

RR-041

Identifying and Documenting Characteristics of Imported Soil and Other Fill Materials Prior to Use on VPLE Sites

Wisconsin Department of Natural Resources

April 2015

This draft document is available for public input. Following completion of the public input period, all comments will be carefully considered and revisions will be made as necessary. A comment response summary and a final document will be posted on this web page within 45 days of the end of the comment period.

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This guidance document provides an outline of the appropriate practices to follow prior to bringing soil and other fill materials onto a remediation site that is enrolled in the Voluntary Party Liability Exemption (VPLE) program, under s. 292.15, Wis. Stats. The guidance describes how DNR staff will work with voluntary parties, consultants and others to establish reasonable materials management approaches for importing materials to a property that is being cleaned up through the VPLE program.

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. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. 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.

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Overview

This guidance document provides an outline of the appropriate practices to follow prior to bringing soil and other fill materials onto a remediation site that is enrolled in the Voluntary Party Liability Exemption (VPLE) program, under s. 292.15, Wis. Stats. DNR staff will work with voluntary parties, consultants and others to establish reasonable materials management approaches for all situations.

If the characteristics and quality of soil and other fill material brought onto a VPLE property are unknown, the Department of Natural Resources (DNR) assumes the “environmental investigation”, as defined in s. NR 750.03(2m), Wis. Adm. Code., is not complete, even if it has been previously approved. Significant project delays can occur if soil and other fill materials are found to be contaminated after being brought to a VPLE site.

Placing contaminated soil or other fill material on a property may cause a discharge and can lead to additional liability, time delays and extra costs for the property owner and others involved. It is important to ensure that soil and other fill materials are from a known source and do not contain contaminants that would be a concern if used on the site. Property owners, consultants and contractors that require fill should work with a reputable company to obtain the soil or fill materials, and obtain adequate documentation that the source of the soil or other fill material is not from an area where contamination is present.

Applicability

This guidance applies when voluntary parties and their consultants are planning to import clean soil or other materials onto a VPLE property. This includes use of recycled concrete, bank run gravel or other materials purchased from a quarry or commercial contractor. There are other rules and procedures that apply to the use of waste materials or soil with known contamination. For example:

- Management of contaminated soil or wastes during response actions – (NR 718, Wis. Adm. Code);
- Low Hazard Exemptions (s. 289.43, Wis. Stats.); and
- Beneficial use of industrial byproducts (NR 538, Wis. Adm. Code).

Guidance

Before bringing soil or other fill materials onto a VPLE property, voluntary parties and their consultants should submit the following information to DNR for pre-approval:

- Documentation of the characteristics of the soil and/or other proposed fill material from the original source property. Include information available regarding the source property of the material including past and current uses;



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- Maps and plans identifying the anticipated final placement areas of the soil and other fill materials on the VPLE property; and
- A soil and materials management plan that includes a proposed sampling plan for the material that will be placed on the VPLE site.

Sampling Considerations

Voluntary parties and their consultants should propose what parameters to sample, how many samples to take, and other relevant considerations. The materials management and sampling plan should, at a minimum, take into consideration the following factors:

- Past history of the property where the soil and other fill materials are coming from;
- The volume of soil and other fill material to be used;
- Zoning restrictions and planned end uses of the receiving property;
- Location on the receiving property where the materials will be placed (e.g. under a cap, at depth, etc., including the locational criteria in s. NR 718.12(1), Wis. Adm. Code.; and
- Results of sampling in relation to the values in ch. NR 720, Wis. Adm. Code.

More than a Phase I May be Needed

Relying solely on Phase I-type documentation may not be enough due diligence, especially in urban areas. For example, if the soil is part of a road construction project, relying only on Phase I data may not take into account the possibility that some contaminants have historically been disposed of atmospherically or migrated through storm or sanitary sewers. Relying solely on a Phase I environmental assessment to determine the usability of soil or other fill material could overlook unknown spills, atmospheric deposition or the possibility of contamination impacting the source property from an off-site location, and thus affecting the fill material.

DNR Plan Review

DNR project managers will review VPLE property soil and materials management plans and are encouraged to share these plans with supervisors and regional VPLE closure committee members for prompt feedback and concurrence before granting approval.

Approval of VPLE property soil and materials management plans is to be based on the professional judgment of DNR project managers, supervisors and the regional VPLE committee. In exercising that judgment, DNR employees will consider the sampling factors listed above, as well as relevant provisions of chs. NR 718 (e.g., locational and sampling criteria for placement of the material onsite) and NR 720 (e.g., land use and RCLs), Wis. Adm. Code.



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Voluntary parties should submit their requests to review the soil management plan as early as possible, allowing sufficient time for DNR staff to review and approve in writing VPLE site soil and materials management plans prior to the importation of the fill to a VPLE site.

After Placement Actions

If soil or other fill materials are placed on a VPLE site without prior sampling or DNR approval, project managers will work with their supervisor to determine what specific actions are necessary. In these situations, voluntary parties should understand that imported soil or other fill material may be considered a recognized environmental condition. As such, the voluntary party will generally be expected to sample the soil and other fill materials that were brought to the property. In some cases, DNR may grant approval to not sample soil and other fill materials imported onto a VPLE property. In situations where the voluntary party presents adequate historical use information or sampling results taken at the source property, this may assure DNR that there was a very low probability than any contaminants were present at levels that would significantly impact human health or the environment.

Site-Specific Inquiries

Voluntary parties and consultants who have questions about their site should contact the site's project manager at DNR. The project manager will work with their supervisor to assist with unique site-specific issues.

Post Certificate of Completion Situations

If DNR project managers receive inquiries regarding properties that have already received a Certificate of Completion, project managers should recommend a soil management plan be developed and approved by DNR (with the appropriate review fee) prior to the placement of any fill materials to prevent new contamination (not covered by the existing VPLE COC) and to document that the fill was acceptable.

All Remedial Action Sites (Sites *Not* in VPLE)

Responsible parties and their consultants at all remedial action sites in Wisconsin are encouraged to follow the procedures and practices identified in this guidance document. A soil and materials management plan can be submitted to DNR as a request for technical assistance, along with the corresponding review fee, and this guidance will be used to evaluate such plans.

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