



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-19-5531-C

DOCUMENT TITLE

Template Letter: NR 718.12/NR 718.15 Exemption for Management On-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-5531 Template Letter - NR 718.12/NR 718.15 Exemption for Managing Excavated Material
On-site
February 2019

PURPOSE: Use this letter for granting a NR 718.12 exemption to allow disposal of contaminated soil and/or a NR 718.15 exemption to allow disposal of contaminated non-soil solid waste (other than asbestos) on the same site as where it was excavated, when allowed by law.

This template letter is to be used only if solid waste, including contaminated soil, is managed at the site where it was excavated. A different template letter (RR-5530) will be used to grant a NR 718.12 exemption for management of contaminated soil at a different site or facility than where it was generated.

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 and/or NR 718.15 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

Subject: Approval to Manage Solid Waste under Wis. Admin. Code § NR718.12 and/or § NR 718.15 For On-Site Management
BRRTS SITE NAME AND ADDRESS, WI
DNR BRRTS Activity #(s): ERP, LUST AND MAT MGMT BRRTS ACTIVITY #S
Optional: FID #: FID NUMBER

Dear GENERATING SITE OWNER(S):

On DATE, NAME AND COMPANY OF PERSON SUBMITTING THE REQUEST submitted an EXEMPTION REQUEST DOCUMENT on your behalf requesting to manage list the amounts of soil, other solid waste, and mixtures of waste and soil that will each be managed with this exemption, as applicable (e.g., 100 cubic yards of contaminated soil and 200 cubic yards of mixed contaminated soil and other solid waste, or 100 cubic yards of solid waste) XX cubic yards of contaminated soil, XX cubic yards of other solid waste, XX cubic yards of mixed contaminated soil and other solid waste on the same site from which it will be excavated in accordance with Wis. Admin. Code § NR 718.12 and/or § NR 718.15. **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 1,400 cubic yards of contaminated soils, 500 yards of contaminated foundry waste, and 2000 yards of mixed contaminated soil and foundry waste. Contaminated material is impacted by polycyclic aromatic hydrocarbons (PAHs), arsenic, and lead. An exemption through Wis. Admin. Code NR 718.15 has been requested to manage the contaminated soil and other solid waste on the north end of the site where it will be used to fill low areas on the property.

Wis. Admin. Code § NR 718.12 and/or § NR 718.15 Exemption

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

Compliance with Locational Criteria

Managing contaminated waste material 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).

OR

Managing contaminated waste material 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 waste material within DESCRIPTION OF THE CRITERIA LISTED. (i.e. 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 material, 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 material 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 material 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 material, 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 material 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 solid waste at the **SITE 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 the proposed material 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 5.

Requirement of Continuing Obligations

You have acknowledged that the continuing obligations described below will be required as a condition of managing the contaminated material on your property as proposed.

The current property owner of the **SITE 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 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 AND/OR 718.15** 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.

Future Solid Waste Management

If solid waste 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 material is considered solid or hazardous waste; and
- ensure that any storage, treatment or disposal is in compliance with applicable statutes and rules.

Solid waste 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 solid waste may pose a hazard, and special precautions may be necessary to prevent a health threat to humans. If material that will be managed under this exemption includes solid waste other than soil, a historic fill exemption may be required to be obtained from the DNR prior to excavating the waste or constructing any structure over the materials per Wis. Admin. Code § NR 506.085.

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 material 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 material 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.

Vapor: Future Actions to Address Vapor Intrusion

IDENTIFY GENERAL TYPE OF CONTAMINANTS, SUCH AS “CHLORINATED VOSs” are present in material proposed to be managed on SITE NAME in the EXEMPTION REQUEST DOCUMENT at levels that may be of concern for vapor intrusion in the future. The location(s) where this contaminated material is proposed to be managed is (are) depicted on the attached FIGURE NAME, NUMBER, DATE.

While vapor intrusion does not currently exist, if a building is constructed or reconstructed on this property, or if use of an existing building is changed to a non-industrial use, vapor intrusion may become a concern. The DNR must be notified before construction of a building or changing the use of an existing building to non-industrial use per Wis. Admin. Code § NR 727.07. The use of vapor control technologies or an assessment of the potential for vapor intrusion will be required at that time per Wis. Admin. Code §§ NR 722.15 (2) (e) 4 and 5.

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 material management activities must be reported to the DNR following the requirements of Wis. Admin. Code ch. NR 706.
- 2) Material 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 material will not result in continuing obligations being imposed).

- 3) Unless otherwise directed by the DNR, documentation of material 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 NAME.
 - c. Maps, drawings, and cross sections that depict how contaminated material was managed.
 - d. A synopsis of the work conducted and an explanation as to how it complied with the material 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 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/OR § NR 718.15 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 material 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