, etc.); and
- Display records that describe that a spill occurred and the actions taken to address the situation.
- Sideboards:
 - Volume and variety of records displayed on BOTW may vary depending on the complexity of the site and frequency of ORRs. In general, there may be exceptions based on public's interest in the site.
 - Not all records associated with a site or spill need to be displayed on BOTW; however, all records that belong in the site file do ultimately need to be stored electronically as part of the site's records disposition act (RDA) record.
 - Why not display everything on BOTW?
 - Some ORRs are considered "complex" and require pre-approval prior to release of a record to public; and
 - Sheer volume of documents listed may be overwhelming to the public. To avoid this, focus on most commonly requested records.

Records that **SHOULD** be displayed on BOTW

The following records are part of the site file and should be displayed on BOTW once uploaded to BRRTS. These records generally would constitute a "simple" open records request and are the records most commonly requested by the public.

1. All regulatory submittals and other related records from consultants/responsible parties required by NR 700:
 - a. DNR-issued responsible party letter;
 - b. RP required NR 700.11 submittals: 700.11 semi-annual site progress, NR 716 site investigation scopes of work, NR 716 site investigation reports, and NR 722 Remedial Action Options reports;

- c. NR 700 submittals that are required by NR 700 based on RP's actions: NR 708, 718, 724, 725, 726, and 727 submittals;
 - d. VPLE documents not otherwise required: NR 750 – Phase I and II EAs.
- 2. Any DNR-issued email, letter or other type of correspondence that provides guidance, shows action, gives direction, approves or denies action – with or without a fee;
- 3. All fee-related submittals requesting RR program technical and liability assistance, per NR 749 or 750 – Technical supporting documentation provided by the customer
- 4. Letter/decision/exemption response written to the customer for all fee-related submittals requesting RR program technical and liability assistance, per NR 749 or 750.
- 5. All tank assessments
- 6. All Phase I and II environmental assessments – VPLE, Lender, and EAs for NR 716.05 letters
- 7. Statewide letters issued by DNR (e.g., VI assessment needed letter, PECFA sunset letter, etc.).
- 8. Limited correspondence received from externals (other than RP or consultant).
 - a. Only where NR 714 requires DNR to have a public comment period and comments are received and responded to.
 - b. **NOTE:** All other correspondence from the public associated with a site would be a public record and included in BRRTS as part of the site file, but not displayed on BOTW.
- 9. Legally enforceable documents entered into regarding the site: consent orders, administrative orders, 292.31 contracts, negotiated agreements, intergovernmental agreements, tax cancellation agreements, Stewardship/Brownfields agreements, etc.
- 10. Other enforcement-related records: NON and NOV's.
 - a. **EXCEPTION: Never display the following** (not subject to ORR): pre-referral memo; referral memo to DOJ; and environmental enforcement request form.
- 11. Deed notices filed or amended under NR 728.11.
- 12. DNR liens placed or removed on the property for PECFA, DERF, Tank Removal, and Superior liens.
- 13. Superfund records – Please see [RR-5194](#) for information regarding confidentiality of Superfund documents.

Records that **SHOULD NOT** be displayed on BOTW

- 1. The following records should be uploaded to BRRTS but **not** be displayed on BOTW:
 - a. All **financial site records**: SAG, state-lead, SUDZ, RFR, DERF, VIZC, abandoned containers; cost recovery; Superfund financial; etc.
 - b. **Correspondence between RP and DNR** (that meets the definition of a site file record), unless otherwise noted above.
 - c. **Correspondence received from other externals about a site** (that meets the definition of a site file record), unless otherwise noted above.
- 2. The following records should be uploaded to BRRTS but are **NEVER to be displayed on BOTW, and may not be releasable as part of an ORR**:

- a. Confidential Records :
 - i. Record that receives special approval under Wis. Admin. Code § [NR 700.05](#) (Wis. Stats. 19 and Wis. Admin. Code § [NR 2.19](#)). A record that meets the NR 700.05 standard is confidential (e.g. trade secrets).
 - ii. Information submitted by RP or consultant is not “confidential” unless it has received approval under the NR 700.05 process.
 - iii. Under Open Records: An ORR for this information is subject to appeals. DNR may redact confidential information but release the rest of a document. This is a balancing decision made by Legal/Records Office.
- b. Records with personally identifiable information. See [Personally Identifiable Information \(PII\) Guidance](#) on [Records Core Module](#) for additional clarification.
- c. Enforcement Confidential: These documents are records but not releasable: pre-referral memo; referral memo to Dept. of Justice (DOJ); and environmental enforcement request form.
- d. Superfund Confidential records: See [RR-5194](#).

Digitization & Scanning

The RR program has established priorities for digitizing records for upload to BRRTS. Guidelines are available in this document that help staff make decisions on what should and should not appear on BOTW. In general, what will be displayed on BOTW will be records that would be part of a “simple,” open records request. Records that would require an internal open records review prior to sharing with the public would be in BRRTS as part of the site file.

In addition, as part of the digitization project, the program has established [naming and category conventions](#) that should be used by staff when uploading records to BRRTS.

General digitizing or scanning guidelines, depending on the type of record are as follows. Additional uploading guidance can be found in the [Scanning Protocols for Closed Sites and NARs](#), [Uploading Protocols for New Submittals](#), and [Record-Specific Uploading FAQs](#) in the [Records Core Module](#). **These documents will be updated as the digitization process is refined.**

1. **Records compiled to fulfill open records requests** – scan those files or records as individual documents.
2. **No Action Required** site files that are at DOA Records Center or in DNR files. See [Scanning Protocols for Closed Sites and NARs](#) on [Records Core Module](#).
3. **New submittals for spills and non-spill sites**. See [Uploading Protocols for New Submittals](#) on [Records Core Module](#).
4. **Historical closures and open sites near closure less than 4" in size** - See [Scanning Protocols for Closed Sites and NARs](#) on [Records Core Module](#). Open site records should be scanned as individual PDFs.

5. **Open sites with elevated public interest** where numerous requests are being made for simple, straightforward information (e.g., technical reports). Open site records should be scanned as individual PDFs.

The following types of records are lower priority, but can be addressed based on progress made on items (1) through (5) above:

6. **Historic closures and open sites near closure greater than 4"** - See scanning protocols for historic closures on page 9. Open site records should be scanned as individual PDFs.
7. **Other open sites** – Open site records should be scanned as individual PDFs.
 - a. Open Sites Near Closure
 - b. Open Sites with staff who are close to retirement
 - c. All other open sites; and
8. **Historic Spills sites no longer open** – See [Scanning Protocols for Closed Sites and NARs](#) on [Records Core Module](#).