Remediation and Redevelopment Program

Issues & Trends 2016

March 2, 2016
12:00 p.m. – 1:00 p.m.

Dial: 1-855-947-8255
Passcode: 6612 745#
Off-Site Letters and General Liability Clarification

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Questions will be taken during the presentation or may be submitted to DNRRRComments@wisconsin.gov
Discussion Topics

• Off-site liability exemption
• Off-site exemption letters
• No Action Required Determinations
• General Liability Clarification letters
• Lease letters
• Questions
When can these letters help?

✓ I found the property I want to buy
✓ I did my due diligence
✓ I did Phase I/II and consultant says there is nothing to worry about
✓ Prospective tenant and their bank are concerned
Background - Authority

- 292.11 Wis. Stats. – Hazardous Substance Spill Law ("Spill Law")
- Chapter 292 has several liability exemptions from Spill law
- 292.13 – Off-site exemption statute
- 292.55 – Gives DNR authority to write letters about liability
Requirement to Notify

- Spill Law and NR 706 require notification of hazardous substance discharges.
- The liability exemptions do not include notification requirements.
- Even if you think contamination is *de minimis* or from off-site, you are required to notify the Department of the discharge.
Who can get these letters?

• Local government
• Lender
• Private property owner
• Homeowner
• Tenant
• Anyone
Off-Site Liability Exemption
Off-Site Liability Exemption

• When contamination from one property crosses a property line and affects another property
• Owner of impacted property has liability exemption from Spill Law
• Generally, DNR will not ask owners of properties to take environmental response actions
Off-Site Liability Exemption

- Contamination originated somewhere else
- Off-site owner did not possess or control the source property
- Off-site owner did not cause discharge or possess or control hazardous substance
Off-Site Liability Exemption

- Owner of impacted property may have to:
  - Provide access
  - Don’t exacerbate contamination
  - Maintain continuing obligations
Off-Site Liability Exemption

• If you meet conditions in the law, you have the exemption
• Don’t need letter from DNR
• Owner may want it in writing to help with financing, sale, etc.
• DNR can provide letter that we have determined that all the conditions of the exemption have been met
Resources

- Off-site Liability Exemption Application (Form 4400-201) *Note: different from other technical assistance form.*

- Fact sheets:
  - What Homeowners, Lenders and Realtors Should Know About Off-Site Contamination (RR-927)
  - When Contamination Crosses a Property Line - Rights and Responsibilities of Property Owners (RR-589)
Off-Site Liability Exemption

- Submit the complete form and all attachments
- Technical Documentation that:
  - There is contamination on the property
  - It is migrating from another property
  - There is no source on your property
  - Signed by property owner
Off-Site Liability Exemption: *Inadequate Submittal*

- Documentation that contamination has migrated onto property, but...
- ...No information to demonstrate there is not an on-site source:
  - Phase 1
  - Soil Samples
  - Other
Off-Site Liability Exemption: What if I don’t meet all the conditions?

We also write letters even if:

– Applicant has not yet bought property (prospective purchaser)
– Contamination has not yet migrated onto property (suspected)
Liability Clarification Letters
No Further Action Letters vs Liability Clarification Letters

No Further Action Letters:

- An immediate response action is taken soon after discharge occurs or discharge is discovered. Examples:
  - Soil excavation as part of tank removal
  - Immediate spill response (contain, remove, etc.)
- No Further Action letter - $350
No Further Action Letters vs Liability Clarification Letters

• Liability Clarification Letters
• Cover a range of situations
• What is my liability/ responsibility under the Spill law for this situation?
• Additional resources available on lender and local government liability protection
Liability Clarification Letter

No Action Required

- Minor discharges on property
- DNR determines that a Site Investigation or Cleanup is not needed
- Often Phase II sampling finds minor detections of contaminants
- Some action was taken long ago, request for concurrence that nothing else is needed
No Action Required

- If DNR gets notice of a discharge, we will review to determine if action is needed.
- If DNR determines it meets NAR criteria, that is recorded in BRRTS (no fee)
- If you want it in writing, pay the fee and fill out the form and request the liability clarification letter
No Action Required

• Authority in s. 716.05, Wis. Adm. Code
• Based on criteria in ss. NR 708.09 (1) & (2), Wis. Adm. Code.
• Tracked as “No Action Required by RR Pgm (NAR)” 09 in BRRTS
• NAR also used for old clean tank pulls
No Action Required

• Provide data from sampling and...
• Information about:
  – use of the property
  – potential sources/ what are RECs
  – volume of impacted material
No Action Required

To determine if Site Investigation/Remedial Action is required, DNR will consider:

- Toxicity and volume of contamination
- Concentrations of contamination in soil and GW
- Possible source of the discharge/use of the property
- Types of contaminants
- Background levels
- Receptors/ exposure pathways

DNR *may ask for more data* if we are unsure if NAR is appropriate.
Other Liability Clarification Letters

• Liability related to a property with a closed site (or sites):
  – Reopeners
  – Vapor Intrusion
  – Continuing obligations
Other Liability Clarification Letters

Property transaction:

• How does the change in ownership affect RP status?

• If two parties (buyer and seller or RP) make an agreement regarding who is responsible for environmental issues and indemnification
  - Is this ok to DNR?
  - How will DNR work the parties to complete the work?
Resources

- Technical Assistance, Environmental Liability Clarification or Post-Closure Modification Request (Form 4400-237)
- Notification For Hazardous Substance Discharge (Non-Emergency Only) (Form 4400-225)
- Fact sheet:
  - General Liability Clarification Letters (RR-619)
Lease Letters

• Company is leasing a property that may or may not have environmental contamination
• They want letter that clearly says they are not in possession or control and not a responsible party
• DNR reviews the lease and environmental information
Tips and Reminders

• If you have a complicated situation, not sure what is best, phone first
• Be clear about what you want
• “no further action” or “no action required” liability clarification letter – ask for the right one
• Provide an update if you are using old data, may have to wait until snow melts
• If you want 2 or more things, multiple fees needed
  – Example: post closure modification and liability clarification letter
Tips and Reminders

• If relying on reports and data in DNR site files, provide a copy with your request.
  – We have lots of sites
  – Project Managers change
  – Some files are in storage and may take long time to retrieve
  – Files can be large and it would take major time for PM to review entire file
DNR Land Recycling Contacts

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Note: These are the Remediation & Redevelopment Program's designated regions. Other DNR program regional boundaries may be different.
Contact Information

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Issues & Trends 2016

April 6, 2016
12:00 p.m.

NR 718 and Low Hazard Exemptions, Clean Soil and Widespread Contamination

Audio and information from today’s presentation and future Issues & Trends Series events can be found on the RR Program Training Webpage at:

Http://dnr.wi.gov/topic/Brownfields/Training.html

Questions/Comments/Suggestions regarding the Issues & Trends Series can be submitted to:

DNRRRComments@wisconsin.gov