

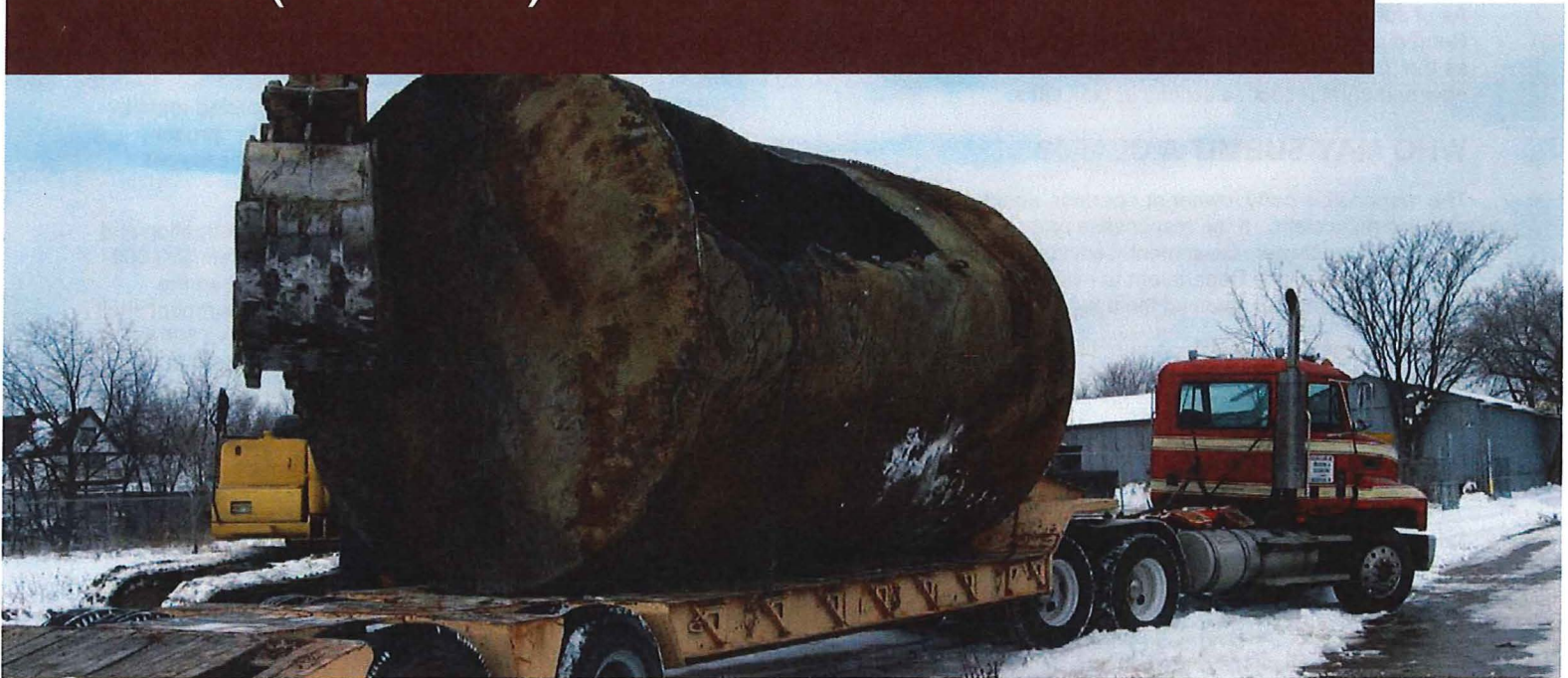
Pilsner Ford 03-14-530057

8/26/13 Phone call - Bob Perkins 920-696-3788

- Bob is interested in buying property
- DNR notified of a release in 2004 - no lab data submitted - open case
- extent of contamination is unknown - need to do site investigation - define degree + extent in soil + GW and submit results to DNR. May have to remediate depending on concentrations.
- if Bob purchases, may become RP. Recommended that he seek legal advice.
- Diana Williams is current RP/owner
- eventually site may need to go through enforcement process if no site investigation is completed.

D. Nettlesheim

Petroleum Environmental Cleanup Fund Award (PECFA)



Information about PECFA and Reimbursements

Cover photo courtesy of Earth Tech.

This document contains information about certain state statutes and administrative rules but does not necessarily include all of the details found in the statutes and rules. Readers should consult the actual language of the statutes and rules to answer specific questions. Please refer to ch. NR 747 Wis.Admin.Code and 292.63, Stats., for further information.

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Wisconsin Department of Natural Resources
101 S. Webster St.
Madison, WI 53707
dnr.wi.gov, search "brownfield"



PECFA PROGRAM & ELIGIBILITY

WHAT IS PECFA?

PECFA is a reimbursement program created by the state of Wisconsin for returning a portion of incurred environmental response costs to owners of eligible petroleum product systems, including home heating oil systems. Program funding is generated from a portion of a \$0.02/gallon petroleum inspection fee.

WHO ADMINISTERS THE PECFA PROGRAM?

As of July 2013, the Department of Natural Resources' Remediation and Redevelopment Program (hereafter referred to as the "Department") administers PECFA and oversees the environmental response actions at tank sites.

WHO MAY SUBMIT A CLAIM?

The responsible party, owner or operator, agent or an assignee may submit a claim. If the responsible party is not the sole owner of the site, an Owner Assignment Certification Form (4400-299) shall be filed with the Department to establish one entity to submit the claim and received the award.

The owner may, with the Department's written approval, designate an "agent". The agent must agree to complete and pay for the remediation up to the point of closure, natural attenuation monitoring, operation and maintenance of a treatment system or long term monitoring. Both the owner and agent submit the claim and the award is made payable to both.

CLAIM REQUIREMENTS

To submit a claim, the claimant must do the following:

1. Register the petroleum product storage system or the home oil tank system with the Department of Agriculture Trade and Consumer Protection (DATCP). Any petroleum product storage tank system larger than 60 gallons must be registered with the DATCP.
2. Report the discharge immediately to the state in accordance with ch. NR 706, Wis. Admin. Code.
3. Hire a consultant to conduct the ch. NR 700-required site investigation.
4. Comply with the Usual & Customary costs (NR 747.325) that apply to all occurrences previously or newly reported to the state, for work performed after May 1, 2006 except for:
 - Work performed under a previously established cap under 292.63(3)(cp).
 - Work performed as part of an emergency action, within initial 72 hours after the onset of the need for the action.
 - Work performed for home oil tank systems.

5. If the total cost for site cleanup will exceed \$60,000, the Department will use the public bidding process to assist in establishing a cost cap to site closure.

6. Once the Department establishes a cap on total costs they will notify the owner. The claimant will also be provided an approval to submit their claim for investigation costs. The Department may elect to "bundle" the site with other remedial efforts in the area in order to obtain lower remediation costs.

Bundling means the process of providing investigation or remedial action services, or both, across multiple occurrences while utilizing one consulting firm or common commodity services and providers, or both, to reduce total remediation cost.

If a bundle is constructed or a bid is conducted and the claimant elects not to use the lowest cost approach, claimant reimbursement will be limited to the lowest bid/bundle cost.

7. The maximum allowable cost for a site investigation and the development of the remedial action plan is \$20,000. If the site investigation is anticipated to exceed the \$20,000 cap, written approval from the Department shall be obtained prior to incurring any costs above \$20,000; notification to the owner shall be made before the owner has incurred liabilities above the \$20,000 maximum.

8. If an applicant does not complete the investigation of the petroleum product discharge by the first day of the 61st month after the month in which the applicant notified the Department under 292.63(3) (a) 3. or October 1, 2003, whichever is later, interest costs incurred by the applicant after the later of those days are not eligible costs.

9. Consultant shall submit notification to the Department, no later than 14 days after execution or termination of a written contract with a responsible party for investigating a discharge from a petroleum product storage system, per NR 747.60.

10. Periodically submit reports to the Department to inform the Department of the consulting firm's progress, per s. NR 747.62, 347.70 or 347.71, Wis. Admin. Code.

11. Commodity bidding is not required where a reimbursement amount is determined either by the Usual & Customary cost schedule or by the public bidding process.

12. Initiate a claim by filling out an "Initial Claim" form that by downloading it from the PECFA web site noted below or by writing to:

PECFA
Department of Natural Resources
Remediation and Redevelopment Program
P. O. Box 8044
Madison, Wisconsin 53708-8044
(608) 267-7646 (FAX)
dnr.wi.gov/topic/Brownfields/

PECFA PROGRAM ELIGIBILITY

WHAT TANKS ARE INCLUDED IN THE PROGRAM?

Coverage under the PECFA program includes petroleum product storage tank systems defined as those containing gasoline, gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel, and used motor oil. Many underground and aboveground storage systems, including any on-site integral piping and dispensing systems, are covered. Specifically, the following systems are covered under s. NR 747.02, Wis. Admin. Code:

- (a) Commercial tank systems larger than 110 gallons capacity.
- (b) Heating oil tank systems where the product is sold.
- (c) Farm and residential tank systems larger than 1,100 gallons capacity and not storing heating oil for consumptive use on the premises.
- (d) Tank systems storing gasoline, diesel fuel, or other vehicle fuels, other than residential tanks of 1,100 gallons or less capacity.
- (e) Farm vehicle fuel systems of 1,100 gallons or less capacity, which meet additional statutory requirements regarding farm size and farm income, and are used to store products not for resale.
- (f) Heating oil tank systems owned by public school and technical college districts, supplying heating oil for consumptive use on premises.
- (g) Tank systems located on Trust Lands of an American Indian Tribe if the owner or operator's tank system would be otherwise covered under (a) through (f) and the owner or operator complies with the rules promulgated in NR 747 and SPS 310 and obtains all applicable agency approvals.
- (h) Home heating oil tank systems provided the claims are for underground tank systems and the persons comply with rules promulgated in NR 747 and SPS 310.

Actual maximum awards and deductibles for the eligible tank system are listed on page 9.

Eligibility and insurance requirements for the new and upgraded tank systems is explained on page 10.

WHAT COSTS ARE ELIGIBLE?

The following is a partial list of items eligible for reimbursement. Although the final determination of eligibility is made at the time

of claim review by the Department, this list is a general guide for claimants.

Note: As of May 1, 2006, costs for work performed must adhere to the Usual & Customary Cost Schedule (s. NR 747.325, Wis. Admin. Code) or have been approved through the Competitive Public Bidding process (see SPS Subchapter VI).

1. Investigation of potential sources of petroleum contamination.
2. Preparation of a remedial action plan.
3. Laboratory services for testing specific to this chapter, including full VOC testing.
4. Investigation and assessment for the degree and extent of contamination.
5. Removal of contaminated soils.
6. Costs of equipment mobilization
7. Removal of petroleum products from surface water, groundwater and soil.
8. Treatment and disposal of contaminated soils.
9. Monitoring to establish existence of natural cleanup progress.
10. Charges for maintenance of equipment used for petroleum products recovery and remedial action.
11. State or municipal permits for installation of remedial equipment.
12. Actual costs for the purchase or rental of temporary building structures to house remedial equipment.
13. Restoration or replacement of a private or public potable water supply.
14. Contractor or subcontractor costs for remedial action.
15. Fees up to \$500 for progress payment or final claim preparation.
16. Compensation to third parties for bodily injury and property damage due to a petroleum product discharge from underground storage tank systems.

WHAT COSTS ARE INELIGIBLE?

The following is a partial list of items determined to be ineligible for reimbursement by the Department. Although the final determination of eligibility is made at the time of claim review, this list is a general guide for claimants.

1. Any costs submitted without absolute proof of payment at time of claim submittal.
2. Overtime labor charges, except for Department approved emergency actions.
3. Costs for cleanups from a non-residential heating or boiler tank system and discharges from mobile fueling tanks or vehicle fuel storage tanks.
4. Used oil remediation costs not from internal combustion engines.
5. Costs associated with environmental audits, real estate transaction, construction projects, or long-term loan transactions.
6. Costs for investigations to locate petroleum product storage systems or home oil systems to determine if a tank is eligible for PECFA.
7. Costs incurred after the Department determines no further action is needed, except for abandonment of monitoring wells and case closure.
8. Costs not integral to the remediation of a petroleum product discharge.
9. Incompetent or ineffective clean-up costs which were not based upon sound professional and scientific judgment.
10. Costs of redoing incomplete or incompetent remedial action work.
11. Costs or rework on remedial action sites or systems to accommodate construction upgrades, retrofits, or redevelopment projects.
12. Costs above those necessary to bring a site to the required level of remediation.
13. Costs to fix or replace damaged buildings, sewer lines, water lines, electrical lines, phone lines, fiber optic lines, or other utilities on the property.
14. Costs of reinstalling damaged remedial equipment and reinstalling or modifying remedial equipment for purposes other than effective remediation.
15. Interest costs accrued due to improper or incomplete filing of claims or a lack of response to Department requests for additional information, except if delayed by Department processes.
16. Late service fees or costs related to invoices or bills for which payment verification is unobtainable.
17. Costs for sampling and testing for heavy metals, except lead when the discharge is from a leaded gasoline system or lead and cadmium when the source is used motor oil.
18. Costs associated with the analysis of inappropriate constituents not associated with an eligible petroleum product.
19. Costs for remedial action activities funded under 42 US 6991, unless the owner or operator or the person owning the home oil tank system repays the funds provided under 42 USC 6991.
20. Expenditures required by the Department in order to meet the groundwater protection standard(s) in, ch. 160, Stats., chs. NR 140 and SPS 310 Wis. Admin. Code, or other administrative rules, but not related to a petroleum product discharge under this chapter.
21. Costs associated with the loss of business.
22. Costs associated with the loss of interest or dividends, or interest costs from a loan other than for remediation.
23. Costs associated with the closure of a tank system.
24. Costs associated with tank closure assessments.
25. Costs of removing tank systems that have previously been closed in-place with inert materials, sand, pea gravel, water, or other substances.
26. Costs associated with the abandonment of wells not related to the remedial action.
27. Costs, other than costs for compensating third parties for bodily injury and property damage, which the Department determines to be unreasonable or unnecessary to carry out the remedial action activities.
28. Costs associated with third-party actions by adjoining property owners for the installation of monitoring wells or other clean-up related items unless a court judgment has been obtained.
29. Costs associated with third-party damages from a discharge originating from an aboveground storage tank.
30. Attorney fees associated with third-party actions.
31. Any costs associated with an appeal of a determination specific to the scope of ch. NR 747, Wis. Admin. Code.
32. Attorney fees including, but not limited to, legal advice, appeals, or other representation on behalf of the responsible party or agent.
33. Supervisory or management costs when a municipality or company uses its own personnel or personnel from a wholly or partially owned subsidiary for remedial activities.
34. Costs for supervisory or management activities conducted by owners or operators.
35. Costs for right-of-entry or trespass fees.
36. Separate vehicle and mileage costs.

37. Costs determined by the Department to be excessive.
38. Costs incurred by a responsible party associated with bid requirements or project administration such as consultant selections, monitoring or supervising subcontractors or consultants.
39. Interest costs associated with costs that are ineligible under this section or s. NR 747.30(3), Wis. Admin. Code.
40. Interest costs excluded under s. NR 747.60(2) (a), 347.625, or 347.69(1) (b), Wis. Admin. Code.
41. Costs determined by the Department to be excessive, as defined by the usual and customary cost schedule periodically established by the Department under s. NR 747.325, Wis. Admin. Code.
42. Costs for any work performed where a contract is not in place as required in s. NR 747.33(2) (a) 1, Wis. Admin. Code.
43. Costs incurred for services exempted under s. NR 747.33(6) (b) 1, Wis. Admin. Code, if the costs are incurred prior to the department approval required under s. NR 747.33(6) (b) 2., Wis. Admin. Code, and the approval requirement is not subsequently waived by the Department.
44. Costs which exceed the \$20,000 limit in s. SPS 347.337(2)(a), Wis. Admin. Code, for a site investigation and remedial action plan, and which are incurred prior to either providing the notices that are required in s. NR 747.337(2)(c), Wis. Admin. Code, or obtaining the approval which is required in s. NR 747.377(2)(b), Wis. Admin. Code.
45. Costs for any work performed after submittal of the notice of completion of an investigation under s. NR 747.62(4) and prior to the Department's issuance of a response to the responsible party and the consulting firm under s. NR 747.62(5), Wis. Admin. Code.
46. Costs for any work performed more than 5 business days after the Department issues a decision under s. NR 747.62(5), Wis. Admin. Code, that an occurrence is subject to the public bidding process in s. NR 747.68, Wis. Admin. Code, if the work is conducted outside of that process.
47. Costs for any work that is performed after submittal of a written deferral notice under s. NR 747.63(5) (c), Wis. Admin. Code, and prior to a Departmental authorization to proceed with additional activities.
48. Costs for any unauthorized work performed more than 5 business days after the Department issues a directive or notice under s. NR 747.64(1), Wis. Admin. Code, about using the public bidding process in s. NR 747.68, Wis. Admin. Code.
49. Costs for any unauthorized services that are performed by any party other than a firm which submitted a bid under s. NR 747.68(2), Wis. Admin. Code, and with which a contract is executed under s. NR 747.69, Wis. Admin. Code, if they are conducted after the qualified low bid is determined under s. NR 747.68(3), Wis. Admin. Code.
50. Costs that exceed the maximum reimbursement established under s. NR 747.68(7) (d), Wis. Admin. Code,
51. Costs for unauthorized work performed more than 5 business days after the Department issues a disqualification notice under s. NR 747.70(4)(d), Wis. Admin. Code.
52. Costs for any work performed between the due date of any submittal required under this subchapter and the date a past-due submittal is actually submitted.
53. Costs for performance bonds.
54. Costs incurred that exceed caps established by the Department unless written Department approval is received prior to performance of the corresponding work.
55. Interest ineligibility:
 - a. If a claim is submitted more than 120 days after receipt of no further action notification, interest costs incurred 60 days after notification are ineligible.
 - b. If written notification of no further remedial action was received prior to August 31, 2001, & the final claim is submitted more than 120 days after 8-31-01, interest costs incurred after January 2, 2002 are ineligible.

WHAT HAPPENS TO SUBMITTALS THAT INCLUDE INELIGIBLE COSTS?

Claims submitted which include ineligible costs shall be considered incomplete by the Department and may be returned to the claimant for recalculation, revision and resubmittal. The claim shall be rescheduled for review when the ineligible costs have been removed and the claim received by the Department. The Department may disallow interest costs accrued during the non-response period, as specified in s. NR 747.12(3)(a), Wis. Admin. Code.

PENALIZED INELIGIBLES

The following list contains items considered by the Department to be grossly ineligible for reimbursement per s. NR 747.30(3), Wis. Admin. Code and subject to the penalties in s. NR 747.30(3)(b), Wis. Admin. Code:

An award for a claim which includes any costs in s. NR 747.30(3)(b), Wis. Admin. Code, and **which was prepared and submitted by an owner or operator or person owning a home oil tank system** shall be reduced to exclude those costs, and shall then be further reduced by 50 percent of the total amount of those costs.

A consultant who prepares a submitted claim that includes any costs listed in s. NR 747.30(3)(b), Wis. Admin. Code, shall pay to the Department an amount equal to 50 percent of the total amount of those costs, and the award for the claim shall be reduced to exclude those costs.

1. Costs incurred on or before August 1, 1987, for a remediation.
2. Costs for cleanup resulting from spills from petroleum transportation equipment.
3. Costs for investigations or remedial action activities conducted outside the state of Wisconsin.
4. Tank emptying, cleaning, disposing, removing, and closing costs after November 1, 1991.
5. Laboratory rush charges, unless related to an approved emergency action.
6. Air travel.
7. Costs associated with tank-system upgrades or retrofits, and any corresponding compliance with other state or federal rules or laws, and future business plans.
8. Costs for repairing, retrofitting, or replacing a petroleum product storage system or home oil tank system, such as for tank bedding materials or fill for setting tanks, lines, or canopies.
9. Costs associated with capital improvements, reinstallation of electrical power, dispensers, pumps, or other items for retrofits, upgrades, or new construction, unless written Department approval is received prior to performance of the corresponding work.
10. Costs associated with concrete, blacktop replacement, on-site landscaping, or other improvements: except for depreciation costs for third-party actions, or for asphalt or concrete patching associated with well abandonment, or where written Department approval is received prior to performance of the corresponding work.
11. Costs associated with razing of buildings, removal of roads, removal of footings and foundations, or other destruction of structures, or other redevelopment costs, unless written Department approval is received prior to performance of corresponding work.
12. The opportunity cost of money, or interest income or dividend income lost because of a decision to use internal funding for a remediation.
13. Subcontractor markups for work performed after January 31, 1993. This subdivision does not apply to work that is included in a public bidding contract executed under s. NR 747.69(1), Wis. Admin. Code.
14. Costs associated with general program support and office operation which are expected to be included in the hourly staff rates, such as telephone charges, photocopying, faxes, paper, printing, postage, hand tools, personal protective equipment, computer equipment, computer-aided-design, and software charges.
15. Costs reimbursed by insurance companies unless performing in an agent role.
16. Costs associated with fees required by any other state agency, such as fees authorized by s. 292.55, Stats., and fees listed in ch. NR 749, Wis. Admin. Code, except Department closure review fees incurred prior to October 29, 1999.

COMPETITIVE PUBLIC BIDDING

The following is a brief guideline that describes the competitive public bidding process. See s. NR 747, Subchapter VI, Wis. Admin. Code, for specific requirements regarding the public bidding process:

1. Consulting firm required to notify PECFA within 14 days of executing or terminating a contract, per s. NR 747.60, Wis. Admin. Code.
2. If contract is terminated, responsible party (RP) must execute another contract or request an extension within 60 days; if RP does not comply with either requirement, interest is not eligible.
3. Consultant must complete progress reports, in a format prescribed by the Department, to inform the Department of progress & estimated costs of work to complete site investigation per s. NR 747.62, Wis. Admin. Code.
4. Consultant shall file with the Department, a notice of completion of an investigation by the end of the calendar month that follows the firm's development of all data necessary to define either the remediation target or scope of remediation; NR 747.62(4), Wis. Admin. Code.
5. Assignment to public bidding per s. NR 747.623, Wis. Admin. Code. If the Department determines that the cost to complete a site investigation and remedial action will exceed \$60,000 excluding interest, it shall be subject to the public bidding process in s. NR 747.68, Wis. Admin. Code.
6. Whenever the Department notifies an RP & the consultant that an occurrence is subject to public bidding per s. NR 747.68, Wis. Admin. Code. a claim for eligible costs shall be submitted no later than 120 days after the Department's notice. Failure to submit a claim shall result in the ineligibility of interest incurred between the date of the notice and the date a claim is filed. (See s. NR 747.625(1) & 347.625(3)(a), Wis. Admin. Code.)
7. Whenever a consulting firm completes a scope of work designated by the Department, a claim for eligible costs incurred shall be submitted to the Department no later than 120 days after completing that work. Failure to submit a claim shall result in the ineligibility of interest incurred between the date of the completion of the scope of work and the date a claim is filed. (See s. NR 747.625(2) & 347.625(3) (b), Wis. Admin. Code).
8. An occurrence may be exempt from the public bidding process if work performed is part of an emergency action, bidding is not cost effective, or an alternative acceptable bidding process has been used. (See s. NR 747.63, Wis. Admin. Code.)
9. The Department may disqualify from public bidding any individual or firm that has failed to meet any of the requirements in s. NR 747.67, Wis. Admin. Code.
10. After the Department provides notification under s. NR 747.68(7)(b), Wis. Admin. Code, the RP shall execute a written contract no later than 60 days, with one of the firms that submitted a bid under s. NR 747.38(2), Wis. Admin. Code, to perform the work. Failure to execute a contract shall result in the ineligibility of interest from the date of the notification until a contract is executed. (See s. NR 747.69, Wis. Admin. Code)
11. The consulting firm holding the contract required in s. NR 747.69(1)(a), Wis. Admin. Code, shall report to the Department, in a format prescribed by the Department, the progress toward completing the scope of work defined in the bid specifications. (See s. NR 747.7, Wis. Admin. Code)

CLAIM SUBMITTAL MILESTONES

WHEN CAN A CLAIM BE SUBMITTED?

Claims may be submitted after the following milestones are reached, in accordance with s. NR 747.355, Wis. Admin. Code. The milestones are:

1. Completion of a Department-approved emergency action.
 2. After completion of an investigation and receipt of written approval by the Department to submit the investigation claim.
 3. Approval of a closed remedial action or no further action.
 4. Approval of natural attenuation as a final remedial response or at the end of each one-year cycle of the monitoring necessary to show that remediation by natural attenuation will occur.
 5. At the end of each one-year cycle of monitoring required for off-site contamination.
 6. After implementation and 1 year of actual operation, or monitoring, or combination thereof, and every 1 year thereafter.
 7. For sites selected by the Department for progress payments based upon extreme life safety and environmental risk and where the claimant has demonstrated to the Department's satisfaction that he or she does not have the financial means to conduct a remediation without progress payments: the Department shall be the sole determiner of whether progress payments are to be allowed, and an appeal of the decision to the Department is not allowed.
4. Where there is a change in responsible party, if the previous RP files a claim.
 5. When there is a change in consulting firms working on the project.
 6. Where there is a change in lenders for the project.
 7. When the Department directs filing a claim, in an effort to reduce interest costs to the program.

Penalty for not submitting a required claim, s. NR 747.355(2)(e), Wis. Admin. Code. If a claim submittal that is directed under par. s. NR 747.355(2)(d)7, Wis. Admin. Code, is not submitted within 120 days of receiving written notification of that directive, any interest expense beginning on the 121st day and extending until the Department receives the claim, is not eligible.

Priority Processing (See s. NR 747.355(3), Wis. Admin. Code):

- (a) Department-approved Emergency Actions
- (b) Cost-effective remediations:
 1. Tanks for schools, farms & home oil tanks.
 2. Closed remedial action that is achieved at a total cost of \$60,000 or less, excluding interest.
 3. A claim for a petroleum product storage system which is owned by a school district and which is used for storing heating oil for consumptive use on the premises where stored.

Other interim payment: See s. NR 747.355(2)(d), Wis. Admin. Code. The Department shall also make awards at the following points:

1. When a lender terminates a funding relationship with a claimant and requests reimbursement for the funds expended.
2. When a claimant has incurred eligible expenses equal to the occurrence maximum plus the applicable deductible.
3. When the conditions prescribed in s. 292.63(4) (a) 2.b. Stats, occur. The Department shall issue an award if the owner or operator or the person has incurred at least \$50,000 in unreimbursed eligible costs and has not submitted a claim during the previous 12 months. This **INCLUDES** owners or operators who meet the test of self- insurance under SPS 310.82.

PECFA Program Maximum Awards, Total Annual Awards and Deductibles

Type of Tank	Owner	For Sites where the investigation is started before 12/22/2001			For Sites where the investigation is started on or after 12/22/2001		
		Maximum Award Per Occurrence	Total Annual Awards	Deductible ⁽²⁾	Maximum Award Per Occurrence	Total Annual Awards	Deductible ⁽²⁾
Home Heating Oil	All	\$7,500	N/A	25% of eligible costs ⁽³⁾	No Change	No Change	No Change
Underground	Non-Marketer (the system does not store products for resale and handles 10,000 or less gallons per month)	\$500,000	\$1,000,000 ⁽⁴⁾	\$2,500 plus 5% of eligible costs, but not more than \$7,500 per occurrence. For claims where an acceptable RAP is received on or after 11/1/99. The deductible is \$2500 plus 5%. ⁽⁶⁾	\$190,000	\$190,000	\$10,000 per occurrence
Underground	Marketer (the system stores products for resale) or Non-marketer with system that handles more than 10,000 gallons per month	\$1,000,000	\$1,000,000 ⁽⁴⁾	\$2,500 plus 5% of eligible costs, but not more than \$7,500 per occurrence. For claims where an acceptable RAP is received on or after 11/1/99. The deductible is \$2500 plus 5%. ⁽⁶⁾	\$190,000	\$190,000	\$10,000 per occurrence
Above-ground	The system does not store products for resale and handles 10,000 or less gallons per month	\$500,000	\$1,000,000 ⁽⁴⁾	\$15,000 plus 2% of eligible costs over \$200,000 ⁽⁵⁾	\$190,000	\$190,000	\$10,000 per occurrence
Above-ground	The system stores products for resale or handles more than 10,000 gallons per month	\$1,000,000	\$1,000,000 ⁽⁴⁾	\$15,000 plus 2% of eligible costs over \$200,000 ⁽⁵⁾	\$190,000	\$190,000	\$10,000 per occurrence
Farm	Underground and aboveground vehicle fuel systems of 1,100 gallons or less storing products not for resale	\$100,000	\$100,000	\$2,500 plus 5% of eligible costs, but not more than \$7,500 per occurrence	No Change	No Change	No Change
Public School District and Technical College District	Heating oil for consumptive use on premises	\$190,000	\$190,000	25% of eligible costs	No Change	No Change	No Change

- (1) Maximum award in effect before December 22, 2001, applies to all eligible costs for investigations and remedial activities started before December 22, 2001.
- (2) The DNR may waive the deductible if it determines that the owner or operator is unable to pay. If the DNR waives the deductible DNR shall file a lien against the property until the lien is paid.
- (3) Nonprofit housing organizations are exempt from paying the deductible for tanks owned by the organization if they assist low-income persons with housing related problems.
- (4) There is a \$2,000,000 maximum annual award if the claimant owns or operates more than 100 petroleum product storage tank systems.
- (5) For a "terminal" (a petroleum product storage system that is connected to a pipeline facility), the deductible is \$15,000 plus 5% of the amount by which eligible cost exceed \$200,000. For a terminal where the RAP is received after 11/1/99 the deductible is \$15,000 plus 10% of the amount by which eligible costs exceed \$200,000.
- (6) The change in deductible first applies to a person who submits a remedial action plan that is acceptable to DNR on November 1, 1999.

PECFA Coverage for New and Upgraded Systems

TANK SYSTEM TYPE:	SITE CONDITION:	OLD CONTAMINATION COVERED?	INSURANCE REQUIRED FOR:	INSURANCE WHEN?
<u>NEW UNDERGROUND SYSTEM</u>	<i>CLEAN OR CONTAMINATED</i>	YES, IF CONTAMINATION CONFIRMED BEFORE 1/1/96	NEW RELEASES FROM SYSTEM AFTER 1/1/96	<i>REQUIRED 1/1/96</i>
<u>UPGRADED UNDERGROUND SYSTEM</u> (see note 1)	CONTAMINATED AT TIME OF UPGRADE	YES, IF CONTAMINATION CONFIRMED BEFORE UPGRADE IS COMPLETED OR BEFORE 1/1/96	NEW RELEASES FROM SYSTEM WHEN CONFIRMED AFTER BOTH UPGRADE AND 1/1/96	REQUIRED ON 1/1/96, IF UPGRADED BEFORE THAT DATE, OR AFTER UPGRADE IF WORK IS COMPLETED AFTER 1/1/96 (see note 2)
<u>UPGRADED UNDERGROUND SYSTEM</u> (See note 1)	CLEAN AT TIME OF UPGRADE	NOT APPLICABLE	NEW RELEASES FROM SYSTEM WHEN CONFIRMED AFTER BOTH UPGRADE AND 1/1/96	REQUIRED ON 1/1/96, IF UPGRADED BEFORE THAT DATE, OR AFTER UPGRADE IF WORK IS COMPLETED AFTER 1/1/96 (see note 2)
<u>NEW ABOVEGROUND SYSTEM</u>	CLEAN OR CONTAMINATED	YES, IF CONTAMINATION CONFIRMED BEFORE 12/23/2001	INSURANCE IS NOT MANDATED, BUT NEW RELEASES FROM SYSTEM WHEN CONFIRMED AFTER 12/22/2001 WILL BE THE RESPONSIBILITY OF THE OWNER	
<u>UPGRADED ABOVEGROUND SYSTEM</u>	CLEAN AT TIME OF UPGRADE	NOT APPLICABLE	INSURANCE IS NOT MANDATED BUT NEW RELEASES FROM SYSTEM WHEN CONFIRMED AFTER 12/22/2001 WILL BE THE RESPONSIBILITY OF THE OWNER	
<u>UPGRADED ABOVEGROUND SYSTEM</u>	CONTAMINATED AT TIME OF UPGRADE	YES, IF CONTAMINATION CONFIRMED BEFORE UPGRADE IS COMPLETED	INSURANCE IS NOT MANDATED BUT NEW RELEASES FROM SYSTEM WHEN CONFIRMED AFTER 12/22/2001 WILL BE THE RESPONSIBILITY OF THE OWNER	

NOTE 1: An upgraded system, by definition is a system that has all of the following: Corrosion protected tank(s), Corrosion protected line(s), Spill containment devices, and Overfill devices.

NOTE 2: If a system is upgraded after 12/31/93, and the owner or operator applies for private insurance within 30 days, a 90 day tail on PECFA coverage is provided for the upgraded system(s).



Environmental Contamination- The Basics

RR-674

September 2014

In an industrialized society like ours, a wide variety of contaminants are discharged to the environment every day from residential, commercial and industrial sources. Many of these discharges may not pose a threat to the public and the environment. However, a significant discharge of a contaminant or hazardous substance has the potential to impact human health or the environment. When a significant discharge occurs, the Wisconsin Department of Natural Resources (DNR), particularly the Remediation and Redevelopment Program (RR Program), provides oversight and assistance in making sure the public and the environment are protected.

A Hazardous Substance, as defined in s. 292.01, Wis. Stats., means any substance or combination of substances, including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in the mortality or an increase in serious irreversible or incapacitating reversible illness, or which may pose a substantial present or potential hazard to human health or the environment because of its quality, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances that are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the DNR.

What is the RR Program?

The RR Program becomes involved when a discharge of a hazardous or potentially hazardous substance occurs to the lands, waters or air in the State of Wisconsin. When a discharge is reported, the RR Program evaluates the severity of the discharge and, if necessary, ensures that the proper cleanup procedures are followed to minimize any threat to human health or the environment.

The RR Program also provides technical and regulatory assistance to public and private parties looking for information, investigating and cleaning up properties with real or perceived contamination. In certain circumstances, the DNR is required to charge a fee for technical assistance. Attention is provided to abandoned or underutilized properties, known as *brownfields*, in an effort to return these properties back to productive use. This effort also promotes the revitalization of blighted areas, as well as the reuse or redevelopment of properties already located in urban areas in order to preserve undeveloped land, also referred to as *greenfields*.

Why should I be concerned?

Not only is it a legal requirement to take necessary steps to address contamination, but contamination can have an adverse impact on human health and the environment. It can take many forms and can occur anywhere. In Wisconsin, two major concerns for environmental and public health impacts from contamination are the degradation of groundwater and vapor intrusion of chemicals. Soil, air and surface water contamination are also areas of concern. When a discharge to the environment has been identified, the DNR is mandated by state law to require response actions that are protective of human health, safety and welfare, and to restore the environment to the extent practicable.

An individual or local government may assume liability for environmental cleanups by acquiring a contaminated property, although there are exemptions for local governments that acquire properties by



Wisconsin Department of Natural Resources
PO Box 7921, Madison, WI 53707
dnr.wi.gov/topic/Brownfields



certain means. The Wisconsin Supreme Court has determined that if you own a contaminated property where contaminants are continuing to migrate, then you may be responsible for cleaning it up, even if you did not cause the contamination, because you are interpreted as having “possession and control” of the discharge.

Stressed vegetation, stained soils, odors, a sheen on the surface of water or a strange taste to water are often obvious indicators of a potential discharge or environmental problem. In addition to these more obvious factors, historical property usage such as plating operations, dry cleaners or engine repairs could also be indicative of other hidden environmental problems. For example, a serious environmental problem that is hard to detect is leakage from an underground storage tank (UST). Unless good records are kept regarding product usage, underground leaks are hard to identify.



What is a discharge?

A discharge to the environment is defined in s. 292.01, Wis. Stats., and means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping. To obtain more information on what constitutes a hazardous substance discharge, refer to the Regulations listed in the “For more information” section on page 3.

How is a discharge discovered?

Discharges to the environment are discovered in several ways. The most common methods of discovery are visual observation while the discharge is taking place (i.e. a leaking gas pump) or historical discharges discovered during building expansion or demolition, road construction activities, utility repairs or tank removal or upgrade activities.

Discharges can also be discovered at the time of property transfer if a potential buyer requests a Phase I or Phase II Environmental Site Assessment (ESA). A Phase I ESA consists of a historical search and identifies current and past property usage and areas of potential environmental concern. A Phase II ESA consists of collecting soil and groundwater samples at the property from those areas identified in the Phase I ESA with suspected or known contamination (i.e. areas of drum storage, stressed vegetation, stained soils, above and below ground storage tanks, etc.).

When do I need to report a discharge?

According to the “Spill Law,” s. 292.11, Wis. Stats., persons who cause, possess or control the discharge of a hazardous substance that adversely impacts, or threatens to adversely impact public health, welfare or the environment must immediately report the discharge to the DNR. Generally, this responsibility falls upon the current property owner. **Emergency spills must be immediately reported by calling the DNR 24-hour toll free Spill Hotline at 1-800-943-0003.** Non-emergency discharges discovered via a tank removal or environmental testing can be reported by completing and submitting the *Notification for Hazardous Substance Discharge* form (4400-225) or visiting your DNR regional headquarters in person during normal business hours (please see page 4 for contact information). If the testing was done as part of a Phase II ESA, report the discharge immediately upon discovery. Do not wait until a Phase II ESA report is completed to report a spill.

What happens next?

Once the DNR has been notified that contamination exists at a site, the DNR will inform the responsible party by telephone or mail if any further actions are needed. The range of actions is defined in the NR 700 rule series (referenced in the "For more information" section). The responsible party is then, in most cases, issued a responsible party letter that outlines legal responsibilities for addressing contamination. The letter will ask the responsible party to hire a qualified environmental consultant. The consultant will submit a work plan that details how they will investigate the degree and extent of the contamination (if necessary, across property boundaries) by collecting soil or groundwater samples.

After determining the degree and extent of the contamination, the environmental consultant will prepare a site investigation report that summarizes the results of their findings. Typically, the consultant will also provide a cleanup strategy in this report. Cleanup measures are then undertaken by the consultant on behalf of the responsible party to restore the environment.

Once the site appears to meet all regulatory requirements, the consultant will prepare a closure request for DNR submittal. Once the appropriate fee has been submitted, the DNR reviews the closure request and determines whether or not the site has been cleaned up to acceptable levels. If closure is appropriate, the DNR or any other state agency with jurisdiction over the case will issue a closure letter indicating that the responsible party has complied with the conditions of closure.

What is a "Responsible Party?"

A responsible party is an individual or public or private entity who causes a discharge of a hazardous substance or who possesses or controls a hazardous substance which is discharged. The responsible party is legally required under Wisconsin's Spill Law to notify the DNR of the discharge and to investigate and remediate the environment. There may be more than one responsible party at a site.

What is the role of an environmental consultant?

When the DNR informs you that you need to address contamination, you will be requested to hire the services of a professional environmental consultant. The role of the environmental consultant is to determine the most appropriate and cost effective way to investigate and remediate the contaminated site. The consultant should act as a representative for the responsible party on technical matters and should have a thorough understanding of regulatory requirements. It is important to feel comfortable with your environmental consultant, as they will be working closely with you and the DNR. Qualifications for environmental consultants are specified in ch. NR 712, Wis. Admin. Code. More information can be found in *Selecting an Environmental Consultant* (RR-502) at dnr.wi.gov/files/PDF/pubs/rr/RR502.pdf.

For more information...

The RR Program web site has many features to assist you. For example, you can locate DNR staff contacts, access DNR publications, obtain environmental information on specific properties or find information on financial incentives. The web site can be found at dnr.wi.gov/topic/Brownfields.

The following are just a few of the DNR resources can be found on the RR Program web site:

Information on Contaminated Sites:

- *BRRTS on the Web*, the RR Program's list of open (still investigating) and closed (cleanup completed) contaminated sites in Wisconsin. dnr.wi.gov/topic/Brownfields/botw.html
- *RR Sites Map*, the RR Program's web-based mapping system for contaminated and cleaned up sites dnr.wi.gov/topic/Brownfields/rasm.html



Selecting an Environmental Consultant

PUB-RR- 502

September 2012

Why do I need a consultant?

If the Wisconsin Department of Natural Resources (DNR) has notified you that you are responsible for investigation and cleanup of soil, groundwater or other contaminated media, you need professional assistance to get the work done. Department rules establish qualifications for environmental consultants who perform this kind of work.

Site investigations and cleanup procedures can be complex and costly. A qualified environmental consultant can clean up your property in accordance with state and federal regulations, and help maintain or increase the value of your land. A good consultant will also understand your business needs, negotiate your cleanup schedule with DNR Remediation and Redevelopment Program (RR) staff and give you regular updates in understandable language.

A competent, experienced consultant can:

- save time, money, and complete the project right the first time;
- help establish a cooperative relationship with regulatory agencies; and
- minimize down time for your business.

Further, DNR rules may require that only certain environmental work at a site can be conducted by persons meeting certain qualifications.

How can I find a qualified consultant?

The DNR cannot endorse a specific environmental consultant or firm. However, the agency maintains a list of consultants who have identified themselves as doing environmental work in Wisconsin (please see page 3). Other means of finding or selecting a consultant include calling other businesses you know that have done environmental cleanups, contacting professional associations in which you are a member, or searching the yellow pages under "environmental services" or "environmental engineers."

What should I tell a consultant?

Tell your potential consultant as much as you can about your property, including:

- the site history, including materials and products used;
- materials and wastes that have been stored, recycled or disposed of;
- potential areas of contamination;
- if you are in a state reimbursement program (e.g. PECFA or DERF);
- the source of your water supply; and
- what DNR has asked you to do.



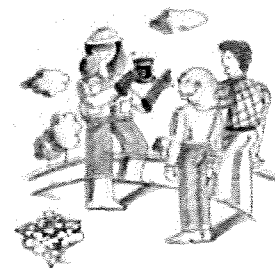
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dnr.wi.gov/topic/Brownfields



What should I ask a consultant?

Ask your potential consultant any questions you have, including:

- how many years they have been doing environmental work in Wisconsin;
- how many similar investigations and cleanups they have completed in Wisconsin or elsewhere (cleaning up a leaking petroleum tank can be very different from cleaning up PCBs);
- what administrative rules they expect to follow (if a potential consultant is not familiar with the NR 700 rule series, Wis. Admin. Codes, governing environmental cleanups or NR 140, Wis. Admin. Code, governing groundwater standards, it is an indication that they are not familiar with Wisconsin regulations);
- whether their staff meet the professional qualifications required in chapter NR 712, Wis. Admin. Code (e.g. whether any of their staff are registered as professional engineers or hydrogeologists with the Wisconsin Department of Safety and Professional Services);
- what level of insurance they carry for errors, omissions, and liability;
- whether they will help prepare requests for reimbursement if your cleanup is eligible; and
- whether they have references you can check.



Don't hesitate to ask a consultant that you may hire how and why their approach to your environmental cleanup would differ from other consultants you have talked with.

What questions should I ask when checking a consultant's references?

When checking the references of a consultant you may hire, you may want to ask the following questions:

- Was your project similar to mine in size and type of contamination?
- Did the consultant stay on schedule, or provide reasonable explanations for delays?
- Did the consultant keep you informed of the project's status, new developments and options for cleanup?
- If problems arose, were they resolved to your satisfaction?
- Did the consultant seem to work effectively with DNR (and local officials if relevant)?
- Were your bills clear and timely?
- Did the consultant advise you in advance of billing about all significant changes to the original cost estimate?

What should I expect for the cost of a cleanup?

Costs for environmental cleanup vary widely based on the type and extent of contamination and the regulatory requirements. Ask your consultant what to expect for your particular situation, and to advise you immediately of any changes.

You may also want to ask these questions:

- Will subcontractors submit competitive bids?
- What hourly rates and overhead apply to professional staff?
- What are the per diem charges for staff doing field work?
- How often will you be billed?
- How will bills be itemized?



Watch for cost estimates that are significantly higher or lower than those received from other consultants. Ask those consultants how they can get the job done more economically, or whether they think proposals from other consultants are incomplete. Also watch for consultants who expect to get the work done much faster than others. There may be good reasons for faster cleanups, but you need to understand those reasons. Sometimes the least disruptive and least costly cleanups, such as natural attenuation of contamination, take the longest.

Also, make sure you understand the terms of a contract before signing, including who will do what, and when. Be sure it includes language that allows you to terminate the contract if you are not satisfied with the consultant's work.

Is there any financial help?

Sometimes. Wisconsin offers certain loans, grants and reimbursement programs for various types of cleanups. Ask your consultant whether you may be eligible for financial aid, and whether they have experience with these programs. Please see *The Financial Resource Guide for Cleanup and Redevelopment* (RR-539) and the associated *August 2012 Update* located at <http://dnr.wi.gov/topic/Brownfields/Financial.html>

What else should I know?

Wisconsin has numerous options to complete an environmental cleanup while enhancing the redevelopment and resale potential of your property. DNR offers liability clarifications and limitations on future environmental liability. Please visit the Remediation and Redevelopment (RR) Program website at dnr.wi.gov/topic/Brownfields for more information.

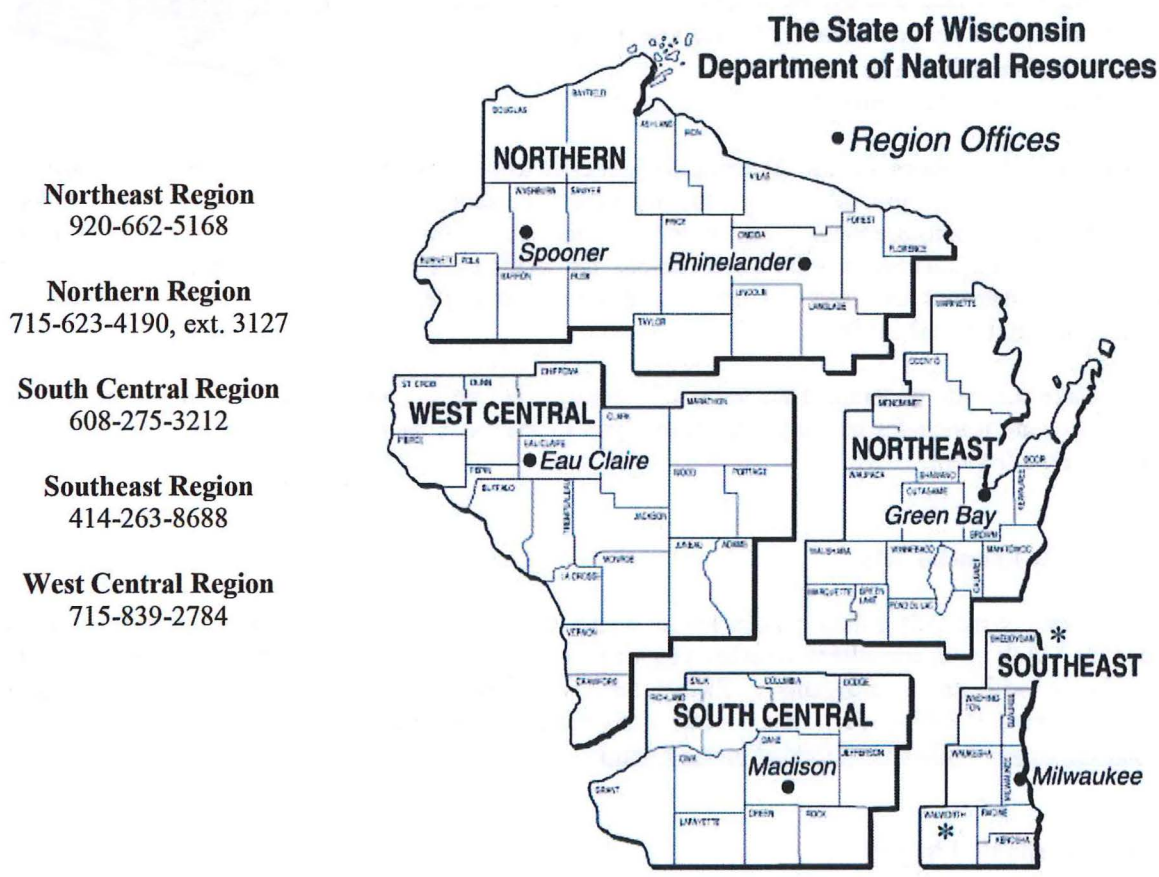
Where can I get more information about cleanups and redevelopment?

Visit the RR Program web site at dnr.wi.gov/topic/Brownfields. The RR Program has web pages with information on cleanup, financial assistance, liability tools and many other topics.

You may also want to review other RR Program publications. All RR publications may be located on the "Publications" page of our web site. Here are a few that may be of interest:

- *Environmental Services Contractors List* (publication RR-024);
- *Environmental Contamination Basics* (publication RR-674); and
- *Brownfield Basics – Tools for Cleaning Up and Redeveloping Contaminated Properties* (publication RR-663).

For information about your particular cleanup, please contact the person who signed the letter you received from DNR. You may also contact RR Program staff at a DNR regional office listed below.



Northeast Region
920-662-5168

Northern Region
715-623-4190, ext. 3127

South Central Region
608-275-3212

Southeast Region
414-263-8688

West Central Region
715-839-2784

*Note: For remediation assistance in Sheboygan County, contact our Northeast Regional Office. For Walworth County, contact our South Central Office.

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

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 Equal Opportunity Office, Department of Interior, Washington, D.C. 20240

This publication is available in alternative format upon request. Please call 608-267-3543 for more information.