



Highway Maintenance Manual

Bureau of Highway Maintenance

Chapter 9 Right-of-Way Use & Permits

~~December 2010~~ August 2022

Section 15 Utility Accommodation

Subject 50 Discovery of Environmental Conditions

1.0 General

~~This policy specifies~~ Follow the responsibilities and ~~the~~ procedures ~~that a utility shall follow~~ listed in this subject when environmental conditions are discovered ~~encountered in the~~ state trunk highway (STH) right-of-way (RAW/ROW). These conditions include, but are not limited to:

- 1) ~~Cultural~~ Tribal and non-tribal cultural resources: archeological sites, historic structures, burial sites, etc.
- 2) Endangered resources: rare plants, animals, and natural communities
- 3) Threatened and endangered species or their habitats
- 2) ~~Contaminated soils~~
- 3) ~~Underground~~ sites, underground storage tanks (USTs)
- 4) ~~Leaking~~, leaking underground storage tanks (LUSTs)

~~2.0~~ WisDOT Responsibility

~~Under Wisconsin Administrative Rule Trans 220, WisDOT shall notify a utility when its facilities may be affected by a proposed improvement project. If the utility confirms that its facilities are in the vicinity of the improvement, then WisDOT shall mail the utility at least that portion of the improvement plan that concerns those facilities. WisDOT shall also provide any additional and duplicate plan information needed by the utility to design and layout the removal, relocation, or adjustment of the existing utility facilities and the placement of relocated or additional facilities within the project limits. This includes furnishing a utility with information regarding any environmental conditions when site assessments are performed as a required part of WisDOT's project investigation. This information shall be considered for **informational purposes only** since data may change from the time an investigation is completed until the time a report is reviewed.~~

~~3.0~~ Utility Responsibility

~~When a utility wants to locate its facility on the RAW and WisDOT is not required to furnish the utility with information regarding environmental conditions, the utility has the responsibility of determining if these conditions exist at its proposed site. The utility should perform a site assessment to accomplish this.~~

~~4.0~~ Site Assessments

~~When a utility needs to do site assessments (investigations), the procedures listed in WisDOT's Facilities Development Manual may be used as a guide. Specifically, Chapter 26 has information on cultural resource preservation (archeological, historical, etc.), and Chapter 21, Section 35, has information regarding contaminated sites and remediation.~~

~~WisDOT recommends that site assessments be performed by a qualified historian, archeologist, or environmental consultant if the utility does not employ personnel specifically qualified for this work.~~

To mitigate discovery of environmental conditions as best as practicable, perform environmental coordination and complete the associated Checklist in HMM 09-15-16.

~~5.02.0~~ Discovery of Environmental Conditions

Whether the discovery of environmental conditions occurs during a site assessment, facility installation, or maintenance operation, **ALL WORK SHALL BE SUSPENDED IMMEDIATELY**. If the site poses a possible health risk, ~~the~~ notify local police and fire departments ~~shall be notified~~ immediately, and ~~the utility shall~~ take ~~the~~ all necessary steps to provide for the safety of people and prevent property damage in the area. After suspending operations, ~~the utility shall~~ contact the offices listed in Table 1 depending upon the type of conditions discovered:.

Failure to stop work immediately upon discovery of environmental conditions **may** result in financial responsibility ([Table 2](#)) for the utility due to subsequent site assessments, mitigation, remediation, or possible fines. ~~A Use the~~ checklist ~~in has been developed (Attachment 1)~~ to ~~help utilities obtain~~[collect](#) the necessary information ~~which that~~ may be asked ~~of them~~ by site investigators.

WisDOT will notify the utility when it can resume its operation.

Table 1: Environmental Conditions Discovery Notification list

| Utility Discovers Table 1: Environmental Conditions while Working on WisDOT Right-of-Way (RAW) Discovery Notification List | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| Category | Contact Information (Note: Contact All That Apply) |
| <u>Tribal Cultural Resources</u> | |
| <u>All areas: contact specific Tribal Nation</u> | <u>Tribal historic preservation officers</u> |
| <u>Non-Tribal Cultural Resources</u> | |
| Historic structure | State Historic Preservation Office: -(608)_264-6506 |
| Archeological site | State Historic Preservation Office: -(608)_264-6507 |
| Burial site | Burial Sites Preservation Office: (608)_264-6503 or (800)_342-7834 |
| Contaminated Soils <u>Sites</u>, USTs, LUSTs | |
| Department of Natural Resources ² | https://dnr.wi.gov/topic/spills/report.html (800) _ 943-0003 or (888)_936-7463 |
| For Any Discovery | |
| Utility project but no WisDOT project | WisDOT region utility permit coordinator ¹ |
| WisDOT project | WisDOT construction project manager or district region construction supervisor ¹ |
| 1. These people shall also notify the following staff in WisDOT's Bureau of Equity and Environmental Technical Services: Jim Becker Lynn Cloud(608) 261-0137 266-0099 Cultural Resources Shar TeBeest (608) 266-1476Contaminated Soils <u>Sites</u> , USTs, LUST Ss , etc. 2. Required under Wisconsin law Ch. 292 Wis. Statutes | |

6.03.0 Utility Facility Placement Options

When environmental conditions are discovered in the ~~RAW~~[ROW](#), the Department of Natural Resources, State Historic Preservation Office, or Burial Sites Preservation Office (collectively: Agency) ~~shall determine~~[determines](#) whether a utility can locate its facility within the affected area. Based upon ~~the~~[an](#) Agency's decision, the following may occur:

6.1 Utility Entirely Avoids the Affected Area

- 1) An Agency mandates that the area be left in its natural state, and utility facilities ~~shall~~[are](#) not ~~be~~ allowed in the area.
- 2) The utility decides that it wants to locate in another area and avoid possible delays to its project due to site assessments, remediation, mitigation, or the possible decision noted in 1.

6.2 Utility Locates Around or ~~through~~[Through](#) the Affected Area

- ~~1~~[3](#)) An Agency orders the site to be completely remediated or mitigated before any utility installation can take place. The utility would then have a clear corridor in which to locate its facility.
- ~~2~~[4](#)) An Agency decides that the area can be left in its natural state, but any area ~~that is~~ disturbed or affected by the utility operation (based upon the Agency's assessment) ~~has to~~[must](#) be remediated or mitigated. The utility may also elect to go around the area, if possible, and avoid remediation or mitigation.
- ~~3~~[5](#)) An Agency decides that the area can be left in its natural state, and ~~the~~[existing](#) conditions do not have to be remediated or mitigated as long as the utility exercises extreme care to avoid any significant disruption to the area. In the case of an archeological or historical site, a utility may be allowed to place a facility in an area that was already disturbed. In the case of a hazardous materials site, a utility would have to utilize construction methods that would prevent any contamination from spreading.

Unless WisDOT has taken charge of the remediation or mitigation process due to a WisDOT project, a utility that decides to locate its facility through an affected area, as described in items ~~4-3-5~~ above, shall document in its permit application that it has contacted the Agency and has received the proper authorization to locate in the area along with its proposed construction methods. These permits may also be routed through the ~~Region's environmental coordinator~~[Region Environmental Coordinator](#) or the Bureau of ~~Equity and Environmental~~[Technical](#) Services as a final check.

7.04.0 Financial Responsibility

When a utility performs an initial site assessment on ~~WisDOT RAW~~ STH ROW – either with a project of its own or because a WisDOT project is not required to obtain environmental information – the utility ~~shall bear the cost of~~ pays for the assessment cost. No matter who ~~performed~~ conducted the initial assessment or even if ~~they were~~ one was not done, a utility that discovers any environmental conditions ~~shall~~ is not ~~be~~ responsible for assessment, mitigation, or remediation costs ~~provided~~ it had complied with section 5.02.0 of this policy and avoids the site by placing its facility in another location. Table 2 specifies who may have to pay for assessment, mitigation, or remediation costs depending upon the situation.

Table 2: Financial Responsibility Table

| Table 2: Financial Responsibility – Utility Discovers Environmental Conditions while Working on WisDOT Right-of-Way <u>STH ROW</u> and Decides to Locate in the Affected Area | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|------------------------------------------------|
| Category/Activity | | Who Pays for the Activity? |
| ————— Cultural Resources | | |
| Site Assessments (Identification or evaluation surveys)¹ | | |
| <u>Site Assessments (Identification or evaluation surveys)¹</u> | • Utility project but no WisDOT project | Utility |
| | • WisDOT project | Utility or WisDOT ² |
| Mitigation¹ | | |
| <u>Mitigation¹</u> | • SHPO, <u>BSPO</u> , or BSPO <u>Tribal order; or no order</u> | Utility |
| • No SHPO or BSPO order | | Utility |
| ————— Contaminated <u>Soils</u> <u>Sites</u>, USTs, LUSTs, etc. | | |
| Site Assessments | | |
| <u>Site Assessments</u> | • Utility project but no WisDOT project | RP or WisDOT or Utility ³ |
| | • <u>WisDOT project</u> | RP or WisDOT or Utility³ |
| Remediation | | |
| <u>Remediation</u> | • DNR order | RP or WisDOT or Utility ³ |
| | • No DNR order | Utility |
| <p>1. WisDOT policy is to not spend available resources for assessments or mitigation, but rather preserve archeological sites and historic structures in place. This is in accordance with Section 106 of the National Historic Preservation Act.</p> <p>2. Applicable only when WisDOT is required to obtain environmental information for its project.</p> <p>3. If a utility fails to comply with section <u>5.02.0</u> of this policy, it may be responsible for a percentage of the costs depending upon how much worse the situation becomes due to the utility's actions.</p> <p>If the WisDOT is not the RP, then a <u>Recover</u> utility which incurs costs incurred due to encountering <u>discovering</u> contaminated <u>soils</u> <u>sites</u>, USTs, or LUSTs will have to recover them from the RP <u>when WisDOT is not the RP</u>.</p> <p>SHPO = State Historic Preservation Office BSPO = Burial Sites Preservation Office DNR = Department of Natural Resources <u>RP</u> = Responsible Party (owner of the <u>hazard</u> source of the <u>hazard</u> <u>owner</u> as determined by DNR) <u>BSPO</u> = Burial Sites Preservation Office <u>DNR</u> = Department of Natural Resources</p> | | |

Attachment 1: Environmental Conditions Discovery Checklist (Page 1 of 2)

As soon as environmental conditions are discovered in WisDOT's right-of-way,
STOP WORK IMMEDIATELY
 and be prepared to report the following information to the contacts listed in [HMM 09-15-50 Table 1](#)

Note: For "Yes/No" questions, box initially set to "No"

1. SITE LOCATION

- a. Highway(s): _____ b. Direction¹: NB SB EB WB
- c. County: _____ d. City Village Town of: _____
- e. Distance and direction from nearest public road intersection or mile marker? _____
- f. Nearest public road intersection name or mile marker number? _____
- g. Other landmarks? _____
- h. [Is this work part of a highway project?](#) Yes No [If yes, list the project ID](#) _____

2. ENVIRONMENTAL CONDITION – Cultural Resources

- a. What was found (burial site, building foundation, artifact)? _____
- b. Is the location of the find marked? Yes No If yes, how is it marked? _____
- c. Approximate area (dimensions) of the find? _____

3. ENVIRONMENTAL CONDITION – Contaminated Sites, USTs², LUSTs³

- a. What was found? _____
- b. Appearance of soils or liquid? _____
- c. Odor of soils or liquid? _____
- d. Approximate size of tank or area of contamination uncovered? _____
- e. Obvious liquid or product in the tank? Yes No
- f. Obvious smell in the tank? Yes No If yes, can you describe it (varnish, kerosene, gasoline, diesel, other, unknown)? _____
- g. Soil type(s) encountered (sand, gravel, clay, till)? _____
- h. Depth to groundwater (if known)? _____
- i. Any previous land use knowledge (local history, memory of site as a business)? Yes No
If yes, please describe. _____
- j. Is the location of the find marked? Yes No If yes, how is it marked? _____

4. STATUS OF UTILITY WORK

- a. Has the work stopped in the area? Yes No If NO, STOP WORK IMMEDIATELY!
- b. Has the area been secured ~~(fenced, staked or marked, roped off, or delineated by traffic control devices)?^{4?}~~ Yes No
- c. Can the work continue in another area? Yes No If yes, for how long? _____
- d. Can the affected area be avoided (utility facility placed in another location)? Yes No
- e. Has any completed utility work been clearly marked (staked, painted, or flagged)? Yes No

1 Direction is the cardinal or route direction, not the actual compass direction:
 NB = Northbound, SB = Southbound, EB = Eastbound, WB = Westbound
 2 Underground storage tanks
 3 Leaking underground storage tanks
 4 [Fenced, staked/marked, roped off, delineated by traffic control devices, etc.](#)

f. Is any of the completed utility facility active, energized, etc.?

Yes No

g. Is this utility being relocated to facilitate a highway project?

Yes No

Attachment 1: Environmental Conditions Discovery Checklist (Page 2 of 2)

5. CONTACTS

- a. Was the State Historic Preservation Office (SHPO) contacted if building foundations or artifacts were discovered? Yes No
 If yes, date: _____ By (name/phone): _____
 SHPO contact (name/phone): _____

- b. Was the Burial Sites Preservation Office (BSPO) contacted if a burial site was discovered? Yes No
 If yes, date: _____ By (name/phone): _____
 BSPO contact (name/phone): _____

- c. Was the Department of Natural Resources (DNR) contacted if a contaminated site, UST or LUST was discovered? Yes No
 If yes, date: _____ By (name/phone): _____
 DNR contact (name/phone): _____

- d. Was the WisDOT utility permit coordinator, construction project manager, or other WisDOT project representative (e.g., consultant) contacted? Yes No
 If yes, date: _____ By (name/phone): _____
 WisDOT contact (name/phone): _____
 WisDOT contact (name/phone): _____
 Consultant contact (name/phone): _____

- e. Was WisDOT's Bureau of ~~Equity & Environmental~~ Technical Services contacted ~~(?)~~ Yes No
Note: ~~this~~ This is not a utility responsibility?
 If yes, date: _____ By (name/phone): _____
 WisDOT contact (name/phone): _____
 WisDOT contact (name/phone): _____

- f. Other contacts or ~~e-mail~~ email addresses: _____

6. RESUMING WORK

- a. Did WisDOT indicate a timeframe in which someone would respond? Yes No
- b. What is that timeframe? _____
- c. Who will authorize resuming work? _____
- d. When can the work be resumed? _____
- e. Date authorization received? _____