

Local Government Environmental Liability Exemptions in Wisconsin

The Hazardous Substance Spills Law, [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” from environmental investigation and cleanup responsibilities at properties they own when the local government obtains title to a contaminated property in a specific way, and other conditions are satisfied.

In addition, [Wis. Stat. § 292.23](#) exempts local governmental units from solid waste management standards and rules. [Wis. Stat. § 292.26](#) provides civil immunity to local governmental units for hazardous substances discovered at certain properties formerly owned by the local governmental unit.

The term local governmental unit (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 the property is crucial

To obtain state law environmental liability exemptions at a specific property, a local government 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 local governmental unit 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 Stewardship grant.

The state’s local government liability exemption has limits and conditions

The local government liability exemption applies to pre-existing contamination in soil, groundwater, sediment and surface water on the property that was caused by an individual or entity other than the local governmental unit. No liability exemption is available for those hazardous substance discharges caused or exacerbated, either actively or negligently, by the local governmental unit. Wis. Stat. §§ 292.11(9)(e)(2) and (4) detail these limitations.

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

The state local government environmental liability exemption only applies to the investigation and cleanup of contaminated property and solid waste management. Local governments are not exempt from other environmental laws, such as reporting requirements for newly discovered discharges, removing underground tanks, etc.

The DNR can provide liability clarification letters

The local government environmental liability exemption is automatically conferred when statutory conditions are satisfied. No approval from the DNR is required. However, the DNR can provide a written liability clarification opinion letter if desired. A fee is required for all types of Wisconsin law environmental liability clarification letters. Use the DNR Form 4400-237 to request a liability clarification letter. Visit the U.S. EPA’s website for information about federal landowner liability protections, <https://www.epa.gov/enforcement/landowner-liability-protections>.

Local governmental unit exemption - verification information to provide to the DNR

When requesting a liability clarification letter from the DNR, or asserting fulfillment of the statutory requirements that confer a local government environmental liability exemption at a specific property, the DNR requests that local governments instruct their municipal attorney to submit and verify the following information. The DNR will use this documentation to inform the agency's determination.

1. Identify how or why the property was acquired.

- Through tax delinquency foreclosure proceedings
- Through condemnation or other eminent domain proceedings under Wis. Stat. Chapter 32
- For the purpose of blight elimination (as described in a state or federal process law)
- From another local governmental unit that previously acquired an exemption at the property
- Through an order of a bankruptcy court; or through escheat
- With the proposed use of Knowles-Nelson Stewardship grant funds

2. Provide documentation of the property acquisition method.

Along with a memo summarizing the acquisition, 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; an explanation of 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 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, public hearing results 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 a federal law process.

For title transfers from another exempt local governmental unit

- 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 Stewardship grant funds

- Contact the DNR-RR LGU specialist for assistance. Contact information is listed below.

3. 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 owner (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

Send materials to: Barry Ashenfelter, DNR RR/5, 101 S. Webster St., Madison, WI 53707-7921.

Contact Barry at 608-267-3120 or barry.ashenfelter@wisconsin.gov with questions and comments.