

# Rule Development Meeting October 1, 2019

Remediation &  
Redevelopment Program





# **Rule Revisions Relating to Emerging Contaminants – First Draft**



**Proposed Rule Revisions - Drafting Update**

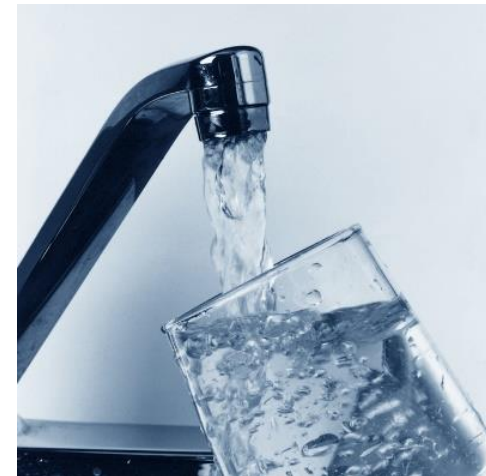
**Judy Fassbender**

**October 1, 2019**



# Overview

- Wis. Admin. Code chs. NR 700 through NR 754 apply to emerging contaminants
  - Generally applicable through “hazardous substance” and “environmental pollution”
- Two main changes...





# Emerging contaminants

- Definitions (NR 700, NR 712, NR 750)
  - Clarification that phase I and phase II must address hazardous substance discharge and environmental pollution
- Standards (NR 725, NR 726, NR 727)
  - Carry over “site-specific” language where omitted from certain chapters



## Next steps

- Second draft rule: December 3, 2019, Rule Development Meeting
- Post-meeting comments may be directed to:  
[DNRRRNR700input@wisconsin.gov](mailto:DNRRRNR700input@wisconsin.gov)

# Remedy Selection Cross-References (Revisions to NR ch. 722)



**Proposed Rule Revisions - Drafting Update**

**Judy Fassbender**

**October 1, 2019**



# Remedy Selection (NR 722)

- Soil management
  - Wis. Admin. Code ch. NR 718 exemption may be needed to complete RA
- Exposure assumptions
  - Default exposure assumptions in NR 720



## Next steps

- Second draft rule - December 3, 2019
- Post-meeting comments may be directed to:  
[DNRRRNR700input@wisconsin.gov](mailto:DNRRRNR700input@wisconsin.gov)



# Notification and Closure



**Proposed Rule Revisions - Drafting Update**

**Gena Larson**

**October 1, 2019**



# **Notification and Closure Overview of Proposed Changes**

- NR 716.14 to clarify sample results notification requirements
- NR 725 and NR 726 to revise notification requirements for off-site properties with groundwater contamination and relation to NR 812
- NR 726 to reflect updates to terminology; clarify and update the methods and requirements for submitting closure requests and forms, and case closure response action goals



# **Notification and Closure**

## **NR 716.14**

- Update information required when submitting results from water supply wells
- Currently only well ID number
- Make consistent with remainder of media



# **Notification and Closure**

## **NR 725/26 GW Notifications**

- Modify notification and continuing obligation (CO) for off-sites affected by residual groundwater contamination
- For sites that obtain drinking water from municipal systems, residual groundwater contamination will not be a concern because property owners are required to connect to an available municipal system if a local ordinance exists (Wis. Stat. § 281.45)



# **Notification and Closure**

## **NR 725 Notification Requirements**

- Clarify notification requirements for Continuing Obligations
- Updated DOT contact



# **Notification and Closure**

## **NR 726 Closure Request Requirements**

- Electronic submittals through document submittal portals
- Require executive summary
- Clarify property information requirements and map and figure requirements
- Clarify vapor pathway submittal information (consistency with other media)
- Include sediment requirements



# **Notification and Closure Response Action Goals**

- Update NR 726 response action goals and authority to be consistent with NR 722 media
- Update both to include sediment



## Next steps

- Second draft rule - December 3, 2019
- Post-meeting comments may be directed to:  
[DNRRRNR700input@wisconsin.gov](mailto:DNRRRNR700input@wisconsin.gov)





# **Second Draft: Proposed Rules for Financial Responsibility at Sites where an Engineering Control is used for Contaminated Sediments**



**Proposed Rule Revisions - Drafting Update**

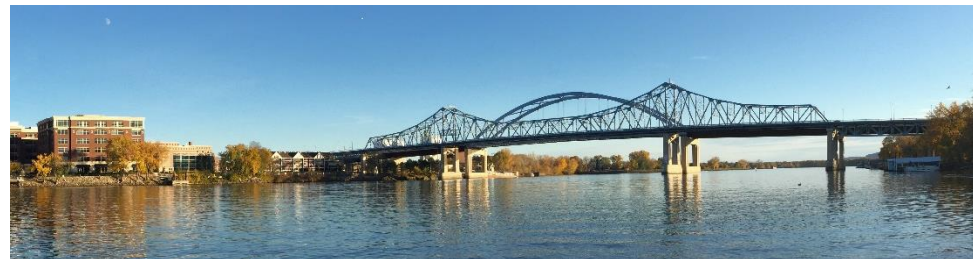
**Molly Schmidt**

**October 1, 2019**



# Rule Revisions – ch. NR 756

- Background: statutory change
  - Act 204
  - Contaminated sediment sites with engineering controls
    - Plan and compliance schedule and proof of FR for
      - Maintenance of EC
      - SI and RA following impediment removal
      - Or both





# **Rule Revisions – ch. NR 756**

- **Background: rule development**
  - March Rule Dev. Mtg - Intro
  - April subgroup meeting - Outline
  - May Rule Dev. Mtg – White paper
  - August Rule Dev. Mtg – First draft

# Rule Revisions – ch. NR 756

- Second draft: overview
  - Plan and compliance schedule
  - FR requirements
  - FR methods
  - Estimating costs
  - Calculating FR amount



# Rule Revisions – ch. NR 756

- Plan & compliance schedule
  - Scheduled actions
  - Engineering analysis
  - Inspection and reporting
  - Length of requirements





# Rule Revisions – ch. NR 756

- FR requirements
  - Planned EC maintenance
  - Additional maintenance due to events or third-party actions
  - SI and RA following impediment removal
  - Additional SI and RA following impediment removal



# Rule Revisions – ch. NR 756

- Methods of FR
  - Performance or forfeiture bond
  - Irrevocable letter of credit
  - Insurance
  - Other methods / financial commitments
  - Deposit with DNR
  - Escrow
  - Irrevocable trust



# Rule Revisions – ch. NR 756

- Estimating costs
  - List of minimum cost items
    - See lists at NR 756.07 (3), (4), and (5)
  - Estimate costs based on type of FR req
    - Planned costs – in each year
    - Additionalals – for last year of FR period





# Rule Revisions – ch. NR 756

- Calculating FR amount
  - Interest-bearing
  - Non-interest-bearing





# Rule Revisions – ch. NR 756

- Second draft: changes
  - Changes from first draft
    - Clarification of language regarding types of FR
    - Language re: interest, calculation method, FDIC limits, etc.
    - Explanatory notes
- Questions?



## Next steps

- This is the last Rule Development Meeting for this item.
- Post-meeting comments may be directed to:  
[DNRRRNR700input@wisconsin.gov](mailto:DNRRRNR700input@wisconsin.gov)

# **Second Draft: Rule Revisions for Insurance and Financial Assurance at VPLE Sites with Contaminated Sediments**



**Proposed Rule Revisions - Drafting Update**

**Michael Prager**

**October 1, 2019**



## 2<sup>nd</sup> Draft

# Rule Revisions – ch. NR 758

- Provide process to comply with requirements in Act 204 (Stats. § 292.15(2)(af) and (am)) regarding VPLE at contaminated sediment sites.
  - VPLE for sediment with insurance
  - Partial VPLE if site has sediment contamination





# **Rule Revisions – ch. NR 758**

## **Overview of Process**

1. Conduct Site Investigation & obtain DNR approval
2. Conduct Cleanup & obtain DNR approval
3. Obtain Closure Letter
4. Buy environmental insurance that includes required endorsement language and coverage
5. Provide certificate of insurance to DNR
6. Pay insurance deductible fee
7. Obtain Certificate of Completion
8. Maintain insurance coverage for 25 years



## **Rule Revisions – ch. NR 758**

- Different than current VPLE insurance for natural attenuation
- Individual policies that are underwritten by insurer
- Work with any broker
- Any insurance company that meets financial requirements



# Rule Revisions – ch. NR 758

*Changes since 1<sup>st</sup> Draft:*

- Changed “insured” to voluntary party
- Added section on deductible
- Provided specific requirements and references to sections in 756 for financial responsibility other than insurance
- Added specific requirements and references to sections in 756 for partial cleanup financial assurance





# Rule Revisions – ch. NR 758

## Insurance Coverage

- Must Cover: pre-existing pollution in the sediment on, at or emanating from the property. Covers cleanup that DNR determines is needed because the conditions described in s. 292.15 (2) (b) 2. or 3, Stats., have occurred.
  - Cleanup failed
  - Contamination was missed in site investigation



# **Rule Revisions – ch. NR 758 Insurance Requirements**

- A.M. Best rating of A X or higher
- Obtain insurance that covers all the requirements in the rule
- DNR is named insured on policy
- Maintain insurance for 25 years
- If insurance requirements are not met, no longer have liability protection that goes with Certificate of Completion



# **Rule Revisions – ch. NR 758**

## **Insurance Deductible**

- Policy will have deductible of \$50,000 or less
- Voluntary party shall pay fee of 5% of deductible when requesting Certificate of Completion
- DNR will pay deductible and use fees in future if claim is filed



# **Rule Revisions – ch. NR 758**

## **Financial Responsibility Other than Insurance**

Other form of FR allowed if:

- Same level of coverage
- Same length of coverage
- Not mercury, PCBs or Dioxin
- Follow certain requirements of NR 756.06



# **Rule Revisions – ch. NR 758**

## **Waiver of Insurance Requirement**

DNR may waive insurance requirement in exceptional circumstances if:

- Written explanation
- Not mercury, PCBs or Dioxin
- DNR concludes that risk or cost is low based on:
  - Volume
  - Concentrations
  - Ecological threats
  - Effects on human health



# **Rule Revisions – ch. NR 758**

## **Partial Certificate of Completion**

Partial COC for soil and groundwater cleanup if:

- All partial COC requirements in s.292.15(2)(am) have been met.
- SI complete including sediment
- Agreement to finish sediment cleanup
- Financial assurance to finish cleanup based on estimate and follow sections of NR 756



## Next steps

- This is the last Rule Development Meeting for this item.
- Post-meeting comments may be directed to:  
[DNRRRNR700input@wisconsin.gov](mailto:DNRRRNR700input@wisconsin.gov)

**Thank you!**

