



April 17, 2019

Mr. Chris Saari
Nat Res Regional Program Manager
Wisconsin Department of Natural Resources
2501 Golf Course Road
Ashland WI 54806-3505

Subject:
Request for Technical Assistance for Liability Clarification
Investigation and Remediation of Sediments in Howards Bay, Superior, WI
BRRTS Case #02-16-120591

Dear Mr. Saari:

On behalf of and in conjunction with Fraser Shipyards, Inc. (Fraser), Superior, Wisconsin, Arcadis U.S., Inc. (Arcadis) is submitting this request for technical assistance for liability clarification on the investigation and remediation of contaminated sediments in Howards Bay, Superior, Wisconsin, under Wis. Stats. § 292.55.

BACKGROUND

Fraser, the City of Superior, Wisconsin, and the State of Wisconsin, Department of Natural Resources (WDNR) (collectively the Non-Federal Sponsors), submitted a project proposal under the Great Lakes Legacy Act (GLLA), 33 U.S.C. § 1268(c)(7) et seq., seeking matching funds for a project to dredge and properly dispose of approximately 97,000 cubic yards of contaminated sediments in Howards Bay. In May 2014, the United States Environmental Protection Agency (EPA), represented by the Great Lakes National Program Office (GLNPO), and the Non-Federal Sponsors negotiated the terms of a Project Agreement defining cost sharing responsibilities and other obligations of the Non-Federal Sponsors applicable to the Project. The Project Agreement was amended in March 2016 and February 2018, and most recently in March 2019 for a remedial action.

In March 2019, the Non-Federal Sponsors also signed a Funding Contribution Agreement for the Project. Within that agreement are requirements for Fraser's submittal of this liability clarification request (4.1) and WDNR's review of the request (2.8).

The intent of the Non-Federal Sponsors in participating in this Project is to remediate the sediment in the Project Area associated with BRRTS Case #02-16-120591. The Parties intend the remedial action of this Project to directly address the liabilities of Fraser and the City and that no additional remedial investigation or remedial action by the Parties will be necessary upon completion of all of the tasks outlined in the Project Agreement, in addition to preparation of a completion documentation report by Fraser separate from and following the completion of construction of the remedy.

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GENERAL LIABILITY CLARIFICATION REQUEST

Arcadis, on behalf of and in conjunction with Fraser, requests that WDNR provide concurrence that if the Howards Bay project area is remediated consistent with the EPA project agreement and Fraser prepares the required, detailed closure package as under 4.10 of the Funding Contribution Agreement, the regulatory case involving Fraser, specifically BRRTS Case #02-16-120591, will be closed.

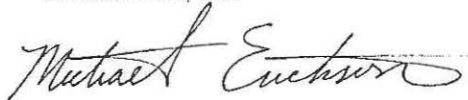
In addition, we have the following specific questions related to site closure that we request be addressed by WDNR for clarification:

- Can Fraser assume its current liability is defined by the existing knowledge of contamination in Howards Bay, and that the GLLA project, as designed, will be sufficient to allow Fraser to submit a closure package for WDNR review, without any additional environmental investigation or analysis, other than accurately reporting the remediation work completed
- Will WDNR rely on the existing sampling results available at the time the design was prepared together with the sampling specifically defined in the design to be completed as part of the project as the entirety of the sampling to be conducted prior to site closure?
- Will WDNR review and confirm appropriateness of a closure package outline and description of proposed content as part of providing liability clarification, prior to preparation of the package by Fraser?
- Fraser would like to receive closure on the entire portion of Howards Bay west of the John A. Blantik Bridge. Is this portion of Howards Bay consistent with what Fraser expects to receive closure for at the completion of this project and how would the legal bounds of that area be established?
- How would liability of third parties for other sources of historical contamination to portions of Howards Bay addressed by the GLLA project be affected by Fraser's application for case closure?

Fraser and Arcadis appreciate WDNR's assistance in this matter and look forward to a successful completion of the GLLA Howards Bay remediation project and consequent closure of Fraser's liability. Please feel free to contact me if you have any questions related to our request for clarification.

Sincerely,

Arcadis U.S., Inc.



Michael Erickson
Senior Vice President
Arcadis

Fraser Shipyards



James Farkas
President and COO
Fraser Industries

Notice: Use this form to request a **written response (on agency letterhead)** from the Department of Natural Resources (DNR) regarding technical assistance, a post-closure change to a site, a specialized agreement or liability clarification for Property with known or suspected environmental contamination. A fee will be required as is authorized by s. 292.55, Wis. Stats., and NR 749, Wis. Adm. Code., unless noted in the instructions below. Personal information collected will be used for administrative purposes and may be provided to requesters to the extent required by Wisconsin's Open Records law [ss. 19.31 - 19.39, Wis. Stats.].

Definitions

"Property" refers to the subject Property that is perceived to have been or has been impacted by the discharge of hazardous substances.

"Liability Clarification" refers to a written determination by the Department provided in response to a request made on this form. The response clarifies whether a person is or may become liable for the environmental contamination of a Property, as provided in s. 292.55, Wis. Stats.

"Technical Assistance" refers to the Department's assistance or comments on the planning and implementation of an environmental investigation or environmental cleanup on a Property in response to a request made on this form as provided in s. 292.55, Wis. Stats.

"Post-closure modification" refers to changes to Property boundaries and/or continuing obligations for Properties or sites that received closure letters for which continuing obligations have been applied or where contamination remains. Many, but not all, of these sites are included on the GIS Registry layer of RR Sites Map to provide public notice of residual contamination and continuing obligations.

Select the Correct Form

This form should be used to request the following from the DNR:

- Technical Assistance
- Liability Clarification
- Post-Closure Modifications
- Specialized Agreements (tax cancellation, negotiated agreements, etc.)

Do not use this form if one of the following applies:

- Request for an **off-site liability exemption or clarification** for Property that has been or is perceived to be contaminated by one or more hazardous substances that originated on another Property containing the source of the contamination. Use DNR's Off-Site Liability Exemption and Liability Clarification Application Form 4400-201.
- Submittal of an Environmental Assessment for the **Lender Liability Exemption**, s 292.21, Wis. Stats., **if no response or review by DNR is requested**. Use the Lender Liability Exemption Environmental Assessment Tracking Form 4400-196.
- Request for an **exemption to develop on a historic fill site** or licensed landfill. Use DNR's Form 4400-226 or 4400-226A.
- **Request for closure** for Property where the investigation and cleanup actions are completed. Use DNR's Case Closure - GIS Registry Form 4400-202.

All forms, publications and additional information are available on the internet at: dnr.wi.gov/topic/Brownfields/Pubs.html.

Instructions

1. Complete sections 1, 2, 6 and 7 for all requests. Be sure to provide adequate and complete information.
2. Select the type of assistance requested: Section 3 for technical assistance or post-closure modifications, Section 4 for a written determination or clarification of environmental liabilities; or Section 5 for a specialized agreement.
3. Include the fee payment that is listed in Section 3, 4, or 5, unless you are a "Voluntary Party" enrolled in the Voluntary Party Liability Exemption Program **and** the questions in Section 2 direct otherwise. Information on to whom and where to send the fee is found in Section 8 of this form.
4. Send the completed request, supporting materials and the fee to the appropriate DNR regional office where the Property is located. See the map on the last page of this form. A paper copy of the signed form and all reports and supporting materials shall be sent with an electronic copy of the form and supporting materials on a compact disk. For electronic document submittal requirements see: <http://dnr.wi.gov/files/PDF/pubs/rr/RR690.pdf>

The time required for DNR's determination varies depending on the complexity of the site, and the clarity and completeness of the request and supporting documentation.

Technical Assistance, Environmental Liability Clarification or Post-Closure Modification Request

Form 4400-237 (R 12/18)

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Section 1. Contact and Recipient Information

Requester Information

This is the person requesting technical assistance or a post-closure modification review, that his or her liability be clarified or a specialized agreement and is identified as the requester in Section 7. DNR will address its response letter to this person.

Last Name Smith	First Sean	MI R	Organization/ Business Name Fraser Shipyards, Inc.
Mailing Address 1 Clough Ave.		City Superior	State ZIP Code WI 54880
Phone # (include area code) (715) 394-7787	Fax # (include area code)	Email ssmith@noengwks.com	

The requester listed above: (select all that apply)

- Is currently the owner
- Is currently considering selling the Property
- Is renting or leasing the Property
- Is currently considering acquiring the Property
- Is a lender with a mortgagee interest in the Property
- Other. Explain the status of the Property with respect to the applicant:

Contact Information (to be contacted with questions about this request) Select if same as requester

Contact Last Name Smith	First Sean	MI R	Organization/ Business Name Fraser Shipyards, Inc.
Mailing Address 1 Clough Ave.		City Superior	State ZIP Code WI 54880
Phone # (include area code) (715) 394-7787	Fax # (include area code)	Email ssmith@noengwks.com	

Section 2. Property Information

Property Name Fraser Shipyards-Howards Bay		FID No. (if known)	
BRRTS No. (if known) 02-16-120591		Parcel Identification Number	
Street Address 1 Clough Ave.		City Superior	State ZIP Code WI 54880
County Douglas	Municipality where the Property is located <input checked="" type="radio"/> City <input type="radio"/> Town <input type="radio"/> Village of Superior	Property is composed of: <input type="radio"/> Single tax parcel <input checked="" type="radio"/> Multiple tax parcels	Property Size Acres

1. Is a response needed by a specific date? (e.g., Property closing date) Note: Most requests are completed within 60 days. Please plan accordingly.

- No Yes

Date requested by: _____

Reason:

**Technical Assistance, Environmental Liability
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2. Is the "Requester" enrolled as a Voluntary Party in the Voluntary Party Liability Exemption (VPLE) program?

- No. **Include the fee that is required for your request in Section 3, 4 or 5.**
 Yes. **Do not include a separate fee.** This request will be billed separately through the VPLE Program.

Fill out the information in Section 3, 4 or 5 which corresponds with the type of request:

**Section 3. Technical Assistance or Post-Closure Modifications;
Section 4. Liability Clarification; or Section 5. Specialized Agreement.**

Section 3. Request for Technical Assistance or Post-Closure Modification

Select the type of technical assistance requested: [Numbers in brackets are for WI DNR Use]

- No Further Action Letter (NFA) (Immediate Actions) - NR 708.09, [183] - **Include a fee of \$350.** Use for a written response to an immediate action after a discharge of a hazardous substance occurs. Generally, these are for a one-time spill event.
- Review of Site Investigation Work Plan - NR 716.09, [135] - **Include a fee of \$700.**
- Review of Site Investigation Report - NR 716.15, [137] - **Include a fee of \$1050.**
- Approval of a Site-Specific Soil Cleanup Standard - NR 720.10 or 12, [67] - **Include a fee of \$1050.**
- Review of a Remedial Action Options Report - NR 722.13, [143] - **Include a fee of \$1050.**
- Review of a Remedial Action Design Report - NR 724.09, [148] - **Include a fee of \$1050.**
- Review of a Remedial Action Documentation Report - NR 724.15, [152] - **Include a fee of \$350**
- Review of a Long-term Monitoring Plan - NR 724.17, [25] - **Include a fee of \$425.**
- Review of an Operation and Maintenance Plan - NR 724.13, [192] - **Include a fee of \$425.**

Other Technical Assistance - s. 292.55, Wis. Stats. [97] (For request to build on an abandoned landfill use Form 4400-226)

- Schedule a Technical Assistance Meeting - **Include a fee of \$700.**
- Hazardous Waste Determination - **Include a fee of \$700.**
- Other Technical Assistance - **Include a fee of \$700.** Explain your request in an attachment.

Post-Closure Modifications - NR 727, [181]

- Post-Closure Modifications: Modification to Property boundaries and/or continuing obligations of a closed site or Property; sites may be on the GIS Registry. This also includes removal of a site or Property from the GIS Registry. **Include a fee of \$1050, and:**
- Include a fee of \$300 for sites with residual soil contamination; and
- Include a fee of \$350 for sites with residual groundwater contamination, monitoring wells or for vapor intrusion continuing obligations.

Attach a description of the changes you are proposing, and documentation as to why the changes are needed (if the change to a Property, site or continuing obligation will result in revised maps, maintenance plans or photographs, those documents may be submitted later in the approval process, on a case-by-case basis).

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Skip Sections 4 and 5 if the technical assistance you are requesting is listed above and complete Sections 6 and 7 of this form.

Section 4. Request for Liability Clarification

Select the type of liability clarification requested. Use the available space given or attach information, explanations, or specific questions that you need answered in DNR's reply. Complete Sections 6 and 7 of this form. **[Numbers in brackets are for DNR Use]**

"Lender" liability exemption clarification - s. 292.21, Wis. Stats. [686]

❖ **Include a fee of \$700.**

Provide the following documentation:

- (1) ownership status of the real Property, and/or the personal Property and fixtures;
- (2) an environmental assessment, in accordance with s. 292.21, Wis. Stats.;
- (3) the date the environmental assessment was conducted by the lender;
- (4) the date of the Property acquisition; for foreclosure actions, include a copy of the signed and dated court order confirming the sheriff's sale.
- (5) documentation showing how the Property was acquired and the steps followed under the appropriate state statutes.
- (6) a copy of the Property deed with the correct legal description; and,
- (7) the Lender Liability Exemption Environmental Assessment Tracking Form (Form 4400-196).
- (8) If no sampling was done, please provide reasoning as to why it was **not** conducted. Include this either in the accompanying environmental assessment or as an attachment to this form, and cite language in s. 292.21(1)(c)2., h.-i., Wis. Stats.:
 - h. The collection and analysis of representative samples of soil or other materials in the ground that are suspected of being contaminated based on observations made during a visual inspection of the real Property or based on aerial photographs, or other information available to the lender, including stained or discolored soil or other materials in the ground and including soil or materials in the ground in areas with dead or distressed vegetation. The collection and analysis shall identify contaminants in the soil or other materials in the ground and shall quantify concentrations.
 - i. The collection and analysis of representative samples of unknown wastes or potentially hazardous substances found on the real Property and the determination of concentrations of hazardous waste and hazardous substances found in tanks, drums or other containers or in piles or lagoons on the real Property.

"Representative" liability exemption clarification (e.g. trustees, receivers, etc.) - s. 292.21, Wis. Stats. [686]

❖ **Include a fee of \$700.**

Provide the following documentation:

- (1) ownership status of the Property;
- (2) the date of Property acquisition by the representative;
- (3) the means by which the Property was acquired;
- (4) documentation that the representative has no beneficial interest in any entity that owns, possesses, or controls the Property;
- (5) documentation that the representative has not caused any discharge of a hazardous substance on the Property; and
- (6) a copy of the Property deed with the correct legal description.

Clarification of local governmental unit (LGU) liability exemption at sites with: (select all that apply)

- hazardous substances spills - s. 292.11(9)(e), Wis. Stats. [649];
- Perceived environmental contamination - [649];
- hazardous waste - s. 292.24 (2), Wis. Stats. [649]; and/or
- solid waste - s. 292.23 (2), Wis. Stats. [649].

❖ **Include a fee of \$700, a summary of the environmental liability clarification being requested, and the following:**

- (1) clear supporting documentation showing the acquisition method used, and the steps followed under the appropriate state statute(s).
- (2) current and proposed ownership status of the Property;
- (3) date and means by which the Property was acquired by the LGU, where applicable;
- (4) a map and the ¼, ¼ section location of the Property;
- (5) summary of current uses of the Property;
- (6) intended or potential use(s) of the Property;
- (7) descriptions of other investigations that have taken place on the Property; and
- (8) (for solid waste clarifications) a summary of the license history of the facility.

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Section 4. Request for Liability Clarification (cont.)

Lease liability clarification - s. 292.55, Wis. Stats. [646]

❖ **Include a fee of \$700 for a single Property, or \$1400 for multiple Properties and the information listed below:**

- (1) a copy of the proposed lease;
- (2) the name of the current owner of the Property and the person who will lease the Property;
- (3) a description of the lease holder's association with any persons who have possession, control, or caused a discharge of a hazardous substance on the Property;
- (4) map(s) showing the Property location and any suspected or known sources of contamination detected on the Property;
- (5) a description of the intended use of the Property by the lease holder, with reference to the maps to indicate which areas will be used. Explain how the use will not interfere with any future investigation or cleanup at the Property; and
- (6) all reports or investigations (e.g. Phase I and Phase II Environmental Assessments and/or Site Investigation Reports conducted under s. NR 716, Wis. Adm. Code) that identify areas of the Property where a discharge has occurred.

General or other environmental liability clarification - s. 292.55, Wis. Stats. [682] - Explain your request below.

❖ **Include a fee of \$700 and an adequate summary of relevant environmental work to date.**

No Action Required (NAR) - NR 716.05, [682]

❖ **Include a fee of \$700.**

Use where an environmental discharge has or has not occurred, and applicant wants a DNR determination that no further assessment or clean-up work is required. Usually this is requested after a Phase I and Phase II environmental assessment has been conducted; the assessment reports should be submitted with this form. This is not a closure letter.

Clarify the liability associated with a "closed" Property - s. 292.55, Wis. Stats. [682]

❖ **Include a fee of \$700.**

- Include a copy of any closure documents if a state agency other than DNR approved the closure.

Use this space or attach additional sheets to provide necessary information, explanations or specific questions to be answered by the DNR.

- General or other liability clarification -

Review of the attached Liability Clarification Letter in regards to the proposed environmental remediation dredging of Howard's Bay.

Section 5. Request for a Specialized Agreement

Select the type of agreement needed. Include the appropriate draft agreements and supporting materials. Complete Sections 6 and 7 of this form. More information and model draft agreements are available at: dnr.wi.gov/topic/Brownfields/Igu.html#tabx4.

Tax cancellation agreement - s. 75.105(2)(d), Wis. Stats. [654]

❖ **Include a fee of \$700, and the information listed below:**

- (1) Phase I and II Environmental Site Assessment Reports,
- (2) a copy of the Property deed with the correct legal description.

Agreement for assignment of tax foreclosure judgement - s.75.106, Wis. Stats. [666]

❖ **Include a fee of \$700, and the information listed below:**

- (1) Phase I and II Environmental Site Assessment Reports,
- (2) a copy of the Property deed with the correct legal description.

Negotiated agreement - Enforceable contract for non-emergency remediation - s. 292.11(7)(d) and (e), Wis. Stats. [630]

❖ **Include a fee of \$1400, and the information listed below:**

- (1) a draft schedule for remediation; and,
- (2) the name, mailing address, phone and email for each party to the agreement.

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Section 6. Other Information Submitted

Identify all materials that are included with this request.

Send both a paper copy of the signed form and all reports and supporting materials, and an electronic copy of the form and all reports, including Environmental Site Assessment Reports, and supporting materials on a compact disk.

Include one copy of any document from any state agency files that you want the Department to review as part of this request. The person submitting this request is responsible for contacting other state agencies to obtain appropriate reports or information.

Phase I Environmental Site Assessment Report - Date: _____

Phase II Environmental Site Assessment Report - Date: _____

Legal Description of Property (required for all liability requests and specialized agreements)

Map of the Property (required for all liability requests and specialized agreements)

Analytical results of the following sampled media: Select all that apply and include date of collection.

Groundwater Soil Sediment Other medium - Describe: _____

Date of Collection: _____

A copy of the closure letter and submittal materials

Draft tax cancellation agreement

Draft agreement for assignment of tax foreclosure judgment

Other report(s) or information - Describe: Liability Clarification Letter

For Property with newly identified discharges of hazardous substances only: Has a notification of a discharge of a hazardous substance been sent to the DNR as required by s. NR 706.05(1)(b), Wis. Adm. Code?

Yes - Date (if known): _____

No

Note: The Notification for Hazardous Substance Discharge (non-emergency) form is available at:

dnr.wi.gov/files/PDF/forms/4400/4400-225.pdf

Section 7. Certification by the Person who completed this form

I am the person submitting this request (requester)

I prepared this request for: _____

Requester Name

I certify that I am familiar with the information submitted on this request, and that the information on and included with this request is true, accurate and complete to the best of my knowledge. I also certify I have the legal authority and the applicant's permission to make this request.

Sean R Smith
Signature

5/7/19
Date Signed

Environmental Resources Manager
Title

(715) 394-4211
Telephone Number (include area code)

Technical Assistance, Environmental Liability Clarification or Post-Closure Modification Request

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Section 8. DNR Contacts and Addresses for Request Submittals

Send or deliver one paper copy and one electronic copy on a compact disk of the completed request, supporting materials, and fee to the region where the property is located to the address below. Contact a [DNR regional brownfields specialist](#) with any questions about this form or a specific situation involving a contaminated property. For electronic document submittal requirements see: <http://dnr.wi.gov/files/PDF/pubs/rr/RR690.pdf>.

DNR NORTHERN REGION

Attn: RR Program Assistant
Department of Natural Resources
223 E Steinfest Rd Antigo, WI 54409

DNR NORTHEAST REGION

Attn: RR Program Assistant
Department of Natural Resources
2984 Shawano Avenue
Green Bay WI 54313

DNR SOUTH CENTRAL REGION

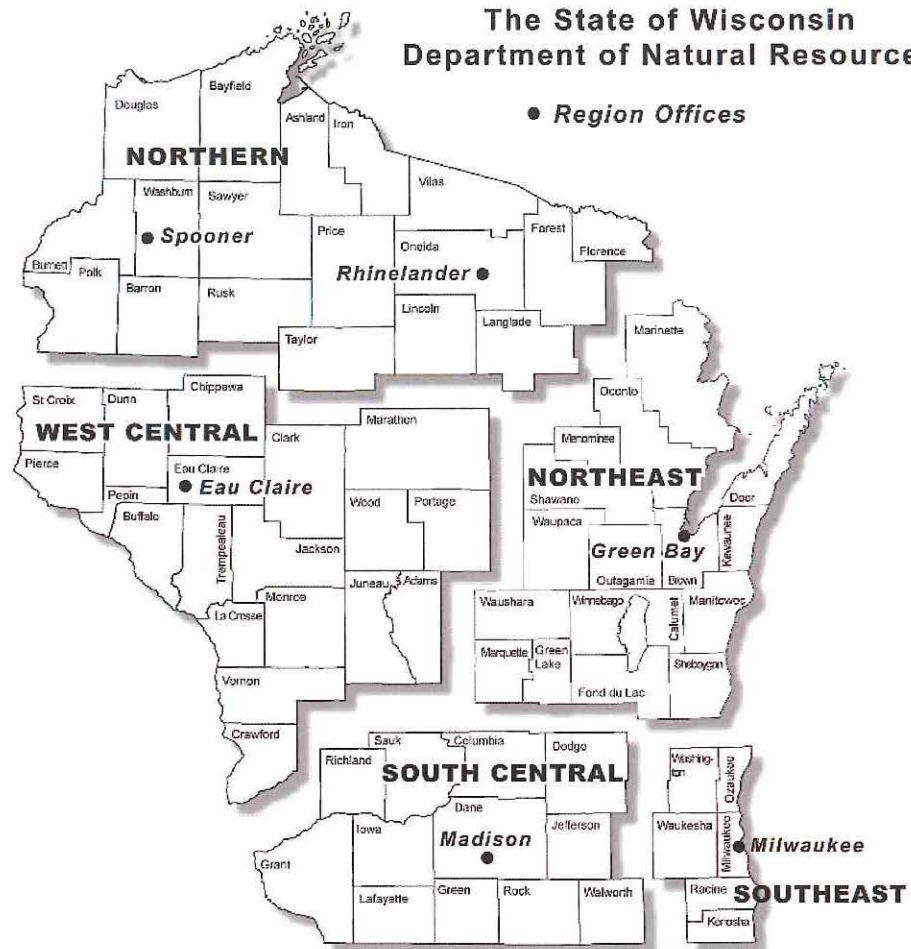
Attn: RR Program Assistant
Department of Natural Resources
3911 Fish Hatchery Road
Fitchburg WI 53711

DNR SOUTHEAST REGION

Attn: RR Program Assistant
Department of Natural Resources
2300 North Martin Luther King Drive
Milwaukee WI 53212

DNR WEST CENTRAL REGION

Attn: RR Program Assistant
Department of Natural Resources
1300 Clairemont Ave.
Eau Claire WI 54702



Note: These are the Remediation and Redevelopment Program's designated regions. Other DNR program regional boundaries may be different.

DNR Use Only			
Date Received	Date Assigned	BRRTS Activity Code	BRRTS No. (if used)
DNR Reviewer		Comments	
Fee Enclosed? <input type="radio"/> Yes <input type="radio"/> No	Fee Amount \$	Date Additional Information Requested	Date Requested for DNR Response Letter
Date Approved	Final Determination		