



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-19-5520-C

DOCUMENT TITLE

Notice of Noncompliance (NON) Template 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

**DNR – Remediation and Redevelopment
RR-5520, Notice of Noncompliance (NON) Template Letter, October 2017**

Directions:

- Place on letterhead, include page numbers in “page 1 of 1” format
- Include as enclosures:
 - The Responsible Party letter
 - For PECFA sites, include PECFA fact sheet
- This Microsoft Word document contains macro-enabled fields that may not function properly with other word processing programs or platforms.
 - Grey-shaded areas are macro-enabled. Click anywhere within the grey area and fill in with the appropriate information.
 - Blue-shaded areas are NOT macro-enabled, but are meant to provide suggestions regarding language. You should delete these sections in your final version.

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]

CERTIFIED MAIL

[Address to all RPs]

Subject: Notice of Non-Compliance: Action Required by [date]
[Site name and address]
[BRRTS No. _____]

Dear Mr. or Ms. [_____]:

This letter is to notify you that you are out of compliance with Wisconsin Statutes (Wis. Stat.) chapter 292 and Wisconsin Administrative Code (Wis. Admin. Code) chapters NR 700 through NR 754. On [date of RP letter], the Wisconsin Department of Natural Resources (“Department”) notified you of your responsibilities to investigate the degree and extent of contamination and clean up the above-referenced site. That letter is attached for your reference.

[List subsequent communications/summarize current status. Use statements (e.g., “You stated that you would submit a work plan by April 3, 2016”) rather than terms of agreement (e.g., “You agreed that you would submit the work plan by April 3, 2016”).]

Please be aware that the Department may initiate enforcement action against you for failure to comply with Wis. Stat. chapter 292. Your legal responsibilities are defined both in Wis. Stat. chapter 292 and Wis. Admin. Code chapters NR 700 through 754 and are also described in the [date of RP letter] letter. In particular, Wis. Stat. § 292.11(3), states:

RESPONSIBILITY. A person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands, or waters of the state.

Our information indicates that you have not [next item due per NR 700, e.g., notification, work plan, RAOR].

(Use where applicable) [There is an immediate concern and need to identify risks for vapor intrusion at your property and neighboring properties.]

Wis. Admin. Code chapters NR 700 through NR 754 establish requirements for emergency and interim actions, public information, site investigations, design and operation of remedial action systems, and case closure. Chapter NR 708 includes provisions for immediate actions in response to limited contamination. Wis. Admin. Code chapter NR 140 establishes groundwater quality standards for contaminants that reach groundwater.

The Department is requesting that by [30 days from date of letter], you [submit or provide document/report pursuant to next step, i.e. documentation a consultant was hired, work plan, etc.].

INCLUDE FOR PECFA ONLY: [You are enrolled in the Petroleum Environmental Cleanup Fund Award (PECFA) program, and are therefore eligible for reimbursement of certain petroleum contamination clean-up costs. The reimbursement program (PECFA) will end on June 30, 2020. Please keep in mind this funding has a limited timeframe for reimbursement. Work needs to begin immediately to take full advantage of the reimbursement available to you as well as to return to compliance. Please refer to the enclosed PECFA fact sheet for more information.]

Please understand that you are in noncompliance and will remain in noncompliance until you fulfill all requirements of the statute. Failure to take the actions required by Wis. Stat. § 292.11 to address this contamination will cause the Department to review this case for enforcement actions. Additionally, please be advised that the Department is authorized under Wis. Stat. § 292.94 to assess non-reimbursable fees for any reports you are required to submit as part of additional enforcement actions.

If you are experiencing problems selecting an environmental consultant or if you have other questions concerning the cleanup process, please do not hesitate to write or call [Project Manager] at [phone and email]. Thank you for your attention to this matter.

Sincerely,

[Name of Regional Team Supervisor]
DNR – [Name of Region] Region
Remediation & Redevelopment Team Supervisor

Encl.

[RP letter]

FOR PECFA ONLY:
[PECFA Fact Sheet]

FOR PECFA ONLY:
[CC: Tim Prosa -- RR]