



# What Homeowners, Lenders and Realtors Should Know About Off-Site Contamination

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It's not unusual to find that chemicals used at a commercial or industrial property have seeped into the groundwater or soil, and have traveled onto a neighboring property. When that happens, the owner or causer of the original chemical discharge is responsible for taking action to assess the extent of contamination – on and off their property. However, many innocent, impacted property owners wonder about their legal responsibilities in relation to contamination caused by someone else, and how this will impact property transactions. This fact sheet is intended to answer some of those questions and concerns.

Wisconsin law provides many tools to property owners, lenders and realtors to clarify their responsibilities when their properties are impacted by contamination from another property. This fact sheet provides a general overview of three of those tools: Off-Site Exemption, Lender Liability Exemption, and General Liability Clarification (GLC) Letters.

## 1. Off-Site Exemption from Contamination

If you own a property impacted by contamination that has migrated onto your property from another's property, Wisconsin state law provides you with an exemption from liability for that contamination.\*

### Am I eligible for an off-site exemption?

To be eligible for an off-site exemption, you must:

- be able to demonstrate that contamination is present on your property from an off-site source that is not owned by you;
- not possess or control the source property;
- not have previously and do not currently possess or control the hazardous substance on the source property; and
- not have caused the original discharge of the hazardous substances.

In addition, you must agree to comply with the following:

1. allow reasonable access to their property so that the DNR and those responsible for the contamination may take action;
2. not interfere with those actions; and
3. if a continuing obligation (see below) is part of the final cleanup, you must maintain those conditions on the relevant portion of your property.

### How do I demonstrate that the contamination did not originate on my property?

In most cases, proof of contamination migration is generally found in a site investigation report associated with the neighboring source property. This is especially true if the impacted, off-site property(ies) are residential properties. Usually, an environmental consultant- working for the property owner that is responsible for the contamination- will conduct an investigation of the soil and groundwater contamination. If there are not reports available that document the contamination on your property, you can talk with DNR staff about other ways you can make this demonstration.



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**Once I have an off-site exemption, what am I exempt from?**

With an off-site exemption, you are exempt from a number of things. The key exemptions include:

- responsibility for cleanup; and
- requirement to reimburse the DNR for any costs associated with cleanup

**What am I *not* exempt from?**

If cleanup requires that a system be constructed and maintained on your property to mitigate future effects of contamination (called an “engineering control”), it may be your responsibility to maintain it, or to allow access for maintenance, depending on the situation. This is called a “continuing obligation,” and you must comply with the terms of the obligation to be eligible for an off-site exemption. The “continuing obligation” may consist of, for example:

- an active or passive venting system to prevent spreading vapors (similar to a radon system) or
- a manmade barrier over contaminated soil, such as pavement or a “cap” consisting of grass or soil.

**Do I have to have a letter to be exempt?**

No. As long as you meet the eligibility requirements listed above, you are exempt under Wisconsin state law. Exemption letters are most useful in providing assurance to prospective purchasers and lenders, and for documentation in case there is a question about who is responsible for the contamination.

**If I sell my house, can I pass the exemption on to the new owner?**

No, the off-site exemption is not transferable. However, if the new owner meets the statutory criteria, they would qualify for the same exemption. In order for the new owner to receive an off-site exemption letter, they must meet all of the same requirements described above and submit an application with supporting documentation and pay the application fee.

**2. Lender Liability Exemption**

**What if I want to refinance or sell my house? Could lenders be liable for the contamination?**

Generally, the answer is “no, a lender is exempt”, if a lender follows state law with respect to their actions concerning the site. There are a number of specific exemptions in state and federal law that provided liability protections to lenders. Lenders, if they meet certain criteria, have specific exemptions associated with normal lending activities, pre-acquisition inspections, acquisition of property, and inspection of personal property and fixtures. In general, lenders are exempt from liability if they take possession of the property as long as they meet certain conditions, including providing access to the property and conducting an environmental assessment.<sup>†</sup>

**3. General Liability Clarification Letter**

**What if I would like a letter from the DNR explaining all this?**

We call these General Liability Clarification (GLC) letters, and they can be provided by DNR staff for a fee, when there are questions about current or future liability issues. These letters have several benefits including:

- easing liability concerns of lenders, sellers, developers or purchasers;
- detailing specific cleanup requirements; and
- assisting in securing a loan.

**What if the responsible party conducts work on my property, such as installing a vapor mitigation system or removing contaminated soil– can I get a letter clarifying what that means to me?**

Yes, you may request a GLC letter from the DNR and we will write you a letter that describes any environmental actions taken at the source property and your property, and continuing obligations for which you are responsible, if any.

**How do I get a letter?**

Any property owner can request that the DNR provide a letter, for a fee, clarifying the requestor’s liability with respect to the substance(s) migrating onto his or her property. In certain situations where a number of properties are affected by off-site contamination from the same source, the DNR can issue letters for an entire affected area. Information on these resources and the form that may be used to request assistance can be found at: <http://dnr.wi.gov/topic/Brownfields/liability.html>.

**More information**

For more information on any of the tools described above, please visit [dnr.wi.gov](http://dnr.wi.gov), search: “Off Site Contamination”. A schedule of associated fees can be found at [dnr.wi.gov](http://dnr.wi.gov), search: “Brownfields fees”.

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\* Please see Section 292.13 of the Wisconsin Statutes for more information on the off-site liability exemption

† Please see Section 292.21 of the Wisconsin Statutes for more information on lender liability

This document contains information about certain state statutes and administrative rules but does not necessarily include all of the details found in the statutes and rules. Readers should consult the actual language of the statutes and rules to answer specific questions.

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