

DRAFT rule revisions for 6/4/2019 Rule Development Meeting

Comments on this draft may be sent to DNRRNR700input@wisconsin.gov.

Subject matter (group/subgroup): Other/ Soil management

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Changes (include treatment, list in order of rules):

NR 708.11 (4) is amended to read:

NR 708.11 (4) DESIGN AND IMPLEMENTATION REQUIREMENTS. For the types of interim actions listed in pars. (a) through (c), responsible parties shall prepare and submit to the department all reports and plans required by ch. NR 724 for department review and approval prior to proceeding to the next step in design, implementation or operation of an interim action under ch. NR 724, unless otherwise directed.

(a) On-site treatment system, including a groundwater extraction and treatment system.

(b) On-site engineering control or barrier, including a landfill cover or groundwater barrier system, sediment cover or a vapor mitigation system other than a radon-type sub-slab depressurization system.

(bm) Any action requiring an exemption under ch. NR 718.12 or ch. NR 718.15 to manage contaminated soil or solid waste.

(c) Any other type of interim action option when the department notifies responsible parties, on a case-by-case basis, that a design report is required prior to implementation of the interim action.

NR 718.01 is amended to read:

NR 718.01 Purpose. This chapter establishes minimum standards for the storage, transportation, treatment and disposal of contaminated soil, contaminated sediment and certain other solid wastes excavated during response actions required by and conducted in accordance with the requirements of chs. NR 700 to 754. Where responsible parties have chosen to comply with the requirements of this chapter, the responsible parties are exempt from the storage, transportation, treatment and disposal requirements in ch. 289, Stats., and chs. NR 500 to 538, except where solid waste program requirements are specifically referenced in this chapter. This chapter is adopted pursuant to ss. 287.03, 289.05, 289.06, 289.43 (8), 289.67, and 227.11 (2), Stats., and ch. 292, Stats.

Note: This chapter exempts responsible parties who conduct specific types of response actions from obtaining site-specific approvals from the state's solid waste program, when the response actions are conducted in accordance with this chapter. The exemptions that responsible parties may be eligible for under this chapter are from any one of the following solid waste program requirements:

1. Licensing of on-site and off-site contaminated soil storage piles.
2. Licensing of on-site and off-site contaminated soil treatment.
3. Licensing of transportation in vehicles containing contaminated soil when the vehicles are owned by the responsible parties.
4. Approval for disposal of contaminated soil and other solid wastes on the same property from which it was excavated.
5. Approval for disposal of specified types of contaminated soil on property other than that from which it was excavated.

NR 718.02 (1) is amended to read:

NR 718.02 Applicability. (1) This chapter applies to the storage, transportation, treatment and disposal of all the following: (a) Contaminated soil or contaminated sediment which:

1. Is excavated or dredged as part of a response action required by and conducted pursuant to chs. NR 700 to 754, at sites or facilities subject to regulation under s. 289.67, Stats., or ch. 292, Stats., or sites

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where remedial action is being taken by a person who is seeking the liability exemption under s. 292.15, Stats.; and

2. Is not a hazardous waste as defined in s. NR 660.10 (52) or 42 USC 6901 to 6991, as amended.

Note: Guidance document RR-705 entitled: "Guidance for Hazardous Waste Remediation" provides detailed information on the requirements that apply and the options that are available when dealing with cleanup and redevelopment issues at sites that are or may be contaminated with hazardous waste. A copy of the document can be found at: <http://dnr.wi.gov/files/PDF/pubs/rr/RR705.pdf>.

3. Is not a TSCA waste regulated by federal regulations in section 761 of Title 40 of the Code of Federal Regulations (40 C.F.R. § 761), and the federal Toxic Substances Control Act (TSCA).

(b) Solid waste which:

1. Contains materials other than contaminated soil and is excavated during a response action conducted pursuant to chs. NR 700 to 754, at sites or facilities subject to regulation under s. 289.67, Stats., or ch. 292, Stats., or sites where remedial action is being taken by a person who is seeking the liability exemption under s. 292.15, Stats.;

2. Is not a hazardous waste as defined in s. NR 660.10 (52) or 42 USC 6901 to 6991, as amended; and

3. Is replaced at the same site or facility from which it was excavated.

NR 718.03 (5m) is created to read:

NR 718.03 (5m) "Contaminated sediment" means sediment which contains one or more hazardous substances or environmental pollution, and which is not a hazardous waste as defined in s. NR 660.10 (52) or 42 USC 6901 to 6991, as amended, regulated under TSCA 15 USC 2601 to 2692.

NR 718.05 (1) is amended to read:

NR 718.05 Storage of excavated contaminated soil or contaminated sediment. (1) EXEMPTION FROM SOLID WASTE PROGRAM REQUIREMENTS. (a) Sites or facilities where less than 2,500 cubic yards of excavated contaminated soil or contaminated sediment are is stored by responsible parties for a period not to exceed 6 months, in accordance with all of the requirements of this section, are exempt from the solid waste program requirements for the storage of contaminated soil or contaminated sediment in ch. 289, Stats., and chs. NR 500 to 538. Unless otherwise approved by the department in accordance with par. (b), this section does not apply to sites or facilities where more than 2,500 cubic yards of excavated contaminated soil or sediment are stored or where storage of contaminated soil or contaminated sediment exceeds 6 months. (b) Responsible parties may store contaminated soil or contaminated sediment that does not meet the criteria of par. (a) if the department has granted a written exemption from s. NR 718.05(1) after considering all of the following: 1. Waste characteristics and quantities. 2. The geology and hydrology of the area. 3. The unavailability of other suitable alternatives. 4. Compliance with local, other state and federal regulations. 5. The potential or actual threat to public health, safety, or welfare or the environment.

Note: ~~This section does not apply to sites or facilities where more than 2,500 cubic yards of excavated contaminated soil are stored or where storage of contaminated soil exceeds 6 months.~~ This section also does not apply to the storage by responsible parties of excavated contaminated soil at sites or facilities that are licensed solid waste storage facilities.

NR 718.05 (2) (c) is amended to read:

NR 718.05 (2) (c) *Impervious base*. Unless otherwise approved by the department in writing, Responsible responsible parties shall place contaminated soil or contaminated sediment on an impervious base material impervious to the contaminant so that the hazardous substances, environmental pollution or

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both do not impact the air, lands or waters of the state and to water, such as concrete, asphalt, plastic sheeting or an impervious construction fabric.

NR 718.05 (2) (d) is amended to read:

NR 718.05 (2)(d) *Cover and anchoring.* Unless otherwise approved by the department in writing, Responsible responsible parties shall ensure that all contaminated soil or contaminated sediment in a storage area is sloped and graded to eliminate depressions in the surface and is completely covered. The An impervious cover shall be in place at all times so that the hazardous substances, environmental pollution or both do not impact the air, lands or waters of the state when the contaminated soil, contaminated sediment or both are is not being transferred. All excavated contaminated soil or contaminated sediment shall be covered, as necessary, to prevent volatilization of soil contaminants in excess of limits in chs. NR 400 to 499.

Note: There may be stormwater and other regulatory requirements that apply.

NR 718.09 (1) is amended to read:

NR 718.09 (1) GENERAL. If excavated contaminated soil is treated at a non-commercial treatment unit or facility and the treatment unit or facility is operated by the responsible parties in compliance with the requirements of this chapter, that site or facility is exempt from solid waste program requirements for the treatment of the contaminated soil in ch. 289, Stats., and chs. NR 500 to 538, except where solid waste program requirements are specifically referenced in this section. If contaminated soil is incorporated into hot-mix asphalt in accordance with sub. (5), the asphalt plant is exempt from solid waste program requirements for treatment of contaminated soil found in ch. 289, Stats., and chs. NR 500 to 538, except where solid waste program requirements are specifically referenced in this section. If excavated soil contaminated solely with ~~light petroleum products or light petroleum products in combination with~~ agricultural chemicals regulated by the department of agriculture trade and consumer protection under s. 94.73, Stats., is treated by the responsible parties at a single-application landspreading facility in compliance with sub. (8), that landspreading facility is exempt from solid waste program requirements for the treatment of the contaminated soil in ch. 289, Stats., and chs. NR 500 to 538, except where solid waste program requirements are specifically referenced in this section. Commercial treatment units or facilities, hot-mix asphalt plants where contaminated soil is treated by means other than incorporation into the asphalt mix, and thermal treatment units or facilities are required to be licensed under ch. 289, Stats., and chs. NR 500 to 538, and are not exempt under this section.

Note: Treatment of contaminated soil that has not been excavated is not regulated as solid waste treatment under ch. 289, Stats., and chs. NR 500 to 538. Design, operation and maintenance requirements for the treatment of unexcavated contaminated soil are established in ch. NR 724.

NR 718.09 (7) is amended to read:

BIOREMEDIATION AND TREATMENT BY VOLATILIZATION OF EXCAVATED CONTAMINATED SOIL OR SEDIMENT. Except as provided in sub. (8), all of the The following requirements apply to the treatment of excavated contaminated soil or sediment by bioremediation, volatilization or both:

(a) Responsible parties who treat excavated contaminated soil or contaminated sediment by bioremediation or volatilization, or both, shall maintain the excavated contaminated soil or contaminated sediment in compliance with the requirements of s. NR 718.05 (2) (c), (e), (f) and (g), unless other methods are approved by the department.

(b) All excavated contaminated soil or contaminated sediment shall be covered, as necessary, to prevent volatilization of soil contaminants in excess of limits in chs. NR 400 to 499. If a cover is required

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by chs. NR 400 to 499, the cover material and anchoring system shall meet the requirements of s. NR 718.05 (2) (d), unless other methods are approved, in writing by the department.

(c) All treatment of excavated contaminated soil or contaminated sediment by bioremediation or volatilization shall be designed, operated and maintained in accordance with the requirements of ch. NR 724.

NR 718.09 (8) is amended to read:

NR 718.09 (8) SINGLE-APPLICATION LANDSPREADING OF EXCAVATED CONTAMINATED SOIL. (a) *General.* Responsible parties, or their agents or contractors, may conduct single-application landspreading of soil contaminated solely with ~~light petroleum products or light petroleum products in combination with~~ agricultural chemicals regulated by the department of agriculture, trade and consumer protection under s. 94.73, Stats., provided that the requirements of pars. (b), (c), (d) and (e) are met. Landspreading of contaminated soil which contains chemicals regulated by the department of agriculture, trade and consumer protection under s. 94.73, Stats., shall also be conducted in accordance with a plan that has received prior written approval from the department of agriculture, trade and consumer protection.

NR 718.09 (8) (b) 1c. is repealed.

NR 718.09 (8) (b) 2a. is repealed.

NR 718.09 (8) (c) is amended to read:

NR 718.09 (8) (c) *Facility approvals.* 1. The department may approve a facility for single-application landspreading under this section if the applicant submits a complete application and the facility meets the location standards under subd. 3. All applications for facility approvals shall be submitted on forms supplied by the department. The applicant shall send a copy of the application to the clerks of the county and the city, village or town where the facility is located at the same time that it is submitted to the department. Before an application for approval of a single-application landspreading facility is considered complete, the following information shall be submitted:

a. The facility location, including legal description and copies of any county soil survey maps, plat maps, USGS topographic maps or other maps used to demonstrate that the criteria in this paragraph are met. The area proposed for landspreading shall be delineated on appropriate maps and the total area proposed for landspreading shall be determined in square feet or acres.

b. The names, addresses and telephone numbers of the person who will operate the landspreading facility and the site owner.

c. A description of the current land use of the facility and surrounding properties.

d. The slope, depth to seasonal high water table and bedrock, and soil characteristics including soil type, and the mean permeability of the uppermost 5 feet of soil. Information summarized from county soil surveys published by the United States department of agriculture maps and similar sources may be used to obtain this information where appropriate. Information obtained from soil borings or test pits may be used to determine site-specific characteristics. The use of county soil surveys is not appropriate to determine separation from groundwater or bedrock for sites where a 10-foot separation distance is required.

e. Copies of any local approvals required in order to landspread or an affirmation that no local approvals are required.

f. Documentation that the site meets the location standards in subd. 3.

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Note: Copies of application forms for facility approvals may be obtained from any regional office of the department or by writing to the Department of Natural Resources, Bureau for Remediation and Redevelopment, PO Box 7921, Madison, Wisconsin, 53707-7921.

NR 718.09 (8) (d) (3) (i) is repealed.

NR 718.09 (8) (d) (4) is repealed.

NR 718.09 (8) (e) (2) (a) is amended to read:

NR 718.09(8) (e) (2) (a) ~~If 20 or less samples are required under subd. 1., all~~ All samples shall be analyzed for all contaminants identified through the waste characterization under par. (b) 1. that exceeded the residual contaminant levels in ch. NR 720.

NR 718.09 (8) (e) (2) (b) is repealed.

NR 718.12 is amended to read:

NR 718.12 Management of contaminated soil or sediment.

(1) GENERAL REQUIREMENTS FOR MANAGING CONTAMINATED SOIL OR CONTAMINATED SEDIMENT WHEN CONDUCTING AN IMMEDIATE, INTERIM OR REMEDIAL ACTION.

(a) If responsible parties manage contaminated soil or contaminated sediment at a site, ~~or~~ facility, or non-metallic mine where the reclamation plan allows contaminated material to be managed, in accordance with the provisions of this section, that site, ~~or~~ facility, or non-metallic mine is exempt from the solid waste program requirements in ch. 289, Stats., and chs. NR 500 to 538 for the soil or sediment disposal.

Note: Contaminated soil or contaminated sediment that cannot be managed under s. NR 718.12 may be approved for disposal in a licensed solid waste disposal facility under ch. 289, Stats., and chs. NR 500 to 538.

(b) The response action shall be conducted in accordance with all of the applicable requirements in chs. NR 700 to 754. Immediate, interim and remedial actions must be conducted in compliance with all applicable laws, including ss. NR 708.05, 708.11 to 708.16, and ch. NR 724, respectively, in addition to the requirements set forth in ch. NR 718.12.

(c) Responsible parties may not place or replace excavated contaminated soil or contaminated sediment in the following areas unless the department has granted a written exemption to these location standards, after considering all of the factors listed in par. (d):

1. Within a floodplain.
2. Within 100 feet of any wetland or critical habitat area.
3. Within 300 feet of any navigable river, stream, lake, pond, or flowage.
4. Within 100 feet of any on-site water supply well or 300 feet of any off-site water supply well.
5. Within 3 feet of the high groundwater level.
6. At a depth greater than the depth of the original excavation from which the contaminated soil was removed.
7. Where the contaminated soil or contaminated sediment poses a threat to public health, safety, or welfare or the environment.

(d) Responsible parties may manage contaminated soil or contaminated sediment in a location listed in par. (c) if the department has granted a written exemption from that location standard, after considering all of the following:

1. Waste characteristics and quantities.

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2. The geology and hydrogeology of the area, including information from well logs and well construction records for nearby wells.

3. The unavailability of other environmentally suitable alternatives.

4. Compliance with other state and federal regulations.

5. The threat to public health, safety, or welfare or the environment.

(e) Unless otherwise approved by the department, responsible parties shall sample and analyze all contaminated soil in accordance with all the following requirements:

1. For each site, ~~or facility~~ or non-metallic mine, one sample shall be collected for analysis for each 100 cubic yards of contaminated soil, for the first 600 yards with a minimum of 2 samples being collected. For volumes of contaminated soil that exceed 600 cubic yards, one sample for each additional 300 cubic yards shall be collected for analysis.

2. Samples shall be analyzed for all contaminants that were detected during a site investigation. In addition, available information shall be evaluated to determine what contaminants may have been discharged at the site or facility and samples shall be analyzed for those contaminants that are expected to be present based on past land use.

3. All soil and sediment samples shall be collected from areas most likely to contain residual soil or sediment contamination.

4. Responsible parties shall report all analytical results to the department in writing within 10 business days after receiving the sampling results.

(f) Documentation provided to the department to satisfy the requirements of 708.05 (6) shall include a description of how contaminated material was managed in compliance with this section.

Note: For those situations where an immediate action is being taken in accordance with s. NR 708.05 or where contamination is discovered as part of utility or other construction related work, the contaminated soil can generally be managed in accordance with the criteria set forth in s. NR 718.12 (1). The department should be contacted upon discovery of contaminated soil during construction activities for direction on how to proceed.

(2) ADDITIONAL REQUIREMENTS FOR ~~MANAGING~~ CONTAMINATED SOIL ~~MANAGED AS PART OF OR~~ CONTAMINATED SEDIMENT WHEN CONDUCTING AN INTERIM ~~ACTION~~ OR REMEDIAL ACTION.

(a) Responsible parties shall provide the department with written notice at least 7 days prior to excavating, dredging or otherwise disturbing contaminated soil or contaminated sediment that will be managed under s. NR 718.12. ~~initiating soil excavation activities.~~

(b) Prior to conducting an interim or remedial action which requires managing contaminated soil or contaminated sediment under s. NR 718.12, responsible parties shall submit a soil management plan design report to the department for review and approval. Unless otherwise approved, at a minimum soil management plans the report will meet the requirements of NR 724.09 and shall contain all the following information:

~~1. The name, address, e-mail address, and telephone number of the responsible party.~~

~~21. The volume of contaminated soil or contaminated sediment to be managed.~~

~~3. The address and location, by quarter-quarter section, township, range, and county, geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the site or facility where the contaminated soil originated.~~

~~4. The name, address, and phone number of any consultants or contractors who are involved with the project.~~

~~5. A proposed schedule for implementation of the soil management plan.~~

~~62. The result of all analyses performed on the contaminated soil or contaminated sediment.~~

~~73. A description of how the contaminated soil or contaminated sediment will be managed.~~

~~84. Sufficient information to justify that the placement or replacement of contaminated soils or contaminated sediment will meet the requirements of s. NR 726.13 (1) (b) 1. to 5.~~

(c) If management of the contaminated soil or contaminated sediment is proposed to take place at a location other than where it was excavated or dredged, the responsible party shall provide the following additional information:

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1. The name, address, and telephone number of the owner or owners of the property.
2. The address and location, by quarter-quarter section, township, range, and county, geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the site, ~~or facility~~ or non-metallic mine, where the contaminated soil or contaminated sediment is to be placed.
3. The geology and hydrogeology of the site or facility, including information from any previous remedial investigations. This also includes information from well logs or well construction records for nearby wells.

~~Note: If another report is being prepared to address the necessary response action, such as a remedial action plan, the soil management plan can be included as part of that report.~~

(d) If implementation of the soil management plan design report will result in the need for a continuing obligation on the property as defined by s. NR 725.05 (2), the responsible party shall provide written notification to anyone meeting the criteria in s. NR 725.05 (1) at least 30 days prior to submitting the soil management plan design report to the department for review. Unless otherwise approved by the department, notification letters shall meet the requirements contained in s. NR 725.07.

(e) For sites, ~~or facilities~~ or non-metallic mines where the department approves a ~~soil management plan~~ an interim or ~~other~~ remedial action that includes a continuing obligation which meets any of the criteria in s. NR 725.05 (2), the department may require that the site, ~~or facility~~ or non-metallic mine, including all properties and rights-of-way within the contaminated site boundaries, be included on the department database. Unless otherwise approved by the department, all applicable database documentation requirements set forth in s. NR 726.11 shall be met. The fees required by ch. NR 749 shall be submitted to the department.

(f) Documentation provided to the department to satisfy the requirements of 708.15 or 724.15 shall also include a description of how contaminated material was managed and how the action complied with the design report approved by the department. Note: Under s. 292.12 (3) (b), Stats., the department has authority to charge a fee for placement on a department database.

Note: If the continuing obligation related to contaminated soil is being imposed as part of another department action for the same site (i.e. closure) separate fees for placement on the database will generally not be required.

NR 724.02 (1) is amended to read:

NR 724.02 Applicability. (1) This chapter applies to all remedial actions and to the following types of interim actions taken by responsible parties, at sites, facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department:

- (a) On-site treatment systems, including groundwater extraction and other remedial treatment systems.
- (b) On-site engineering controls or barriers, including engineered landfill covers or groundwater barrier systems.
- (bm) Vapor mitigation systems.

Note: Remedial actions to actively remediate vapor contaminant sources fall under pars. (a) or (b).

(br) Any action requiring an exemption under 718.12 or 718.15 to manage contaminated soil, contaminated sediment or solid waste

- (c) Any other type of interim action when the department determines, on a case-by-case basis, that a design report required under s. NR 724.09 is necessary prior to implementation.

Note: This chapter does not apply to emergency or non-emergency immediate actions or to those types of interim actions that are not listed in s. NR 724.02 (1).

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Plain language explanation/analysis:

The rule changes above are all changes to code that will be proposed to achieve consistency in documentation requirements for soil and sediment management activities and remove code provisions related to soil management practices no longer in use. Several of the changes will better allow the department to manage soil and sediment in line with current commercial needs and practice. Sites or facilities where contaminated material is stored in compliance with this section are exempt from the requirements of the solid waste program. This exemption is self-implementing and allows parties to store soil while they are conducting a remedial or other action where contaminated soil will be excavated, but not immediately reused or disposed of. The exemption only applies to situations where no more than 2,500 yards of soil will be stored for no longer than 6 months, on an impervious base, and under cover. Allowing case-by-case approval for storage parameters outside of the existing self-implementing code language would facilitate the completion of more remedial actions and remain protective.

Comparable state or federal rules or policies:

Not applicable.

Economic impact comments:

The rule changes above are all clarifications to generally accepted practices and existing documentation requirements. Economic impact would be nominal. Allowing for an exemption from existing on-site storage of excavated soil or solid waste would allow more flexibility for managing soil and would benefit entities engaged in brownfield redevelopment, which has a positive economic impact