

Remediation and Redevelopment Program – Rule Development Meeting

October 1, 2019 | 10:00 a.m. to 2:00 p.m.

Wisconsin Dept. of Natural Resources
GEF 2 | Room G27A
101 S. Webster St. | Madison, WI 53701

Meeting materials are available at: <https://dnr.wi.gov/topic/Brownfields/RuleChanges.html>.

Attendees: Molly Schmidt (DNR), Michael Prager (DNR), Gena Larson (DNR), Jodie Peotter (DNR), Judy Fassbender (DNR), Jenna Soyer (DNR), Erica Lawson (Tetra Tech), Renee Exum (Michael Best), Carrie Webb (DNR), Bill Nelson (DNR), Frank Dombrowski (WE Energies), Laurie Parsons (TRC), Arthur Harrington, Shelley Hildebrandt (Intertek-PSI), Jennifer Hagen (OBG Ramboll), Margaret Brunette (DNR), Mary Christie (Pace Analytical)

Agenda:

1. Welcome and Introductions.

Staff explained the purpose of the meetings and provided an overview of the process, scope, and timeline for drafting rules.

2. First draft of proposed rule revisions relating to emerging contaminants.

Staff provided a summary of the draft rule (see presentation and draft rule). An attendee stated that, when first drafting Wis. Admin. Code ch. NR 700, the drafters had not included the ASTM references in the rule due to the concern that these references would become out-of-date. Staff replied that they were currently considering their uses of references to external items and would need to resolve multiple issues if it were a concern. The attendee listed several portions of the draft rules with questions regarding choice of language (e.g., whether language regarding site-specific standards was redundant in some instances, whether references to certain chapters outside of the NR 700 rule series were overly broad, and whether certain terms (e.g., “including” versus “or”) adequately conveyed the intended meanings). Department staff thanked the attendee for the input and stated that in some instances the selected language may have been intentional; however, they would review the items discussed ahead of the next draft.

3. First draft of proposed rule revisions related to remedy selection.

Staff provided a summary of the draft rule (see presentation and draft rule). No comments.

4. First draft of proposed rule revisions relating to notification and closure.

Staff provided a summary of the draft rule (see presentation and draft rule). Following the presentation, Department staff noted that several comments from attendees that were applicable to the second agenda item would also apply here.

An attendee asked about the revision relating to notification at sites with groundwater contamination where the site was supplied by a municipal water system and whether this revision would affect notification for vapor sites. Staff replied that it would not – the pathways would be dealt with individually. The attendee

asked whether off-site issues were still under policy development, staff confirmed that the attendee was correct.

5. Second draft of proposed rule revisions implementing 2015 Wis. Act 204 requirements for financial responsibility for sites where an engineering control is being used to address contaminated sediment (new chapter NR 756).

Staff provided a summary of the draft rule (see presentation and draft rule). Following the presentation, an attendee asked for clarification on where and how the new chapter would apply. Staff stated that the new chapter would solely apply at contaminated sediment sites where the responsible party used an engineering control. These rules would not apply at Voluntary party Liability Exemption (VPLE) sites – the statute prohibits contaminated sediment sites with engineering controls from entering the VPLE program. An attendee asked whether the end date of the financial responsibility period would be negotiated. Staff replied that the timeframe for the requirement was not established in the rule – the rule stated that the length of time could vary site-by-site and was included in the plan and compliance schedule. The Department had the authority to extend the time period, and there would be a regular opportunity to reassess the continued need for proof of financial responsibility. Pursuant to a question regarding the reopening of closed sites, staff replied that there was not currently any intent to audit closed sites.

An attendee asked about the purpose of the 50% limit on the Department's ability to reduce estimated costs for event-based financial responsibility requirements. Staff stated that the intent was to provide more structure and clarity for this part of the rule. An attendee stated that the number seemed arbitrary and could result in large amounts of financial responsibility being required.

An attendee commented that the use of future dates to determine financial responsibility cost estimates may be problematic for events that cannot be determined in advance. Staff replied that they could review this item. An attendee stated that they may send in further input to assist.

6. Second draft of proposed rule revisions implementing 2015 Wis. Act 204 requirements for financial assurance at sites with contaminated sediment that are enrolled in the Voluntary Party Liability Exemption (VPLE) program (new chapter NR 758).

Staff provided a summary of the draft rule (see presentation and draft rule). An attendee asked how the amount for VPLE insurance was determined. Staff explained the background behind that portion of the rule. An attendee asked about the overlay of these requirements with the current VPLE policy regarding certification solely for sampled contaminants. Staff and other attendees discussed that 2015 Wis. Act 204 was likely drafted on the assumption that full certification for all contaminants would be provided and that the result of the new requirements under the act along with the policy regarding certification solely for sampled contaminants would likely be that fewer sites will find this option attractive. An attendee stated that insurance may be a better alternative for some sites. Staff stated that they had sought confirmation that insurance required under the rules would be available. An attendee stated that this option for VPLE may have too many challenges to be useful and urged staff to consider the agency's discretion in this area to provide a more workable system. An attendee asked whether downslope sediment cleanup requirements were tied to upslope sources. Staff stated that there was some difficulty in proving causation and variable sites. An attendee added that the off-site exemption applied to contaminated sediment sites.

7. Conclude and Adjourn.

Staff thanked attendees and stated that the next meeting would be November 6, 2019, in Madison and that staff would be presenting the following items:

- A first draft of proposed rule revisions relating to submittal timelines in the NR 700 rule series;
- A second draft of proposed rules relating to submittal preparation requirements and other changes to Wis. Admin. Code ch. NR 712;
- A first draft of rule revisions affecting fees required under Wis. Admin. Code ch. NR 749;
- A second draft of proposed rule revisions relating to 2015 Wis. Act 204 changes to the definition of “agency with administrative authority”;
- A second draft of miscellaneous proposed rule revisions including updates to terminology, submittal format requirements, and other changes;
- A first draft of rule revisions relating to remedial action confirmation samples; and
- A second draft of rules relating to contaminated sediment sites.