



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-19-5530-C

DOCUMENT TITLE

Template Letter: NR 718.12 exemption for management off-site

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.

A handwritten signature in black ink that reads "Jennifer Haeg".

Signature

September 4, 2019

Date

DNR – Remediation and Redevelopment
RR-5530 Template Letter - NR 718.12 Exemption for Off-Site Management of Contaminated Soil,
Only
February 2019

PURPOSE: Use this letter for granting a NR 718.12 exemption to allow disposal of contaminated soil at an off-site facility or site.

This template letter is to be used only if contaminated soil is being managed at a site or facility other than where it was excavated. Other “solid waste” (i.e., material other than contaminated soil) may not be managed at a location other than the site or facility where it was excavated from under NR 718; but could be managed at another location with a low hazard exemption granted by the Waste and Materials Management Program.

A different template letter (RR-5531) should be used when granting a NR 718.12 and 718.15 exemptions for managing contaminated soil or other solid waste at the same site it was generated from.

Language from this template letter may be copied into a letter approving an interim or remedial action plan or continuing obligation modification that requires a NR 718.12 exemption.

The letter should be put on regional letterhead. Per signature delegation authority, the project manager may sign the exemption if it imposes continuing obligations only after the response receives peer review from the regional or central office contaminated materials specialist or another qualified reviewer.

NOTES:

Yellow highlighted text contains notes/directions to the DNR staff writing the letter and must be deleted from the final letter. Refer to NR 718 and the “Recommended Format for Exemption Request Wis. Admin. Code § NR 718.12 or § NR 718.15 **RR-072**” to confirm that all information needed to grant this exemption was provided.

Grey highlighted text contains areas where DNR staff need to fill in or replace the information as appropriate.

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

GENERATING SITE OWNER
ADDRESS
CITY, STATE ZIP

And

RECEIVING SITE OWNER
ADDRESS
CITY, STATE ZIP

Subject: Approval to Manage Contaminated Soil under Wis. Admin. Code § NR718.12 at A Different Site or Facility

Generating Property: GENERATING SITE NAME AND ADDRESS, WI, BRRTS #(s): ERP, LUST AND MAT MGMT BRRTS ACTIVITY #S, **Optional:** FID #: FID NUMBER

Receiving Property(ies): RECEIVING SITE NAME AND ADDRESS, WI, BRRTS #(s): ERP, LUST AND MAT MGMT BRRTS ACTIVITY #S, **Optional:** FID #: FID NUMBER

Dear GENERATING SITE OWNER(s) AND RECEIVING SITE OWNER(s):

On DATE, NAME AND COMPANY OF PERSON SUBMITTING THE REQUEST submitted an EXEMPTION REQUEST DOCUMENT on your behalf requesting to manage XX cubic yards of contaminated soil on RECEIVING SITE NAME in accordance with Wis. Admin. Code § NR 718.12. **If applicable, add the following sentence:** Supplemental information regarding this request was also provided on DATES. The Department of Natural Resources (DNR) received all applicable technical assistance and database fees for providing review and response, in accordance with Wis. Admin. Code § NR 749.04 (1).

Provide a brief summary of the project including the reason for excavation (such as redevelopment/construction activities) and describe how the material will be addressed by the remedial action (capped, etc.). Summarize details provided in the request about the future use of the generating property. Example: A two-story building is proposed to be constructed on the south end of this SITE NAME. Excavations for a parking lot, the building foundations, and utility installations will generate 3,400 cubic yards of soil contaminated with Polycyclic Aromatic Hydrocarbons (PAHs). An exemption through Wis. Admin. Code NR 718.12 has been requested to manage the contaminated soil off-site at SITE NAME where it will be used as backfill in a remedial excavation.

Wis. Admin. Code § NR 718.12 Exemption

This letter grants an exemption from the solid waste requirements in Wis. Stat. § 289 and Wis. Admin. Code §§ NR 500 to NR 538 for the proposed contaminated soil management activities. Approval of the exemption is based on the following:

Compliance with Locational Criteria

Managing contaminated soil in areas of the site or facility identified on FIGURE X of the EXEMPTION REQUEST DOCUMENT will meet the locational criteria listed under Wis. Admin. Code § NR 718.12

(1) (c).

OR

Managing contaminated soil in areas of the site identified on **FIGURE X** of the **EXEMPTION REQUEST DOCUMENT** will meet the locational criteria listed under Wis. Admin. Code § NR 718.12 (1) (c), with the exception of the following:

Delete the conditions listed below that will be met. Exemptions from the remaining criteria can be given if there is a valid reason to do so and considers: waste characteristics and quantities; geology and hydrogeology of the area, unavailability of other environmentally suitable alternatives; compliance with other state and federal regulations, the threat to public health, safety or welfare or the environment (Wis. Admin. Code § 718.12 (1) (d)).

- Within a floodplain;
- Within 100 feet of a wetland or critical habitat area;
- Within 300 feet of any navigable river, stream, lake, pond or flowage;
- Within 100 feet of any on-site water supply well or 300 feet of any off-site water supply well
- Within 3 feet of the high groundwater level;
- At a depth greater than the depth of the original excavation from which the contaminated soil was removed; and
- Where the contaminated soil poses a threat to public health, safety or welfare or the environment.

Grant of exemption to Wis. Admin. Code § NR 718.12 (1) (c) #

In consideration of **DESCRIPTION OF THE BASIS FOR GRANTING AN EXEMPTION TO ANY OF THE LOCATIONAL CRITERION, I.E. LOW-LEVEL CONTAMINATION, PROPOSED REMEDIAL RESPONSE SUCH AS CAPPING AT DISPOSAL SITE, ETC.**, the DNR grants an exemption to the location criteria of Wis. Admin. Code § 718.12 (1) (c) # and will allow placement of contaminated soil within **DESCRIPTION OF THE CRITERIA LISTED. (i.e. within 3 feet of the high groundwater level)**

Characterization of Soil to be Excavated

Use the following paragraph if a site-specific sampling plan was not provided for review to the DNR before the Wis. Admin. Code § NR 718 exemption request/soil management plan was submitted. **NOTE: A site-specific sampling plan is not required to be submitted if the sampling requirements in Wis. Admin. Code § NR 718.12 (1) (e) will be followed.**

Soil samples were collected for analysis of contaminants previously detected or expected to be present at this site including **TYPE OF CONTAMINATION, i.e. VOCs, PAHs, METAL**, from areas most likely to contain residual contamination. Based on an estimated volume of **XXX** cubic yards of soil, and a sampling frequency of 1 sample per **XXX** cubic yards, the sampling protocol described in Wis. Admin. Code § NR 718.12 (1) (e) **WAS/WAS NOT** met. **If the required frequency was met, delete the rest of this paragraph.** However, the DNR has determined that the soil was adequately characterized due to **DESCRIPTION OF WHY THE DNR CONCURS WITH THE LOWER SAMPLING FREQUENCY, SUCH AS LOW CONCENTRATIONS, CONSISTENT RESULTS, SOIL HOMOGENEITY, ETC.**

OR

Use the following paragraph if a site-specific sampling plan was provided to the DNR for review before the Wis. Admin. Code § NR 718 exemption request/soil management plan was submitted, and the DNR approved of the sampling plan.

On **DATE SAMPLING PLAN WAS APPROVED**, the DNR approved a sampling plan to characterize soil that will be managed under this exemption that differs from the requirements of Wis. Admin. Code § NR 718.12 (1) (e). **INSERT A BRIEF DESCRIPTION OF THE PLAN.** Based on an estimated volume of **XXX** cubic yards of soil, and a sampling frequency of 1 sample per **XXX** cubic yards, the sampling

protocol approved by the DNR was met. The DNR concurs that the soil was adequately characterized for management under this exemption.

Submittal of a Soil Management Plan

A complete soil management plan, as defined by Wis. Admin. Code §§ NR 718.12 (2) (b) and (c), was provided to the DNR.

Assessment of Risk Posed by Soil Management

The proposed management of contaminated soil at the **SITE OR FACILITY NAME** is expected to meet the criteria of Wis. Admin. Code §§ NR 726.13 (1) (b) 1 to 5.

Notice Provided Prior to Commencing Soil Management Activities

Per Wis. Admin. Code § NR 718.12 (2), the DNR was provided with at least seven days’ notice prior to commencing to proposed contaminated soil management.

If continuing obligations will be imposed include item 6 and the following Continuing Obligation language, otherwise delete everything from this point until the “Other Information” section on page 6.

Requirement of Continuing Obligations

The current owners of **RECEIVING SITE OR FACILITY** acknowledged that the continuing obligations described below will be required as a condition of managing the contaminated soil on their property as proposed.

The current property owner of the **SITE OR FACILITY NAME**, and any subsequent property owners, must comply with the following continuing obligations, established under Wis. Admin. Code § NR 718.12 (2) (d) at this site, to ensure that conditions will remain protective. DNR staff will conduct periodic, pre-arranged inspections to ensure that the conditions included in this letter **AND THE ATTACHED MAINTENANCE PLAN** are met. If these requirements are not followed, the DNR may take enforcement action under Wis. Stat. ch. 292.11 to ensure compliance with the specified requirements, limitations or other conditions related to the property.

Documents submitted to the DNR to request the Wis. Admin. Code § **NR 718.12** exemption meet the requirements of Wis. Admin. Code § NR 718.12 (2) (e) and are available in Portable Document Format (PDF) on the DNR’s Bureau for Remediation and Redevelopment Tracking on the Web (BOTW) and RR Sites Map (RRSM), to provide public notice of remaining contamination and continuing obligations. Both BOTW and RRSM are available at dnr.wi.gov and search “WRRD”.

More information on responsibilities related to continuing obligations can be found in the DNR publication “Continuing Obligations for Environmental Protection” (RR-819), which can be found at dnr.wi.gov, search “RR-819”.

Please send written notifications **and inspection reports, if required**, in accordance with the following requirements to:

Wisconsin Department of Natural Resources
Remediation and Redevelopment Program
Attn: **NAME OF ENVIRONMENTAL PROGRAM ASSOCIATE OR PROJECT
MANAGER**
DNR OFFICE STREET ADDRESS
CITY, WI, ZIP CODE

Include the required COs from the list below; delete all those that do not apply.

Residual Soil Contamination

If contaminated soil that was managed as proposed in the EXEMPTION REQUEST DOCUMENT is excavated in the future, the property owner at the time of excavation will have the following responsibilities per Wis. Admin. Code § NR 727.05 (1) (d):

- determine if contamination is present;
- determine whether the soil is considered solid or hazardous waste; and
- ensure that any storage, treatment or disposal is in compliance with applicable statutes and rules.

Excavated soil may be managed in accordance with Wis. Admin. Code § NR 718, with DNR pre-approval obtained. In addition, all current and future property owners and occupants of the property and right-of-way holders need to be aware that excavation of the contaminated soil may pose a hazard, and special precautions may be necessary to prevent a health threat to humans.

The location(s) where contaminated soil is proposed to be managed at SITE NAME is depicted on the attached FIGURE NAME, NUMBER, DATE.

The following two paragraphs are optional, and may be included depending on site conditions

Depending on site-specific conditions, construction over contaminated soils or groundwater may also result in vapor migration of contaminants into enclosed structures or migration along underground utility lines. The potential for vapor intrusion and means of mitigation may need to be evaluated when planning any future redevelopment, and measures may need to be taken to ensure the continued protection of public health, safety, welfare and the environment at the site.

The DNR's approval prior to well construction or reconstruction is required *where contaminated soil was managed*, in accordance with Wis. Admin. Code § NR 812.09 (4) (w). This requirement applies to private drinking water wells and high capacity wells. To obtain approval, complete and submit DNR Form 3300-254 to the DNR Drinking and Groundwater Program's regional water supply specialist. This form is available at dnr.wi.gov, search "3300-254".

Maintenance of a Cover

A INSERT APPLICABLE BARRIER SOIL COVER/ENGINEERED COVER/OTHER BARRIER is proposed to be installed and maintained over contaminated solid waste that will be managed at SITE NAME as proposed in the EXEMPTION REQUEST DOCUMENT. A [MAINTENANCE PLAN, DRAFT MAINTENANCE PLAN, CONCEPTUAL MAINTENANCE PLAN] is attached, which describes the inspection and maintenance activities that will apply to the proposed barrier. An updated maintenance plan must be provided to the DNR once the barrier has been constructed if changes are required and must address actual site conditions (Wis. Admin. Code § NR 724.15 (3) (h)). A map is attached which shows where contaminated soil is proposed to be managed and the extent of the proposed cover. Once constructed, inspections of the [SOIL COVER/ENGINEERED COVER/OTHER BARRIER] will be required (per Wis. Admin. Code § NR 724.13), and submittal of inspection reports may also be required per 727.05 (1) (b) 3. The DNR will be required to be notified before changing to a non-industrial use if the cover is approved for industrial land use, per Wis. Admin. Code § NR 727.07 (3), to ensure that the cover will be protective for that use.

The [MAINTENANCE PLAN, DRAFT MAINTENANCE PLAN, CONCEPTUAL MAINTENANCE PLAN] prohibits certain activities in areas where maintenance of a cover or barrier is intended to prevent contact with any remaining contamination. The following activities are prohibited on any portion of the property where [SOIL COVER/ENGINEERED COVER/OTHER BARRIER] is required, unless prior written approval has been obtained from the DNR:

- removal of the existing barrier or cover;
- replacement with another barrier or cover;
- excavating or grading of the land surface;
- filling on covered or paved areas;
- plowing for agricultural cultivation;
- construction or placement of a building or other structure;
- *Use the following if the use of the property is commercial or industrial (non-residential)* changing the use or occupancy of the property to a residential exposure setting, which may include certain uses, such as single or multiple family residences, a school, day care, senior center, hospital, or similar residential exposure settings.
- *Use this bullet only if the use of the property is a residential-type setting other than single-family residential.* changing the use or occupancy of the property to single-family residential use.

Use of Industrial Land Use Soil Standards

Direct contact risk posed by contaminated soil managed under this exemption was assessed using residual contaminant levels for industrial land use. The DNR must be notified if the property land use will change from industrial use to a non-industrial land use per Wis. Admin. Code § NR 727.07 (3). Additional investigation and remediation may be required prior to the change in land use to ensure the site conditions are protective for the planned land use.

Site Specific Condition

INSERT DESCRIPTION OF THE SITE-SPECIFIC CONDITION (NOTE THAT A SITE-SPECIFIC CONDITION CAN ONLY BE USED WITH ONE OR MORE OTHER CONTINUING OBLIGATIONS). REFERENCE Wis. Admin. Code § NR 722.15 (2) (e) 5.

Other Information

- 1) Any hazardous substance discharge discovered during soil management activities must be reported to the DNR following the requirements of Wis. Admin. Code ch. NR 706.
- 2) Soil management activities exempted by this letter are scheduled to be completed within **TIME PERIOD**. Enter the expected amount of time it will take to complete the work. This information may be provided in **RR-072** or may be requested by the DNR project manager. This should not exceed 2 years. The DNR should be prompted to follow up with the applicant if this length of time passes and a report documenting the completion of the action or notification of a schedule change has not been received. Depending on the length of time that has passed and how site conditions, development plans, and DNR regulations have changed over that time, the applicant may need to provide updated documentation supporting their exemption request or the DNR may consider the approved plan to be cancelled and the applicant would need to reapply for the exemption. Notify the DNR if this schedule will change.

Item 3 is optional and may be removed if the project manager has already determined that documentation will not need to be submitted (such as when management of contaminated soil will not result in continuing obligations being imposed).

- 3) Unless otherwise directed by the DNR, documentation of soil management activities shall be provided within 60 days of the completion of this project. The documentation must describe how the activities complied with the approved management plan and must also comply with the requirements of Wis. Admin. Code § NR 724.15 (3). Documentation must include:

- a. A cover letter that contains the information required by Wis. Admin. Code § NR 724.05 (2) (e) 1.
- b. Owner contact and property location information for the **SITE OR FACILITY NAME**.
- c. Maps, drawings, and cross sections that depict how contaminated soil was managed.
- d. A synopsis of the work conducted and an explanation as to how it complied with the soil management plan and the conditions in this exemption approval.
- e. A description of any changes made to the planned management activity and an explanation as to why they were necessary for the project.
- f. Any field observations or results of monitoring conducted during the management activity.
- g. A description of how new site conditions are protective of human health, safety, welfare and the environment at the **SITE OR FACILITY NAME**.
- h. A revised cover maintenance plan, if needed.

The DNR will request that incomplete documentation be amended as allowed by Wis. Admin. Code § NR 724.07 (2).

- 4) This exemption is granted under Wis. Admin. Code § NR 718.12 and applies only to the specific activities described within the submitted **EXEMPTION REQUEST DOCUMENT**. Any contaminated material that is excavated or otherwise disturbed at the **SITE NAME**, not covered under this or another exemption, must be managed in compliance with the requirements of Wis. Admin. Code chs. NR 500 through NR 538. The management of contaminated material on a property that does not comply with these rules may be considered a hazardous substance discharge or environmental pollution, and would be required to be addressed by the process outlined in Wis. Admin. Code chs. NR 700 to NR 750.
- 5) **PARTY CONDUCTING THE REMEDIAL ACTION** is responsible for obtaining any local, federal, or other applicable state permits to carry out the project.

All remediation sites are included in DNR's Bureau of Remediation and Redevelopment Tracking System (BRRTS) database. All documents and project milestones related to the cleanup of each of the involved sites are listed in the database entry identified by BRRTS activity #(s) **XX-XX-XXXXXX**. Actions relating only to the management of contaminated soil at **RECEIVING SITE NAME** are tracked in the BRRTS system under activity # **XX-XX-XXXXXX**.

We appreciate your efforts to protect the environment at this site. If you have any questions regarding this approval decision, please contact me, **DNR PROJECT MANAGER**, by calling **(###) ###-####**, or by email at first.last@wisconsin.gov.

Sincerely,

PROJECT MANAGER NAME
Hydrogeologist
Remediation & Redevelopment Program

Attachments:

- figure depicting where waste will be placed/replaced
- maintenance plan

cc: CONSULTANT NAME(S) AND CONTACT INFORMATION
RESPONSIBLE PARTY NAME(S) AND CONTACT INFORMATION, IF DIFFERENT THAT
SITE OWNER
CENTRAL OFFICE CONTAMINATED MATERIAL MANAGEMENT SPECIALIST