

From: Kelsey Bird <kbird@fehrgraham.com>
Sent: Tuesday, December 3, 2024 10:44 AM
To: Schultz, Josie M - DNR
Cc: Dillon Plamann
Subject: Access Agreements for Bay Towel (BRRTS# 02-05-237064) additional vapor sampling at adjoining sites
Attachments: Compiled Fehr Graham Access Agreement - 317 Chicago Street Dec 2024.pdf; Compiled Fehr Graham Access Agreement- 501 South Washington Street Dec 2024.pdf

**CAUTION: This email originated from outside the organization.
Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Hi Josie,

I have sent out the agreements, attached, to the adjoining sites for the former Bay Towel Site to complete an additional round of passive indoor air and sub-slab vapor sampling given that the previous results for TCE had laboratory detections limits above the VAL.

The agreements are attached.

Thank you,

KELSEY BIRD | Engineer
Fehr Graham | Engineering & Environmental

909 North 8th Street, Suite 101
Sheboygan, Wisconsin 53081
P: 920.453.0700
fehrgraham.com

December 3, 2024

Ms. Donna T. Cornelius
317 Chicago Street
Green Bay, WI 54301

**RE: Access Permission for Environmental Site Investigation
Former Bay Towel Site
501 S. Adams Street
Green Bay, WI
BRRTS # 02-05-237064**

Dear Ms. Cornelius:

Fehr Graham is continuing the site investigation at the former Bay Towel site located at 501 South Adams Street, Green Bay, WI 54301 (BRRTS #02-05-237064). We have previously completed two rounds of sub-slab vapor and indoor air sampling at your Property. The second round of indoor air sampling, completed May 16-23, 2023, had a laboratory detection limit greater than the Vapor Action Level (VAL) standard set for trichloroethene (TCE). In other words, TCE was not detected, however, the value of the detection limit was greater than that of the VAL. To confirm that the level of TCE in the indoor air is below the VAL, an additional round of Passive Indoor Air and Passive Sub-slab Vapor sampling will be completed over the course of 14 to 28 days.

The Wisconsin Department of Natural Resources (WDNR) approved site investigation which includes the following activities that are proposed to be conducted on your Property:

- » One (1) sub-slab vapor port will be installed and sampled using a passive sampler over a time period of 14 to 28 days to analyze the vapor chemistry below the property building.
- » One (1) passive indoor air vapor sample will be collected over a time period of 14 to 28 days to analyze the vapor chemistry within the property building.

Attached is a form that provides permission for access to do this work. The WDNR encourages you to be cooperative with permission for access, and the situation is discussed further in the attached WDNR Publication RR-589. If you have any questions on the need for this work or any other issues, please feel free to contact the WDNR Project Manager for the Bay Towel Site, Ms. Josie Schultz. She can be reached at josie.schultz@wisconsin.gov or by phone at (920) 366-5685.

Please fill out the missing information on the attached form, sign and return the form to me in the enclosed envelope.

Thank you for your time and cooperation, your help with this matter is appreciated. If you have any questions, please call me at 920.453.0700 or email me at kbird@fehrgraham.com

Sincerely,

A handwritten signature in dark ink, appearing to read 'Kelsey Bird', with a stylized flourish at the end.

Kelsey Bird
Engineer

Attachments: RR-589 Publication "When Contamination Crosses the Line"
Blank Access Agreement for Signature
Return Envelope

Cc: Ms. Josie Schultz, WDNR, Green Bay, WI 54313 via email only to josie.schultz@wisconsin.gov

O:\Bay Towel\21-1121 SIWP\Communications\Access Agreement\317 Chicago Street\Fehr Graham Access Agreement Cover Letter - 317
Chicago Street Dec 2024.docx

ACCESS AGREEMENT TO ALLOW ENTRY TO PREMISES

PROPERTY OWNER: Ms. Donna T. Cornelius

LOCATION: 317 Chicago Street

CITY: Green Bay STATE: Wisconsin

1. **RIGHT OF ENTRY TO PREMISES.** The undersigned Owner is the legal owner of the property and hereby grants the undersigned Consultant, and Consultant's employees and agents of Bay Towel, Inc. ("Bay Towel"), to enter upon and perform certain exploration activities upon the property described above. Specifically, the allowed activities are:
 - » One (1) sub-slab vapor port will be installed and sampled to analyze the vapor chemistry below the property building. One (1) sub-slab vapor sampling event will be completed.
 - » One (1) indoor air vapor sample will be collected to analyze the vapor chemistry within the property building.
2. **PURPOSE OF ACTIVITIES.** The purpose of the allowed activities is to evaluate the degree and extent of possible soil, groundwater and vapor contamination associated with the release from the former Bay Towel site located at 501 South Adams Street, Green Bay, WI 54301 (BRRS #02-05-237064).
3. **TERM OF AGREEMENT.** The activities authorized hereunder are expected to be completed on or before December of 2025. All rights and privileges granted by Owner shall cease on that date, unless they are extended by a subsequent agreement.
4. **STANDARD OF CARE.** Consultant will perform its activities in a manner consistent with that level of care and skill ordinarily exercised by other members of Consultant's profession practicing in the same or similar locality under similar conditions.
5. **AGREEMENT NOT TO INTERFERE.** Owner shall not interfere with any of the activities described herein, unless such activities pose a threat to human health or safety or a threat of damage to Owner's property.
6. **UTILITY MARKING.** Consultant agrees to arrange for public utilities on the Owner's property in the vicinity of the proposed activities to be identified and marked (e.g. by Digger's Hotline) prior to Consultant's activities on the Owner's property. With respect to private utilities, Owner is responsible to identifying the existence of such utilities and then Consultant is responsible for hiring a private utility locate company to locate the identified private utilities.

7. **RESTORATION OF PROPERTY.** Material and equipment utilized by the Consultant will be removed by Consultant from the property upon completion of the exploration and activities authorized by this agreement. Consultant will restore the property to substantially the same condition prior to Consultant's activities.
8. **PROVISION OF ANALYTICAL RESULTS.** Upon written request, Consultant shall provide copies of analytical results of vapor, soil and/or groundwater samples obtained on Owner's property to Owner within two weeks of completion of the field activities.
9. **INSURANCE.** Consultant represents to the best of its knowledge, information and belief that it carries Worker's Compensation Insurance and that it has coverage under employer's liability, commercial general liability, bodily injury and property damage, and professional liability errors and omissions policies that Consultant deems reasonable and adequate. Upon request, Consultant shall furnish to Owner proof of such insurance coverage and the respective limits of liability.
10. **INDEMNIFICATION.** Consultant shall indemnify and hold harmless from and against 3rd party tort damages, costs (including reasonable attorneys fees) for personal injury or property damage occurring to Owner or third parties solely to the extent caused from the act of negligence or willful misconduct by Consultant as a result of the work which Consultant, its employees perform on the property. The limitation of liability shall not exceed \$2,000,000.
11. **NO REAL ESTATE INTEREST.** Consultant acquires no rights in the property by virtue of this agreement.
12. **COST OF ACTIVITIES.** Owner shall not be responsible for any costs or expenses incurred by the activities described herein.
13. **GOVERNING LAW.** This Agreement shall be governed by the laws of the state of Wisconsin.
14. **COUNTERPARTS.** This Agreement may be signed in two or more counterparts, each of which shall be treated as an original but which, when taken together, shall constitute one and the same instrument.

Property Owner

AUTHORIZED SIGNATOR: _____

SIGNATURE: _____

DATE: _____

PHONE NUMBER: _____

EMAIL ADDRESS: _____

Consultant

AUTHORIZED SIGNATOR: _____

SIGNATURE: _____

DATE: _____

Bay Towel, Inc.

AUTHORIZE SIGNATOR: _____

SIGNATURE: _____

DATE: _____



When Contamination Crosses a Property Line

The Off-Site Environmental Liability Exemption - Wis. Stat. §§ 292.12 and 292.13 Rights and Responsibilities of Off-site, Affected Property Owners

Purpose

This fact sheet summarizes the state's statutory liability exemption for owners of real property affected by environmental contamination migrating from another property. It also explains how contamination from one property can impose health and safety obligations on other properties even when the liability exemption is in effect.

Background

It is relatively common to discover that substances used at an older commercial or industrial property have migrated into the soil, surface water and groundwater and have traveled onto a neighboring property. When this occurs, the party responsible for investigating and cleaning up the source of the contamination is required to take action to address health and safety concerns at both the source property and the off-site property.

When contamination from one property crosses a property boundary, Wisconsin law provides an environmental liability exemption to the affected property owner who meets the conditions in the law. The affected property owner is identified as the "off-site" owner in state law, because environmental contamination has moved beyond the source property's boundaries.

The Wisconsin Department of Natural Resources (DNR) will generally not ask off-site, exempt property owners to investigate or remediate contamination that did not originate on their property. A few exceptions to the exemption, related to imminent health and safety threats and long term obligations, are described in the next section.

The statutory off-site exemption is self-implementing and is effective as long as an eligible party meets all the statutory conditions. Property owners and others may request a written exemption determination letter from the DNR for a fee, but this letter is not required to have the exemption protections.

Summary of an off-site property owner's rights and responsibilities

Wisconsin law, Wis. Stat. § 292.11(3), requires anyone who causes, possesses or controls a hazardous substance discharge to the environment (i.e. land, air, water) to take action to restore the

environment to the extent practicable and minimize harmful effects. When contamination from one property migrates and affects another property, however, Wisconsin law provides an exemption for an owner (possessor) of the affected, neighboring property from the requirement to take response actions under Wis. Stat. §§ 292.11(3), (4) and (7)(b) and (c). This statutory provision is known as the "off-site liability exemption," and is authorized by Wis. Stat. § 292.13.

Related Guidance

- [Off-site Liability Exemption Application \(Form 4400-201\)](#)
- [General Liability Clarification Letters \(RR-619\)](#)
- [Continuing Obligations for Environmental Protection \(RR-819\)](#)
- [Environmental Contamination and Your Real Estate \(RR-973\)](#)

An off-site property owner is someone who owns property affected by soil, groundwater, sediment, soil gas (vapor) or other environmental contamination that originated on another property. The property where the contamination began is known as the source property. An affected off-site property owner is eligible for an off-site liability exemption if all of the following conditions in Wis. Stat. § 292.13 are satisfied, including, but not limited to:

- The off-site property owner did not cause the original discharge of the hazardous substance;
- The off-site property owner did not, and does not, possess or control the hazardous substance that was discharged on the source property;
- The property that contains the source of the migrating contamination is not owned or controlled by the same person or entity that owns the affected off-site property;
- The off-site property owner allows reasonable access to their property, so the DNR and its contractors, along with those responsible for the contamination, can take necessary response actions to protect public health;
- The off-site property owner does not interfere with the response actions of others and does not do anything to make the contamination situation worse;
- The off-site property owner agrees to other conditions that the DNR determines are reasonable and necessary to ensure that response actions are adequate; and
- For soil and sediment contamination, when the responsible party is not responding appropriately to the contamination, the off-site property owner agrees to take actions that the DNR determines are necessary to prevent an imminent threat to human health and safety. For example, taking action to limit public access to the property, installing containment barriers, and addressing fire, explosion and vapor hazards on the property.

No Exemption from Reporting Requirements

The off-site exemption does not exempt an affected property owner from Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR.

Limitations of the Exemption

The off-site exemption is conditional, limited in scope and applies solely to legal responsibilities identified in Wis. Stat. §§ 292.11(3), (4) and (7)(b)(c). The off-site exemption does not exempt a property owner from:

- Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR;
- Wis. Stat. § 292.12, which authorizes the DNR to require continuing public health protection obligations on any property affected by environmental contamination (see page 4 of this fact sheet); and
- Limited, immediate actions, as specified in Wis. Stat. § 292.13(1m)(e). For instance, off-site property owners may be required to address an imminent threat from fire, explosion or vapors if there is not a party responsible for the cleanup who can conduct the actions.

In addition, the off-site liability exemption is not automatically transferable, nor assignable, to future owners of the off-site property. However, it is likely that a new owner could be eligible for the exemption if they meet the conditions in Wis. Stat. § 292.13, including the ability to substantiate that they do not currently, or have ever, owned the source property and did not cause the discharge.

Overview of migrating contamination

Hazardous substances that are spilled or otherwise discharged to the environment can disperse and move around underground. These substances can spread out and migrate, or travel, through the soil into groundwater and nearby lakes and rivers. Gases (vapors) emanating from underground hazardous substances can also make their way upward into houses and other buildings.

When hazardous substances (contamination) move from their starting place (source) and affect the soil, sediment, groundwater or indoor air of an adjacent or nearby property, it is important to accurately determine who is legally responsible for investigating the nature and extent of the contamination, cleaning it up, and mitigating its harmful effects.

Discovering contamination from an off-site source

When a property owner discovers soil or groundwater contamination they believe came from another property, the owner must first notify the DNR of the contamination. The DNR will then work with the owner and potentially responsible parties to ensure appropriate actions are taken to investigate and clean up the contamination to protect health and safety.

Migrating contamination and access to property

Responsible parties are required by state law to investigate and remediate, to the extent practicable, all contamination that migrates within and beyond the boundaries of a source property. If the contamination crosses a property line, the responsible party must investigate where it goes and ask owners of affected, off-site properties for permission to access their properties. Property access is needed so the environmental investigation and cleanup or mitigation work can be completed.

An off-site property owner must allow access to their property to be eligible for the off-site liability exemption. When signing an access agreement, the off-site owners may wish to negotiate with the responsible party on issues such as the work schedule, the restoration of disturbed landscaping, etc.

If the owner of an affected off-site property does not allow the responsible party's environmental consultants or the DNR onto their property, the off-site owner will not qualify for the off-site exemption and the off-site owner may assume legal responsibility for the contamination on their property.

Obtaining an off-site liability determination letter from the DNR

Off-site property owners can request a liability determination letter from the DNR, for a fee, that documents the exemption in writing.

To obtain a letter, the off-site property owner must provide information to demonstrate that there are hazardous substances impacting their property from a source on another property and that all the other conditions for the exemption have been met. The off-site property owner can use the investigation data collected by the responsible party in response to the contamination or an owner of an off-site property may collect their own data to demonstrate the contamination is coming from somewhere else.

Requesting a Determination or Clarification Letter

To obtain an off-site liability determination letter or liability clarification letter, submit the DNR's [Off-site Liability Exemption application, Form 4400-201](#) and the applicable fee. This form includes instructions and describes the information needed by the DNR for a site-specific letter.

Obtaining a liability clarification letter from the DNR

If someone does not meet all the requirements for the exemption, (e.g. a prospective purchaser) and therefore doesn't qualify for an off-site liability determination letter, anyone with an interest in a property that is or may be affected by migrating contamination can still request that the DNR review the site-specific situation and provide a written liability clarification letter for a fee. Liability clarification letters may be helpful when evaluating the potential purchase of a property or when contamination is suspected to be impacting a property.

Continuing obligations for the protection of health and safety at off-site properties

When residual contamination extends across a property line, continuing obligations may also extend onto an affected, off-site property. In these situations, owners of off-site properties may not be legally responsible for responding to the contamination, but they are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety.

Wisconsin, like most states, allows some residual contamination to remain after a cleanup of contaminated soil, vapors, sediment or groundwater has been approved by the state (see Wis. Stat. § 292.12). The removal of all contamination is generally not practicable, nor is it always necessary for the protection of public health and the environment.

When the DNR approves the completion of an interim action, or a remedial action, or issues a case closure letter at a site where residual contamination exists, the DNR may condition or qualify its case closure approval on compliance with continuing obligations at the source property and affected off-site properties to protect public health and the environment.

These continuing obligations are property-specific requirements and restrictions identified in the DNR approval or case closure letter. They are legal responsibilities associated with the source property, and apply to current and future owners of the property. If contamination has migrated off-site, there may be continuing obligations that also apply to off-site, affected properties.

Common Continuing Obligations for Source and Affected, Off-site Properties

One common continuing obligation, for the owners of the source property and affected, off-site properties, is the proper management and disposal of contaminated soil that is excavated. Other continuing obligations and requirements necessary to protect health and safety may include:

- Keeping clean soil and vegetation over contaminated soil;
- Maintaining a cover of pavement, soil, asphalt, etc. over contaminated soil or groundwater;
- Operating and maintaining a vapor mitigation system that is installed by the responsible party;
- Obtaining DNR approval prior to constructing or reconstructing a well at properties with groundwater contamination; and
- Maintaining industrial use for a property that was cleaned up to industrial standards.

Owners of off-site properties are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety, except for those continuing obligations imposed for residual sediment contamination.

Notice to Affected Off-site Property Owners of Case Closure Request and Possible Continuing Obligations

The party responsible for cleaning up contamination must notify affected, off-site property owners of a proposed continuing obligation on their property before the DNR reviews a request for case closure. State law requires this, and it allows the off-site property owners some time to provide the DNR with any technical information that may be relevant to the cleanup approval.

An off-site property owner is, of course, free to discuss responsibility for the proposed off-site continuing obligations with the responsible party. If an off-site property owner enters into a legally enforceable agreement (i.e. a private contract) with the party responsible for the contamination, under which the responsible party assumes responsibility for maintaining a continuing obligation on the off-site owner's property, that agreement must be submitted to the DNR and recorded in the database per Wis. Stat. § 292.12(5)(c).

If the DNR approves a case closure request that includes continuing obligations at an off-site property, the DNR will notify off-site owners of the continuing obligation. A property owner may request modification of a continuing obligation in the future if environmental conditions change. For example, petroleum contamination degrades over time and laboratory test results of new soil, groundwater or vapor samples may support modifying or removing a continuing obligation.

Finding information about continuing obligations

Information about property-specific continuing obligations can be found (as applicable) in the DNR interim action approval letter, the case closure letter for the source property, and in the DNR documents giving notice to off-site property owners. These letters and related documents are available in the DNR database of property cleanup activities.

This database, called [BRRTS on the Web](#), is available at [dnr.wi.gov](#) (search "BRRTS"). The documents about affected, off-site properties that are associated with a specific source property can be found in BRRTS when you search the site number or address of the property that is the source of the contamination. Property owners, local government officials, building contractors, well drillers and others may review the database to find out if there are any land-use restrictions or continuing obligations associated with a specific property before beginning work there.

For more information

Questions about the off-site environmental liability exemption and continuing obligations can be directed to the brownfields specialist in your local DNR regional office. To find a specialist in your area, go to [dnr.wi.gov](#) and search "brownfields contacts."

For additional information about off-site contamination and liability clarification letters go to [dnr.wi.gov](#) and search for "off-site contamination." For additional information about residual contamination and continuing obligations go to [dnr.wi.gov](#) and search for "continuing obligations."

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.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Chief, Public Civil Rights, Office of Civil Rights, U.S. Department of the Interior, 1849 C. Street, NW, Washington, D.C. 20240. This publication is available in alternative format (large print, Braille, etc.) upon request. Please call for more information. Note: If you need technical assistance or more information, call the Accessibility Coordinator at 608-267-7490 / TTY Access via relay - 711

December 3, 2024

City of Green Bay Fire Station 1
100 N. Jefferson Street
Green Bay, WI 54301-5006

**RE: Access Permission for Environmental Site Investigation
Former Bay Towel Site
501 S. Adams Street
Green Bay, WI
BRRTS # 02-05-237064**

To whom it may concern:

Fehr Graham is continuing the site investigation at the former Bay Towel site located at 501 South Adams Street, Green Bay, WI 54301 (BRRTS #02-05-237064). We have previously completed two rounds of sub-slab vapor and indoor air sampling at your Property. The second round of indoor air sampling, completed May 16-23, 2023, had a laboratory detection limit greater than the Vapor Action Level (VAL) standard set for trichloroethene (TCE). In other words, TCE was not detected, however, the value of the detection limit was greater than that of the VAL. To confirm that the level of TCE in the indoor air is below the VAL, an additional round of Passive Indoor Air and Passive Sub-slab Vapor sampling will be completed over the course of 14 to 28 days.

The Wisconsin Department of Natural Resources (WDNR) approved site investigation which includes the following activities that are proposed to be conducted on your Property:

- » One (1) sub-slab vapor port will be installed and sampled using a passive sampler over a time period of 14 to 28 days to analyze the vapor chemistry below the property building.
- » One (1) passive indoor air vapor sample will be collected over a time period of 14 to 28 days to analyze the vapor chemistry within the property building.

Attached is a form that provides permission for access to do this work. The WDNR encourages you to be cooperative with permission for access, and the situation is discussed further in the attached WDNR Publication RR-589. If you have any questions on the need for this work or any other issues, please feel free to contact the WDNR Project Manager for the Bay Towel Site, Ms. Josie Schultz. She can be reached at josie.schultz@wisconsin.gov or by phone at (920) 366-5685.

Please fill out the missing information on the attached form, sign and return the form to me via email.

Thank you for your time and cooperation, your help with this matter is appreciated. If you have any questions, please call me at 920.453.0700 or email me at kbird@fehrgraham.com

Sincerely,

A handwritten signature in dark ink, appearing to read 'Kelsey Bird', with a stylized flourish at the end.

Kelsey Bird
Engineer

Attachments: RR-589 Publication "When Contamination Crosses the Line"
Blank Access Agreement for Signature

Cc: Ms. Josie Schultz, WDNR, Green Bay, WI 54313 via email only to josie.schultz@wisconsin.gov

O:\Bay Towel\21-1121 SIWP\Communications\Access Agreement\501 South Washington Street\Fehr Graham Access Agreement Cover Letter - 501 South Washington Street Dec 2024.docx

ACCESS AGREEMENT TO ALLOW ENTRY TO PREMISES

PROPERTY OWNER: City of Green Bay Fire Station 1

LOCATION: 501 South Washington Street

CITY: Green Bay STATE: Wisconsin

1. **RIGHT OF ENTRY TO PREMISES.** The undersigned Owner is the legal owner of the property and hereby grants the undersigned Consultant, and Consultant's employees and agents of Bay Towel, Inc. ("Bay Towel"), to enter upon and perform certain exploration activities upon the property described above. Specifically, the allowed activities are:
 - » One (1) sub-slab vapor port will be installed and sampled to analyze the vapor chemistry below the property building.
 - » One (1) indoor air vapor sample will be collected to analyze the vapor chemistry within the property building.
2. **PURPOSE OF ACTIVITIES.** The purpose of the allowed activities is to evaluate the degree and extent of possible soil, groundwater and vapor contamination associated with the release from the former Bay Towel site located at 501 South Adams Street, Green Bay, WI 54301 (BRRS #02-05-237064).
3. **TERM OF AGREEMENT.** The activities authorized hereunder are expected to be completed on or before December of 2025. All rights and privileges granted by Owner shall cease on that date, unless they are extended by a subsequent agreement.
4. **STANDARD OF CARE.** Consultant will perform its activities in a manner consistent with that level of care and skill ordinarily exercised by other members of Consultant's profession practicing in the same or similar locality under similar conditions.
5. **AGREEMENT NOT TO INTERFERE.** Owner shall not interfere with any of the activities described herein, unless such activities pose a threat to human health or safety or a threat of damage to Owner's property.
6. **UTILITY MARKING.** Consultant agrees to arrange for public utilities on the Owner's property in the vicinity of the proposed activities to be identified and marked (e.g. by Digger's Hotline) prior to Consultant's activities on the Owner's property. With respect to private utilities, Owner is responsible to identifying the existence of such utilities and then Consultant is responsible for hiring a private utility locate company to locate the identified private utilities.
7. **RESTORATION OF PROPERTY.** Material and equipment utilized by the Consultant will be removed by Consultant from the property upon completion of the exploration and activities authorized by this agreement. Consultant will restore the property to substantially the same condition prior to Consultant's activities.
8. **PROVISION OF ANALYTICAL RESULTS.** Upon written request, Consultant shall provide copies of analytical results of vapor, soil and/or groundwater samples obtained on Owner's property to Owner within two weeks of completion of the field activities.

ACCESS AGREEMENT TO ALLOW ENTRY TO PREMISES

9. **INSURANCE.** Consultant represents to the best of its knowledge, information and belief that it carries Worker's Compensation Insurance and that it has coverage under employer's liability, commercial general liability, bodily injury and property damage, and professional liability errors and omissions policies that Consultant deems reasonable and adequate. Upon request, Consultant shall furnish to Owner proof of such insurance coverage and the respective limits of liability.
10. **INDEMNIFICATION.** Consultant shall indemnify and hold harmless from and against 3rd party tort damages, costs (including reasonable attorneys fees) for personal injury or property damage occurring to Owner or third parties solely to the extent caused from the act of negligence or willful misconduct by Consultant as a result of the work which Consultant, its employees perform on the property. The limitation of liability shall not exceed \$2,000,000.
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13. **GOVERNING LAW.** This Agreement shall be governed by the laws of the state of Wisconsin.
14. **COUNTERPARTS.** This Agreement may be signed in two or more counterparts, each of which shall be treated as an original but which, when taken together, shall constitute one and the same instrument.

PROPERTY OWNER

AUTHORIZED SIGNATOR: _____

SIGNATURE: _____

DATE: _____

PHONE NUMBER: _____

EMAIL ADDRESS: _____

CONSULTANT

AUTHORIZED SIGNATOR: _____

SIGNATURE: _____

DATE: _____

ACCESS AGREEMENT TO ALLOW ENTRY TO PREMISES

BAY TOWEL, INC.

AUTHORIZE SIGNATOR: _____

SIGNATURE: _____

DATE: _____



When Contamination Crosses a Property Line

The Off-Site Environmental Liability Exemption - Wis. Stat. §§ 292.12 and 292.13 Rights and Responsibilities of Off-site, Affected Property Owners

Purpose

This fact sheet summarizes the state's statutory liability exemption for owners of real property affected by environmental contamination migrating from another property. It also explains how contamination from one property can impose health and safety obligations on other properties even when the liability exemption is in effect.

Background

It is relatively common to discover that substances used at an older commercial or industrial property have migrated into the soil, surface water and groundwater and have traveled onto a neighboring property. When this occurs, the party responsible for investigating and cleaning up the source of the contamination is required to take action to address health and safety concerns at both the source property and the off-site property.

When contamination from one property crosses a property boundary, Wisconsin law provides an environmental liability exemption to the affected property owner who meets the conditions in the law. The affected property owner is identified as the "off-site" owner in state law, because environmental contamination has moved beyond the source property's boundaries.

Related Guidance

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- [General Liability Clarification Letters \(RR-619\)](#)
- [Continuing Obligations for Environmental Protection \(RR-819\)](#)
- [Environmental Contamination and Your Real Estate \(RR-973\)](#)

The Wisconsin Department of Natural Resources (DNR) will generally not ask off-site, exempt property owners to investigate or remediate contamination that did not originate on their property. A few exceptions to the exemption, related to imminent health and safety threats and long term obligations, are described in the next section.

The statutory off-site exemption is self-implementing and is effective as long as an eligible party meets all the statutory conditions. Property owners and others may request a written exemption determination letter from the DNR for a fee, but this letter is not required to have the exemption protections.

Summary of an off-site property owner's rights and responsibilities

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environment to the extent practicable and minimize harmful effects. When contamination from one property migrates and affects another property, however, Wisconsin law provides an exemption for an owner (possessor) of the affected, neighboring property from the requirement to take response actions under Wis. Stat. §§ 292.11(3), (4) and (7)(b) and (c). This statutory provision is known as the "off-site liability exemption," and is authorized by Wis. Stat. § 292.13.

An off-site property owner is someone who owns property affected by soil, groundwater, sediment, soil gas (vapor) or other environmental contamination that originated on another property. The property where the contamination began is known as the source property. An affected off-site property owner is eligible for an off-site liability exemption if all of the following conditions in Wis. Stat. § 292.13 are satisfied, including, but not limited to:

- The off-site property owner did not cause the original discharge of the hazardous substance;
- The off-site property owner did not, and does not, possess or control the hazardous substance that was discharged on the source property;
- The property that contains the source of the migrating contamination is not owned or controlled by the same person or entity that owns the affected off-site property;
- The off-site property owner allows reasonable access to their property, so the DNR and its contractors, along with those responsible for the contamination, can take necessary response actions to protect public health;
- The off-site property owner does not interfere with the response actions of others and does not do anything to make the contamination situation worse;
- The off-site property owner agrees to other conditions that the DNR determines are reasonable and necessary to ensure that response actions are adequate; and
- For soil and sediment contamination, when the responsible party is not responding appropriately to the contamination, the off-site property owner agrees to take actions that the DNR determines are necessary to prevent an imminent threat to human health and safety. For example, taking action to limit public access to the property, installing containment barriers, and addressing fire, explosion and vapor hazards on the property.

No Exemption from Reporting Requirements

The off-site exemption does not exempt an affected property owner from Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR.

Limitations of the Exemption

The off-site exemption is conditional, limited in scope and applies solely to legal responsibilities identified in Wis. Stat. §§ 292.11(3), (4) and (7)(b)(c). The off-site exemption does not exempt a property owner from:

- Wis. Stat. § 292.11(2), which requires the immediate notification of identified contamination to the DNR;
- Wis. Stat. § 292.12, which authorizes the DNR to require continuing public health protection obligations on any property affected by environmental contamination (see page 4 of this fact sheet); and
- Limited, immediate actions, as specified in Wis. Stat. § 292.13(1m)(e). For instance, off-site property owners may be required to address an imminent threat from fire, explosion or vapors if there is not a party responsible for the cleanup who can conduct the actions.

In addition, the off-site liability exemption is not automatically transferable, nor assignable, to future owners of the off-site property. However, it is likely that a new owner could be eligible for the exemption if they meet the conditions in Wis. Stat. § 292.13, including the ability to substantiate that they do not currently, or have ever, owned the source property and did not cause the discharge.

Overview of migrating contamination

Hazardous substances that are spilled or otherwise discharged to the environment can disperse and move around underground. These substances can spread out and migrate, or travel, through the soil into groundwater and nearby lakes and rivers. Gases (vapors) emanating from underground hazardous substances can also make their way upward into houses and other buildings.

When hazardous substances (contamination) move from their starting place (source) and affect the soil, sediment, groundwater or indoor air of an adjacent or nearby property, it is important to accurately determine who is legally responsible for investigating the nature and extent of the contamination, cleaning it up, and mitigating its harmful effects.

Discovering contamination from an off-site source

When a property owner discovers soil or groundwater contamination they believe came from another property, the owner must first notify the DNR of the contamination. The DNR will then work with the owner and potentially responsible parties to ensure appropriate actions are taken to investigate and clean up the contamination to protect health and safety.

Migrating contamination and access to property

Responsible parties are required by state law to investigate and remediate, to the extent practicable, all contamination that migrates within and beyond the boundaries of a source property. If the contamination crosses a property line, the responsible party must investigate where it goes and ask owners of affected, off-site properties for permission to access their properties. Property access is needed so the environmental investigation and cleanup or mitigation work can be completed.

An off-site property owner must allow access to their property to be eligible for the off-site liability exemption. When signing an access agreement, the off-site owners may wish to negotiate with the responsible party on issues such as the work schedule, the restoration of disturbed landscaping, etc.

If the owner of an affected off-site property does not allow the responsible party's environmental consultants or the DNR onto their property, the off-site owner will not qualify for the off-site exemption and the off-site owner may assume legal responsibility for the contamination on their property.

Obtaining an off-site liability determination letter from the DNR

Off-site property owners can request a liability determination letter from the DNR, for a fee, that documents the exemption in writing.

To obtain a letter, the off-site property owner must provide information to demonstrate that there are hazardous substances impacting their property from a source on another property and that all the other conditions for the exemption have been met. The off-site property owner can use the investigation data collected by the responsible party in response to the contamination or an owner of an off-site property may collect their own data to demonstrate the contamination is coming from somewhere else.

Requesting a Determination or Clarification Letter

To obtain an off-site liability determination letter or liability clarification letter, submit the DNR's [Off-site Liability Exemption application, Form 4400-201](#) and the applicable fee. This form includes instructions and describes the information needed by the DNR for a site-specific letter.

Obtaining a liability clarification letter from the DNR

If someone does not meet all the requirements for the exemption, (e.g. a prospective purchaser) and therefore doesn't qualify for an off-site liability determination letter, anyone with an interest in a property that is or may be affected by migrating contamination can still request that the DNR review the site-specific situation and provide a written liability clarification letter for a fee. Liability clarification letters may be helpful when evaluating the potential purchase of a property or when contamination is suspected to be impacting a property.

Continuing obligations for the protection of health and safety at off-site properties

When residual contamination extends across a property line, continuing obligations may also extend onto an affected, off-site property. In these situations, owners of off-site properties may not be legally responsible for responding to the contamination, but they are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety.

Wisconsin, like most states, allows some residual contamination to remain after a cleanup of contaminated soil, vapors, sediment or groundwater has been approved by the state (see Wis. Stat. § 292.12). The removal of all contamination is generally not practicable, nor is it always necessary for the protection of public health and the environment.

When the DNR approves the completion of an interim action, or a remedial action, or issues a case closure letter at a site where residual contamination exists, the DNR may condition or qualify its case closure approval on compliance with continuing obligations at the source property and affected off-site properties to protect public health and the environment.

These continuing obligations are property-specific requirements and restrictions identified in the DNR approval or case closure letter. They are legal responsibilities associated with the source property, and apply to current and future owners of the property. If contamination has migrated off-site, there may be continuing obligations that also apply to off-site, affected properties.

Common Continuing Obligations for Source and Affected, Off-site Properties

One common continuing obligation, for the owners of the source property and affected, off-site properties, is the proper management and disposal of contaminated soil that is excavated. Other continuing obligations and requirements necessary to protect health and safety may include:

- Keeping clean soil and vegetation over contaminated soil;
- Maintaining a cover of pavement, soil, asphalt, etc. over contaminated soil or groundwater;
- Operating and maintaining a vapor mitigation system that is installed by the responsible party;
- Obtaining DNR approval prior to constructing or reconstructing a well at properties with groundwater contamination; and
- Maintaining industrial use for a property that was cleaned up to industrial standards.

Owners of off-site properties are responsible for complying with the continuing obligations imposed on their property by the DNR or state law to protect health and safety, except for those continuing obligations imposed for residual sediment contamination.

Notice to Affected Off-site Property Owners of Case Closure Request and Possible Continuing Obligations

The party responsible for cleaning up contamination must notify affected, off-site property owners of a proposed continuing obligation on their property before the DNR reviews a request for case closure. State law requires this, and it allows the off-site property owners some time to provide the DNR with any technical information that may be relevant to the cleanup approval.

An off-site property owner is, of course, free to discuss responsibility for the proposed off-site continuing obligations with the responsible party. If an off-site property owner enters into a legally enforceable agreement (i.e. a private contract) with the party responsible for the contamination, under which the responsible party assumes responsibility for maintaining a continuing obligation on the off-site owner's property, that agreement must be submitted to the DNR and recorded in the database per Wis. Stat. § 292.12(5)(c).

If the DNR approves a case closure request that includes continuing obligations at an off-site property, the DNR will notify off-site owners of the continuing obligation. A property owner may request modification of a continuing obligation in the future if environmental conditions change. For example, petroleum contamination degrades over time and laboratory test results of new soil, groundwater or vapor samples may support modifying or removing a continuing obligation.

Finding information about continuing obligations

Information about property-specific continuing obligations can be found (as applicable) in the DNR interim action approval letter, the case closure letter for the source property, and in the DNR documents giving notice to off-site property owners. These letters and related documents are available in the DNR database of property cleanup activities.

This database, called [BRRTS on the Web](#), is available at [dnr.wi.gov](#) (search "BRRTS"). The documents about affected, off-site properties that are associated with a specific source property can be found in BRRTS when you search the site number or address of the property that is the source of the contamination. Property owners, local government officials, building contractors, well drillers and others may review the database to find out if there are any land-use restrictions or continuing obligations associated with a specific property before beginning work there.

For more information

Questions about the off-site environmental liability exemption and continuing obligations can be directed to the brownfields specialist in your local DNR regional office. To find a specialist in your area, go to [dnr.wi.gov](#) and search "brownfields contacts."

For additional information about off-site contamination and liability clarification letters go to [dnr.wi.gov](#) and search for "off-site contamination." For additional information about residual contamination and continuing obligations go to [dnr.wi.gov](#) and search for "continuing obligations."

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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