



# 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 Letters

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Land Recycling Team Leader

Questions will be taken during the presentation or  
may be submitted to [DNRRRComments@wisconsin.gov](mailto: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

## DNR NORTHERN REGION

Carrie Stoltz  
(715) 365-8942

## DNR NORTHEAST REGION

Tauren Beggs  
(920) 662-5178

## DNR SOUTH CENTRAL REGION

Janet DiMaggio  
(608) 275-3295

## DNR SOUTHEAST REGION

Margaret Brunette  
(414) 263-8557

## DNR WEST CENTRAL REGION

Gina Keenan  
(715) 839-3765



*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](http://dnr.wi.gov/topic/Brownfields/Training.html)

Questions/Comments/Suggestions regarding the *Issues & Trends Series* can be submitted to:  
**DNRRRComments@wisconsin.gov**

