



Local Government Environmental Liability Exemptions and Responsibilities in Wisconsin

Purpose

The purpose of this guidance is to provide basic information about Wisconsin's local government unit environmental liability exemption (LGU exemption). The method of property acquisition used by an LGU determines if the exemption is acquired. DNR brownfields staff can help LGUs understand the exemption before taking title to a contaminated property, and also provide liability clarification letters.

Wisconsin Statute (Wis. Stat.) § 292.11, requires any person or entity that causes, possesses, or controls a hazardous substance discharge to take action to restore the environment to the extent practicable. Wis. Stat. § 292.11(9)(e) exempts counties, municipalities, and other local governmental units (LGUs) from environmental investigation and cleanup responsibilities at properties they own when the local government obtains title to a contaminated or potentially contaminated property in a specific way, and other conditions are satisfied. In addition, Wis. Stat. § 292.23 exempts an LGU from solid waste management standards and rules. Wis. Stat. § 292.26 provides civil immunity to LGUs for hazardous substances discovered at certain properties formerly owned by the LGU. An LGU is defined as any county, city, town, village, town sanitary district, county utility district, public inland lake protection and rehabilitation district, metropolitan sewage district, a redevelopment authority created under Wis. Stat. §

66.1333, a public body designated by a municipality under Wis. Stat. § 66.1337(4), a community development authority, or a housing authority.

The method used to acquire a property determines if the LGU exemption is in effect

To qualify for an LGU environmental liability exemption (LGU exemption) at a specific property, an LGU **must** acquire title to the property in one of the following ways: a) through tax delinquency proceedings; b) through an order of a bankruptcy court; c) from another LGU that is exempt; d) through condemnation under Wis. Stat. ch. 32; e) for the purpose of blight elimination (using a state or federal process law); f) through escheat; or g) with a DNR Warren Knowles-Gaylord Nelson Stewardship grant (Wis. Stat. § 292.11(9)(e)1m.).

Wisconsin's LGU exemption has limits and conditions

The LGU exemption applies to pre-existing contamination on a property from a hazardous substance discharge to the environment that was caused by an individual or entity other than the LGU. No liability exemption is available for hazardous substance discharges caused or exacerbated, either actively or negligently, by the LGU. Wis. Stat. § 292.11(9)(e)(2) and (4) details the limitations.

The DNR recommends the LGU assess unidentified substances in containers stored above ground on the property and properly secure or dispose of the containers. Further, when property reuse is planned, an LGU should notify the DNR and work together to ensure any substantial health threats are mitigated before or during redevelopment work. Failing to do so may end the LGU exemption.

The LGU exemption only applies to the investigation and cleanup of contaminated property and solid waste management. LGUs are not exempt from other environmental laws, such as reporting newly discovered hazardous substance discharges to DNR per Wis. Stat § 292.11(2)(a). LGUs are also not exempt from removing

underground tanks per ch. ATCP 93, Wisconsin Administrative (Wis. Admin.) Code, which is the Department of Agriculture, Trade and Consumer Protection's (DATCP) administrative rule that governs installation, registration, maintenance, and abandonment of tanks. Visit datcp.wi.gov and search for "petroleum and hazardous storage tanks" for more information.

Wisconsin's LGU exemption is not the same as federal Superfund/CERCLA liability protections

Visit the U.S. EPA's website for information about federal environmental liability protections:

- <https://www.epa.gov/enforcement/superfund-landowner-liability-protections>
- <https://www.epa.gov/enforcement/state-and-local-government-activities-and-liability-protections>

DNR can provide liability clarification letters to local governments

The LGU exemption is automatically conferred when statutory conditions are satisfied. No document or other approval from the DNR is required. However, if an LGU would like a liability clarification letter for a specific property, or multiple properties, the DNR can provide a written liability clarification letter to an LGU before or after property acquisition occurs.

A fee is required for all types of environmental liability clarification letters per Wis. Admin. Code ch. NR 749. Use the DNR form *Technical Assistance, Environmental Liability Clarification or Post-Closure Modification Request* (Form 4400-237) to request a liability clarification letter; go to dnr.wi.gov, search "4400-237." See *Guidance: General Liability Clarification Letters* (RR-619) for more information about liability clarification letters; go to dnr.wi.gov, search "RR-619." Services and fee information is available at dnr.gov.wi, search "RR Fees."

Information to provide to the DNR when requesting liability clarification letters

When requesting a liability clarification letter from DNR or asserting fulfillment of the statutory requirements that confer the LGU exemption at a specific property, the DNR requests LGUs submit and verify the following information to inform the DNR's determination:

Identify how or why the property was acquired.

- Through tax delinquency foreclosure proceedings
- Through condemnation or other eminent domain proceedings under Wis. Stat. ch. 32
- For blight elimination
- From another local governmental unit that previously qualified for the LGU exemption at the property
- Through an order of a bankruptcy court or escheat
- With the use of Warren Knowles-Gaylord Nelson Stewardship grant

Provide documentation of the property acquisition method or purpose

Along with a memo summarizing how and why the property was acquired, provide one or more of the following documents, or other relevant documentation, to verify the method used to acquire title to the property:

For tax delinquency acquisitions: Court order assigning title; the new deed or a written explanation of the county's transfer to the LGU.

For acquisition via condemnation: Memo outlining the steps followed under Wis. Stat. ch. 32, a copy of the deed assigned to the LGU; and a copy of any negotiated agreement involved in the transfer.

For acquisitions that are for the purpose of blight elimination: Blight determination documentation based on a Wis. Stat. ch. 66 definition of blighted property or area and a related process and a municipal resolution approving the blight determination; or a local resolution approving the creation of a tax incremental financing district for blight elimination; or evidence of a blight designation via another state or federal law process.

For title transfers from another exempt LGU: Documentation of the prior LGU owner's method of property acquisition and the process used to transfer property to the current LGU owner.

For acquisition through bankruptcy: Bankruptcy court order, with language assigning property to the LGU highlighted.

For acquisition by escheat or with Warren Knowles-Gaylord Nelson Stewardship grant funds: Contact the RR program statewide Brownfields Contact for local government liability specialist for assistance; go to dnr.wi.gov, search "RR Staff."

Provide other property data:

- Property address, legal description and/or the PLSS 1/4, 1/4 section description
- A map or aerial photo of the property and a summary of current uses
- Name of current and previous owners (title holder)
- List of intended or potential new uses for the property
- Description of any environmental investigations at the property
- Summarize the DNR license history if the property was previously used as a dump or landfill
- The date, or proposed date, of title transfer and property acquisition.