

Answers to Common Questions about the Voluntary Party Liability Exemption (VPLE)

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General Questions/ Eligibility

Q1. Can anyone receive the liability exemption?

A1. Yes. In 1999, the law was changed to allow any party, even one who caused the contamination at the property, to participate in the VPLE process. A voluntary party is defined as "a person who submits an application to obtain an exemption" and pays the required fees.

Q2. What types of sites are eligible for VPLE?

A2. There are several "conditions" that a property must meet in order to be eligible for the VPLE program, and ultimately the issuance of a Certificate of Completion under s. 292.15, Stats. The conditions include:

- Regulatory Status

Some properties, due to their environmental regulatory status, are excluded by law from receiving a Voluntary Party Liability Exemption. The property should not meet the definition of an ineligible property, as listed in s. 292.15(7), Stats.

For example, many types of solid waste sites (e.g., storage, landfill, etc.) are eligible to participate in the VPLE program. However, the statute prohibits a property with a solid waste facility that meets the definition of an "approved facility" (see s. 289.01(3), Stats) from participating in the VPLE process or obtaining the liability exemption. These approved facilities are usually large, licensed and engineered landfills.

- Technical Issues

Some sites may not be eligible to participate or to complete the VPLE process due to technical issues associated with the environmental clean up at the site. For example, a waste site (e.g., landfill) must obtain a ch. NR 726, Wis. Admin. Code, site closure in order to receive the VPLE protections. It must do so without the reliance on any active remedial system to ensure

compliance with environmental and public health standards, such as active treatment or collection systems relating to groundwater, leachate or gas.

In addition, sites with certain, operating hazardous waste treatment storage or disposal facilities are not eligible for VPLE. More information about site eligibility criteria can be found in s. 292.15(7), Wis. Stats., and on the VPLE webpage: dnr.wi.gov/org/aw/rr/liability/vple.htm.

- **Presence of a Discharge Requiring Remedial Action**

The property must have or had a discharge of a hazardous substance that requires or required a remedial action under s. 292.11, Stats. Most properties that have had a discharge of a hazardous substance can enter the process to obtain the liability exemption. A “clean” property that has never had a discharge could not obtain the VPLE, but a site that had an environmental cleanup in the past could qualify if all VPLE requirements are met.

Q3. If I buy property for which a cleanup has already occurred, can I still receive the liability exemption?

A3. Yes. However, additional work at the property may need to be conducted in order to meet the requirements to receive the liability exemption, including an environmental investigation of the entire property. If a Phase I and Phase II environmental assessment have not been recently (e.g., in the last 180 days or less) conducted, they will need to be conducted for the property.

Q4. What if the environmental condition of the property I want to purchase is unknown?

A4. Before you purchase the property, the DNR recommends that you find out as much about the environmental conditions of the property as you can. You can conduct a Phase I and II Environmental Assessment of the property to determine if there is potential or known environmental contamination.

Depending on the results of the Phase I, you may want to proceed with a Phase II environmental assessment. If the assessments indicate that an investigation and cleanup is necessary, then the Voluntary Party Liability Exemption may be of benefit to you. Before you purchase the property, you may want to ask your consultant for an estimate of what it would cost to conduct these various environmental steps.

Q5. What if the property does not require an investigation and/or cleanup?

A5. If there has never been a discharge of a hazardous substance at the property, there would be no environmental liability under s. 292.11, Stats., for the property. Simply stated, a “clean” property is not eligible for the VPLE process and the exemption. A property with a past release which has already been cleaned up, however, may be eligible for the exemption (see Question 3).

Q6. How Does the Voluntary Party Liability Exemption process differ from the traditional spill cleanup program?

A6. To compare the differences between an investigation and cleanup under the traditional cleanup program (i.e., receiving a closure letter) versus the Voluntary Party process, please see the fact sheet *Voluntary Cleanups & Liability Exemptions* (RR-506) at: <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR506.pdf>.

A person cleaning up a site in Wisconsin can either conduct the cleanup under the traditional spill cleanup process or utilize the Voluntary Party Liability Exemption process. There are two significant differences between receiving a ch. NR 726, Wis. Admin.Code closure vs. a

Certificate of Completion: (1) the scope of the investigation; and (2) in the VPLE process, cleanup cannot be approved if a full Site Investigation has not been conducted due to a structural barrier (e.g., couldn't sample under the building). A VPLE site investigation covers an investigation of the entire property and any off-site discharge, not just the "known" discharge.

Q7. If a party already qualifies for a liability exemption, such as the lender liability exemption or the exemption for local governments, can they still participate in VPLE?

A7. Yes, if you already have a liability exemption but want to cleanup the property so that it can be used or sold to another party, it can help to obtain the VPLE so that future owners can be assured that the whole property has been cleaned up and that no additional cleanup will be needed.

Q8. Can I enter into the Voluntary Party Liability Exemption process if I want to clean up a leaking underground storage tank?

A8. Yes. The Voluntary Party Liability Exemption is available for the cleanup of a property with a discharge of any hazardous substance, including petroleum products from a leaking underground storage tank. However, the voluntary party would also need to comply with any federal or state requirements related to closing and cleaning up leaking underground storage tanks.

Also, for all VPLE sites, the voluntary party would need to conduct an investigation and cleanup of the entire property, not only the leaking tank. This would include any contamination that may have migrated off the property. The cleanup of some properties with leaking underground storage tanks is overseen under the authority of the Department of Safety and Professional Services (DSPS). However, the DNR is the only agency with the statutory authority to issue a Certificate of Completion to a voluntary party seeking the liability exemption in s. 292.15, Wis. Stats.

If a VPLE site is under the jurisdiction of the DSPS, the two agencies will work together to review the cleanup actions.

Q9. Can I enter into the VPLE process if I want to cleanup a site with agriculture chemical contamination that is overseen by the Department of Agriculture, Trade and Consumer Protection (DATCP)?

A9. Yes, if a site is overseen by the Agricultural Chemical Cleanup Program, they can seek the VPLE and the DNR project manager will work with the staff with the DATCP to make sure all requirements are met.

Q10. Can a property with a landfill or solid waste facility enter the VPLE process and receive a Certificate of Completion?

A10. Yes, many properties with certain types of landfills and solid waste facilities (i.e., licensed or not) are eligible to obtain a Certificate of Completion. However, the statute prohibits a solid waste facility that was a licensed, approved facility under s. 289.01(3) Wis. Stats., from obtaining the Voluntary Party Liability Exemption. "Approved facilities" are usually larger, engineered landfills. Please see the DNR VPLE website for a list of licensed, approved facilities in Wisconsin. In addition, even if a property includes a solid waste facility which was not an "approved facility", DNR can not issue a liability exemption if active remedial operation or treatment is required after the site cleanup is approved, in order to achieve closure under ch. NR 726, Wis. Admin.Stats. These active operations or treatments include gas, leachate or groundwater collection or treatment.

Q11. Can a property owner with hazardous waste enter the VPLE process and receive a Certification of Completion?

A11. Yes, properties that contain hazardous waste can be investigated and remediated through the VPLE process, and the owner can receive a Certificate of Completion. However, the exemption is not available for certain, operating hazardous waste treatment, storage or disposal facilities. Please see s. 292.15(7), Wis. Stats., or contact the DNR for more information.

Application/Beginning the Process

Q12. Can a Certificate of Completion be issued to more than one party for a single property?

A12. Yes. If two or more voluntary parties want to receive a Certificate of Completion for the same property, each party must submit a separate application to the DNR. Parties should work with the DNR on a case-by-case basis to determine which party or parties will pay the DNR the advance deposit and any additional review fees required by the VPLE process.

Q13. What is considered a “property”?

A13. A property is a single parcel of land, with the entire legal description found on one deed and which has been conveyed as an undivided parcel in the past.

Q14. If I have multiple, contiguous properties, how many applications, fees and advance deposits do I need to send to the DNR?

A14. If you have more than one “property,” you must submit a separate application form and a non-refundable application fee for each “property” (see Question 11). If the site assessments and cleanups are being conducted together at the different “properties,” a single advance deposit based on the aggregate size of the combined properties may be submitted.

Q15. At what point in the environmental response process should I enter into the VPLE process?

A15. It depends on the situation. Generally, parties are encouraged to enter into the VPLE process as early as possible, before any investigation has been conducted, so they can get DNR review at the beginning of the process. However, parties can enter into the VPLE process after some (or all) environmental work has been completed, though the party is still required to follow all the steps under ch. NR 700 rules series, Wis. Adm. Code. It may be more expensive to wait til later in the process, as the DNR may require additional assessment, investigation or cleanup work at the property where actions were taken prior to being in the VPLE process.

Assessment and Investigation

Q16. What is a Phase I Environmental Assessment?

A16. A Phase I Environmental Assessment is an assessment of a site to identify all recognized environmental conditions at a property. Recognized environmental conditions are the presence or likely presence of any hazardous substance, including petroleum products, on a property under conditions that indicate an existing release, past release or a material threat of a release of any hazardous substances into structures on the property or into the ground, groundwater, or surface

water of the property. This assessment may include, but is not limited to, reviewing records, interviewing persons and conducting physical inspections of the site. The DNR recommends that the VPLE applicant/participant follow the most current ASTM standard when conducting an assessment. If the project will involve federal brownfields funds, a Phase I conducted in accordance with EPA's All-appropriate Inquiry rule is required.

Q17. What is a Phase II Environmental Assessment?

A17. A Phase II Environmental Assessment is an assessment conducted to physically confirm the presence or absence of environmental contamination in areas identified as recognized environmental conditions in the Phase I Assessment. The Phase II does not determine the nature and extent of contamination. This assessment may include, but is not limited to, field sampling of media, laboratory analysis of samples and visual confirmation of environmental contamination of the site. Again, DNR recommends following ASTM's most current standard when undertaking this work.

Q18. What if my Phase I or II EA was conducted several years ago?

A18. If the EA was conducted more than six months ago, we recommend that you provide an ASTM-compliant update that describes any changes associated with the property that may affect the environmental conditions of the site.

Q19. What type of environmental investigation of the property is necessary?

A19. An environmental investigation includes three important steps: the Phase I Environmental Assessment, the Phase II Environmental Assessment and a ch. NR 716, Wis. Adm. Code, site investigation of the entire property. The scope of the investigation is not limited to the property boundary if there are documented discharges or reason to believe that hazardous substances migrated off the property. The investigation must be extensive due to the potential of more than one discharge being present at a property. All three assessment steps must be completed and reviewed by DNR staff in order to proceed through the program.

Q20. Is a Phase II Environmental Assessment the same as a ch. NR 716 site investigation?

A20. No. A Phase II Environmental Site Assessment only verifies that one or more discharges have occurred on the site, while the purpose of a ch. NR 716 site investigation is to define the nature, degree and extent of all environmental contamination and to define the source(s) of contamination on the site.

Q21. Who may conduct the investigation?

A21. The voluntary party usually hires and pays an environmental consultant to conduct the investigation. The consultant hired to conduct the investigation and cleanup must meet the professional qualifications required by ch. NR 712, Wis. Adm. Code.

In some cases, the investigation may be conducted by a party other than the voluntary party (for example, a person selling the property to the VPLE applicant). However, the DNR may require the voluntary party to conduct additional investigation work if the initial investigation is inadequate. A site investigation must be conducted in accordance with requirements contained in ch. NR 716.

Cleanup Requirements

Q22. What environmental standards must I follow to receive DNR review and approval?

A22. The cleanup standards for a VPLE site are the same as for any other type of contaminated site. All applicable environmental laws and regulations - federal, state, and local - must be followed. The primary cleanup standards in Wisconsin are described in the ch. NR 700 rule series. Groundwater standards are found in ch. NR 140, Wis. Adm. Code. These regulations apply to all types of contamination regardless of the source of contamination or type of site.

Q23. Who may conduct the cleanup?

A23. Any party may conduct the cleanup. Usually the voluntary party hires and pays an environmental consultant to conduct the cleanup activities (see Question 18). The cleanup must be conducted in accordance with the requirements contained in the NR 700 administrative rule series.

Q24. Can I use an engineering control, such as a cap, to prevent exposure to contamination as part of the cleanup I conduct at a VPLE site?

A24. Yes. If an engineering control is approved by the DNR as part of a remedial action plan, it can be used as part of a VPLE cleanup. Any land use controls required pursuant to s. 292.12, Wis. Stats., will be incorporated into the Certificate of Completion and the exemption from liability will be contingent upon continued adherence to the requirements of the controls (e.g. the voluntary party or future property owners must adhere to a requirement(s) to prevent exposure to any contaminated soils left on-site). The “cap” would be based on the intended land-use at the site. Thus a “cap” for an industrial property may differ than an engineering control at the same property for multi-family housing. The COC will recognize and limit the VPLE protections granted a property and VP based on the land-use and degree of cleanup.

Q25. What if a cleanup is approved for a certain land-use but the land-use changes after the Certificate of Completion is issued?

A25. A cleanup generally is approved based on the intended use of the property (industrial, residential, etc.). In these cases, the closure letter and Certificate of Completion will likely require that if a change in the use of the property is proposed in the future, that prior written approval from the Department be obtained to insure that the remedy is still protective of public health and that the liability exemption can remain in place. If changes are proposed to the use of the site and the Department requires additional response actions, a new Certificate of Completion will typically be issued.

Q26. Do I need to clean up the solid waste left on my property before I can obtain a Certificate of Completion?

A26. Before the DNR will issue a Certificate of Completion, the voluntary party will be required to take appropriate action to address solid waste on the property. The DNR project manager will work with the environmental consultant to determine what solid waste requirements must be met. If you are planning development on a site with solid waste, you will need DNR approval for an exemption to state regulations that prohibit development on waste sites. For more information on the requirements and process to get DNR approval see the DNR webpage on Development on Historic Fill Sites and Licensed Landfills: dnr.wi.gov/org/aw/rr/rbrownfields/historic_fill.htm.

Certificate of Completion

Q27. When do I get the liability exemption (aka Certificate of Completion)?

A27. Certificates of Completion are issued when the DNR determines that all requirements in s. 292.15, Wis. Stats., and the ch. NR 700 administrative rule series, have been met. The primary requirement is that the DNR must determine that the property and any off-site discharges have been satisfactorily restored to the extent practicable and the harmful effects from the discharge have been minimized – this includes any discharges that have migrated off the property. Also, all applicable fees must have been paid.

Q28. After I enter into the Voluntary Party Liability Exemption process, how long does it take before I am issued a Certificate of Completion?

A28. The amount of time it takes to bring a property through the Voluntary Party Liability Exemption process can vary greatly depending on the site-specific circumstances. Larger, more complicated sites can take longer to investigate, and different remediation techniques can take different lengths of time. The length of time it has taken parties to receive a Certificate of Completion after they submitted their application has ranged from five months to more than five years.

Q29. What benefits do I receive if I get the liability exemption?

A29. There are three protections granted after the DNR issues the liability exemption: (1) no further response actions are needed if environmental standards change; (2) there will be no liability if an approved cleanup remedy is later discovered to have failed to fully restore the environment; and (3) there will be no liability for contamination that is cleaned up but later found to be more extensive than originally thought. These protections only apply to releases that occurred on the property prior to the site investigation being approved by the DNR under s. 292.15, Wis. Stats.

Any discharges that occurred after the site investigation is approved would not be covered by the exemption, unless the voluntary party updated the site investigation by identifying the post-site investigation discharge and remediated those discharges to the satisfaction of the DNR as part of the VPLE cleanup. A new COC would be issued to address these new discharges at the property.

Q30. If I receive a Certificate of Completion and it turns out that some contamination was missed during my investigation and cleanup, who is responsible for conducting any further investigation and cleanup?

A30. In this case, the DNR would look for parties who caused the contamination if they are not covered by the Voluntary Party Liability Exemption, and request that they take responsibility for the additional contamination. If there are no viable responsible parties who caused the contamination the DNR would evaluate the public health and environmental impacts at the site to determine if the DNR should use other means to remediate the site. The property owner may choose to conduct some cleanup on a voluntary basis.

Q31. Once I receive the Certificate of Completion, am I exempt from all state and federal environmental liability at the property?

A31. No. This provision only exempts parties from portions of Wisconsin's Hazardous Substance Discharge Law (the “Spill” law, s. 292.11, Wis. Stats.), and portions of the state solid waste and hazardous waste laws.

With respect to federal liability, the Voluntary Party Liability Exemption does not exempt parties from any federal laws or regulations. However, the DNR and the U.S. Environmental Protection Agency (EPA) entered into a One Cleanup Program Memorandum of Agreement (MOA) to clarify the role of the federal cleanup programs in Wisconsin's voluntary cleanups. This MOA generally states that, based on federal cleanup programs – e.g. Superfund, RCRA, TSCA – EPA will not take action at a property where the responsible or voluntary party is undertaking or has completed a cleanup in accordance with Wisconsin and federal laws.

In addition, the “Small Business Liability Relief and Brownfields Revitalization Act”, signed into law in 2002, restricts federal action at “eligible response sites” that are being cleaned up under the oversight of state cleanup programs (i.e., an enforcement bar). Generally speaking, the EPA has no interest in properties where the discharges have been investigated and cleaned up in accordance with state law.

Q32. Can I sell my property before I receive my Certificate of Completion?

A32. Yes. It does not matter to the DNR who owns the property as long as the requirements of the VPLE are met. In some cases, parties are able to work out a deal where a purchaser agrees to buy a property that is going through the VPLE process. In these cases, buyers and sellers usually enter into agreements which define who will assume the responsibility for completing the cleanup. Depending on the site circumstances and the type of remediation, purchasers may be able to construct a building or use part of the property for some productive use while the cleanup is being finished.

Q33. Can I receive a Certificate of Completion if I meet the closure requirements at a site where I am using natural attenuation as a remedy?

A33. Yes. Voluntary parties can receive a Certificate of Completion when natural attenuation is used if certain requirements have been met. The VPLE statute was changed to allow parties to obtain a Certificate of Completion at properties before groundwater standards have been met if they can demonstrate that natural attenuation will bring the groundwater into compliance with state enforcement standards.

To obtain a Certificate of Completion for a property using natural attenuation, ch. NR 754, Wis. Adm. Code, requires that the voluntary party pay an environmental insurance fee to the DNR. The DNR has an insurance policy to cover the state's financial liability if a property with COC has a natural attenuation remedy that “fails.” For more information on the insurance requirements for natural attenuation at VPLE properties and a schedule of insurance fees, please see *Insurance for Voluntary Party Liability Exemption Sites Using Natural Attenuation: Information and Fee Schedule* (publication # RR-661) or contact your local RR Program project manager or land recycling specialist.

Q34. Can I receive a Certificate of Completion if I have contamination on my property from an off-site source?

A34. Yes. Voluntary parties can receive a Certificate of Completion if there is hazardous substance on the property that originates from an off-site source if the voluntary party receives a written DNR determination they have met all requirements in s. 292.13, Wis. Stats., which qualifies the party for the state off-site liability exemption. The VP cannot have owned or currently own the property that is the source of the off-site contamination. The party must also meet the other VPLE requirements.

Q35. Once I have the Certificate of Completion (COC), and I sell my property, how does the COC get assigned?

Q35. As provided by s. 292.15(3), Wis. Stats., the exemption conveyed by this COC “applies to any successor or assignee of the voluntary party”. This means that if a new owner were to purchase the property, they would be a successor to the property and they would be protected by the VPLE for discharges that occurred prior to the date the site investigation was approved. There is no action necessary on your part to transfer this exemption to the future owner. However, some VPs have attached the COC to the property deed to ensure that the information conveys with the land.

Q36. What are requirements if I buy a property that received a Certificate of Completion?

A36. If you buy a property that received a Certificate Completion, you are required to comply with and maintain any continuing obligations that apply to the residual contamination on the property. These obligations are described in the closure letter and the Certificate of Completion. For sites that received a Certificate, you can find copies of this information on the Remediation and Redevelopment Program’s internet accessible Geographic Information System (GIS) Registry.

Withdrawal from the VPLE Process

Q37. What happens if I decide I don’t want to proceed under the Voluntary Party Liability Exemption process?

A37. You can withdraw from the VPLE process any time *by providing timely, written notification to the DNR*. However, withdrawing from the VPLE process does not exempt you from any legal requirements in conducting an environmental cleanup. If you caused the problem or own the site and are not covered by another liability exemption, the Hazardous Substance Discharge Law requires that you address known problems on the property.

Q38. If I withdraw from the VPLE process, what money will be returned to me?

A38. Upon written notification of your withdrawal from the VPLE process, any remaining, unused money from the advance deposit will be refunded. The application fee is nonrefundable. Should you decide to reenter the program, a new application and advance deposit fee should be submitted.

Partial Certificate of Completion

Q39. What is a Partial Certificate of Completion?

A39. The VPLE law (s. 292.15(2)(am), Wis. Stats.) allows the DNR to approve a partial cleanup and issue a partial Certificate of Completion. There are two types of partial cleanups that voluntary parties may choose to do:

address the contamination only on a specific geographic portion of the property; or
clean up specific hazardous substances on the property.

Parties who want a partial Certificate of Completion generally must meet all the requirements for a full Certificate of Completion. Parties can be considered for a partial Certificate of Completion

only after the DNR approves a complete site investigation of the entire property, including contamination that may have migrated off-site.

In addition, in order to receive a partial Certificate of Completion, parties must also ensure that:

- public health, safety, or the environment will not be endangered by any hazardous substances remaining on or originating from the property after the partial cleanup;
- the development or use of the property will not aggravate or contribute to the discharge of a hazardous substance on or originating from the property;
- the development or use of the property will not unduly interfere with, or increase the cost of, cleaning up the remaining contamination on the property; and
- the owner of the property will cooperate with the DNR to address the contamination remaining on the property. If necessary, owners must agree to allow the DNR, or representatives of the DNR, access to the property for environmental activities on the property, such as placement of borings, equipment or structures on the property.

A partial Certificate of Completion will state that not all of the property has been satisfactorily restored or that not all the harmful effects from a discharge of a hazardous substance have been minimized. If you are interested in conducting a partial cleanup, you should indicate this on your application.