

Chapter NR 714

Public Information and Participation and Notification

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NR 714.01 Purpose. The purpose of this chapter is to identify the required public participation and ~~public information~~ notification activities for response actions undertaken pursuant to chs. NR 700 to 726~~54~~. Nothing in this chapter shall be construed to prevent the department or responsible parties from providing additional means for public ~~information and participation~~ and notification consistent with the provisions of this chapter. ~~This chapter contains public participation requirements mandated for environmental repair sites or facilities in s. 292.31, Stats., and for leaking underground storage tanks in 40 CFR part 280.~~ This chapter is adopted pursuant to ss. 227.11 (2), 289.06 (1), and ch. 292.11, 292.15, 292.31, and 292.41, Stats.

Note: The following portions of 40 CFR part 280 have been included in the text of this chapter: 40 CFR ss. 280.67 (a) to (d).

NR 714.02 Applicability. This chapter applies to response actions taken under the authority of ~~sch. 292.11, 292.15, or 292.31, Stats.~~

Note: Persons who wish to conduct response actions that will ~~meet~~ be consistent with the requirements of CERCLA and the National Contingency Plan (NCP) may request that the department enter into a contract with them pursuant to s. 292.31 or a negotiated agreement under s. 292.11(7)(d) 444.442, Stats. However, a CERCLA-quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to 754~~28~~ in order to satisfy be consistent with CERCLA and the NCP.

NR 714.03 Definitions. In this chapter:

(1) “Contested case” has the meaning specified in s. 227.01(3), Stats. A contested case hearing is ~~only conducted by the department in situations where state statutes allow an aggrieved party to request a hearing before an administrative law judge.~~

Note: Section 227.01 (3), Stats., defines “contested case” to mean “an agency proceeding in which the assertion by one party of any substantial interest is denied or controverted by another party and in which, after a hearing required by law, a substantial interest of a party is determined or adversely affected by a decision or order.”

(2) “Noncontested case hearing” or “public informational hearing” means ~~a statutorily required hearing conducted as specified in s. NR 2.135, in a matter that is not considered a contested case.~~

(3) “Public meeting” means a meeting held for general informational purposes ~~which~~ and that is not required by statute.

NR 714.05 ~~Program-specific public participation requirements~~ Responsibilities of the department. The department shall conduct all of the following public participatioin and notification activities:

(1) ENVIRONMENTAL REPAIR. ~~The department shall conduct all of the following public participation activities, as required in s. 292.31, Stats., with respect to:~~ PUBLIC DATABASE AND DATABASE OF RESIDUAL CONTAMINATION. The department shall:

~~(a) Inventory of sites or facilities which may cause or threaten to cause environmental pollution.~~ The inventory of sites or facilities which may cause or threaten to cause environmental pollution required by s. 292.31 (1) (a), Stats., and any amendments compiled in accordance with s. NR 710.17, shall be published as a class 1 notice under ch. 985, Stats.

Note: The department maintains a number of lists, in addition to the inventory of sites or facilities which may cause or threaten to cause environmental pollution required by s. 144.442 (4) (a), Stats. These lists are: a state-wide list of leaking underground storage tank sites (LUST); a

historical list of reported hazardous substance discharge incidents (i.e., spill report); a list of Wisconsin Superfund sites on the NPL; the Wisconsin remedial response site evaluation report; hazard ranking list; and the registry of waste disposal sites in Wisconsin. To obtain any of these lists, contact the Bureau of Solid and Hazardous Waste Management, Department of Natural Resources, Emergency and Remedial Response Section, Public Information Requests, P. O. Box 7921, Madison, WI 53707.

Maintain a public database of contaminated sites that are known to the department, in accordance with s. 292.31(1)(a), Stats.

Note: The public database of contaminated sites may be accessed at the following web site: <http://dnr.wi.gov/org/aw/rr/brrts/index.htm>.

(b) *Hazard ranking list.* The hazard ranking list, which is compiled in accordance with s. NR 710.19, shall be published as a class 1 notice under ch. 985, Stats. The department shall hold a public informational hearing in accordance with the requirements of s. NR 2.135 on the hazard ranking list, and any amendments to the hazard ranking list, if a hearing is requested within 30 days after the notice is published. As provided in s. 292.31 (1) (c) 4., Stats., notwithstanding s. 227.42, Stats., the public informational hearing may not be converted to a contested case hearing. A public hearing notice shall be published by the department at least 10 days prior to the hearing.

Note: Section 292.31 (1) (c), Stats., was repealed by 2005 Wis. Act 418.

Maintain a public database of sites or facilities that have residual contamination, and that includes information about any continuing obligations to maintain structural or institutional safeguards in regard to the residual contamination, in accordance with s. 292.12(3), Stats. and s. 292.57, Stats.

Note: The public database of sites or facilities with continuing obligations, including those related to residual contamination, may be accessed at the following web site:

<http://dnrmaps.wisconsin.gov/imf/imf.jsp?site=brrts2>.

(c) **(2)** PROPOSED DEPARTMENT-FUNDED REMEDIAL ACTIONS ~~options.~~

(a) For sites or facilities where a department-funded remedial action is proposed pursuant to s. 292.11 or 292.31, Stats., or both, the department shall publish a public notice as a class 1 notice under ch. 985, Stats., upon selection of a proposed remedial action in accordance with ch. NR 708 or 722, ~~for sites or facilities where a department-funded remedial action is proposed pursuant to s. 292.11 or 292.31, Stats., or both.~~ The availability of the department's proposed remedial action for public review shall be included in the public notice, including the identification of a department contact person, and his or her phone number and mailing address.

~~(d-b)~~ *Other.* The department shall be responsible for conducting or directing appropriate public participation and notification activities for sites or facilities where a ~~department-funded~~ response action is funded wholly or in part by the department and be conducted pursuant to s. 292.11 or 292.31, Stats., and where the department is overseeing response actions conducted wholly or in part by responsible parties under a contract signed pursuant to s. 292.31, Stats.

(2) LEAKING UNDERGROUND STORAGE TANKS. For all confirmed discharges from leaking underground storage tanks which require a site investigation under ch. NR 716, the department shall conduct, or require responsible parties to conduct, public participation activities which meet all of the following minimum requirements:

(a) Notice shall be provided to the public by means designed to reach those members of the public directly affected by the discharge of a hazardous substance and the implementation and operation of any proposed remedial action. Notice to the public may be provided by any of the following methods:

1. Public notice in local newspapers.
2. Block advertisements.
3. Public service announcements.
4. Publication in a state register.
5. Letters to individual households.
6. Personal contacts by department field staff or responsible parties.

(b) **(3) PUBLIC RECORDS.** The department shall make available to the public for inspection upon request, in compliance with ss. NR 2.19 and 2.195, site or facility-specific information and decisions concerning response actions.

Note: The public may request a time to view department files regarding the investigation and remediation of contaminated property by contacting the regional environmental program associate. The list of environmental program associates may be accessed at http://dnr.wi.gov/org/law/rr/technical/lists/contact_rr.htm#epas.

~~(c)~~ **(4) PUBLIC MEETINGS.** ~~Before approving of the proposed remedial action, The department may hold a public meeting to consider comments on any the proposed investigation of contamination or any other proposed response remedial action if there is sufficient public interest, or for any other reason.~~

~~(d) The department shall notify the public using one of the methods in par. (a) if implementation of the selected remedial action does not comply with all applicable federal and state public health and environmental laws, and closure of the case is under consideration by the department.~~

~~**Note:** If the department is required to give public notice of a remedial action being considered for closure that does not comply with the applicable public health and environmental laws, the department is not required to conduct a noncontested case hearing.~~

Note to reader: this section has been moved from NR 714.07(4) and modified.

(5) REQUESTS FOR SITE OR FACILITY SPECIFIC RESPONSES. Interested persons may request, in writing, that the department keep them informed of approvals or rejections of the response actions being taken at a site or facility. The department shall maintain a list of persons interested in a specific site or facility and provide them with copies of any department approvals or rejections for all of the following documents:

(a) Site investigation workplans.

(b) Site investigation reports.

(c) Remedial action options reports.

(d) Requests for case closure.

~~(3~~ **6) SUPERFUND.** The department shall conduct appropriate public participation activities consistent with 40 CFR part 300, at sites or facilities on the national priorities list, unless U.S. EPA is conducting the public participation activities. The public participation activities shall include the posting of signs at the site or facility in accordance with s. NR 714.07 (~~3~~4), either by the U.S. EPA, department or the potentially responsible parties.

NR 714.07 General ~~p~~Public participation and notification requirements of responsible parties.

(1) EVALUATION OF NEED FOR PUBLIC PARTICIPATION AND NOTIFICATION. In order to promote effective and meaningful public participation and notification, responsible parties shall conduct all necessary public participation and notification activities, unless otherwise directed by the department. Responsible parties shall evaluate the need for and the level of public participation and notification, based on the following criteria:

(a) *Threats.* Known or potential threats to public health, safety or welfare or the environment that may be reduced by providing information to the public.

(b) *Public concern.* Level of public concern about a specific site, facility or discharge or the number or status of sites, facilities or discharges which require a response action within a particular geographic area.

(c) *Additional information needed.* The need to contact the public in order to gather information about the response action, including immediate or interim actions.

(d) *Other.* Any other factors which may be relevant to a specific site, facility or discharge or to a group of sites, facilities or discharges.

(2) ~~ADDITIONAL~~ CONTENT OF PUBLIC NOTIFICATION. If responsible parties or the department determine that public notification is necessary at a site or facility, responsible parties shall include, ~~or~~ and the department may direct the responsible parties to include specific language regarding, the following information ~~in publicly disseminated information or news releases~~ as part of the public notification:

(a) *Description.* A description of the contamination, including the type, volume and characteristics of the contamination.

(b) *Mitigation.* Response actions that are planned or underway to contain, reduce or eliminate the threat of the contamination.

(c) *Contacts*. Phone number and address of persons to contact for more information.

(d) *Other*. Other information designated by the department.

Note to reader: this section has been moved from NR 714.05(2)(a) and modified.

(3) METHODS OF PUBLIC NOTIFICATION. Notice shall be provided to the public by means designed to reach those members of the public directly or indirectly affected by the discharge of a hazardous substance and the implementation and operation of any proposed or actual remedial action. The department may direct the responsible party to undertake any of the following public participation activities, and may require departmental approval of materials prepared by the responsible party in order to conduct these activities. The department may also undertake any of these activities, including personal contacts by department staff. Notice to the public may be provided by any of the following methods:

(a) Public notice in local newspapers.

(b) Block advertisements, including but not limited to posters in areas frequented by the public.

(c) Distributing leaflets door-to-door in the vicinity of the site or facility.

(d) Letters to individual households or personal contacts by responsible parties or their representatives.

Note to reader: these provisions have been moved from NR 714.07(6)(a) and modified.

(e) Contacting appropriate government officials, including but not limited to local government, law enforcement, emergency response and health officials to inform them of the circumstances and the response actions that are planned or underway to contain, reduce or eliminate the threat of the contamination.

Note: In most situations, the appropriate local government contact is the clerk.

(f) Contacting media by preparing radio, newspaper or television announcements, including public service announcements.

(g) Contacting any interested individuals who have asked to be kept informed of site or facility activities at various points in the process, including any other site-specific information itemized by the requestor that is available from the responsible party, including but not limited to sample results, emergency or interim actions, disposal of wastes removed from the site, requests for case closure or enforcement actions.

(h) Holding advertised public informational meetings designed to provide the public an opportunity to ask questions and receive answers from the responsible party, the department, or both.

(i) Establishing a clearinghouse, toll-free telephone number or internet location where the public may obtain more information about the site or facility and the proposed or actual remedial actions, as well as submit comments and receive responses regarding activities that may generate noise, dust, odors, traffic or similar local concerns.

(j) Using any other appropriate mechanisms to contact and inform the public, including the opportunity to submit public comments on proposed remedial activities and to receive written responses.

(4) POSTING OF SIGNS. (a) Unless otherwise directed by the department, responsible parties shall post one or more department-issued signs in the following manner, when any of the following conditions are found at a site or facility:

1. At the edge of the excavated contaminated soil being stored on the site or facility.

2. At the specific locations at within the facility or site where contaminated media present a direct contact threat to humans.

Note: Responsible parties should consult s. NR 720.11, table 2, and the procedures established in s. NR 720.11 or the procedures established in s. NR 720.19 (5) for residual contaminant levels based on protection of human health from direct contact, to assist in determining when contaminated soil poses a direct contact or inhalation threat to the public.

3. At the entry locations of buildings or structures contaminated with hazardous substances or environmental pollution that pose or may pose a threat to public health, safety or welfare, and where the building or structure will be addressed by one of the response actions for the site or facility.

4. At any other location within a site or facility where the department believes unacceptable human exposure to contaminants exists.

(b) The responsible parties shall add to the department-issued sign required in par. (a) all necessary information, including:

1. Name, address and phone number of the owner or operator of the site or facility or responsible parties.
2. Types of hazardous substances or environmental pollution on the property.
3. Department-issued identification number for the site or facility.
4. For signs posted at contaminated soil piles, the anticipated month, day and year of removal of the soil pile.
5. Any other information the department may request.

(c) Responsible parties shall place the signs at locations on the site or facility in accordance with par. (b), so that they shall be visible to the general public, unless the department specifies the location of the sign or signs. At least one sign shall be placed at the edge of contaminated soil storage piles.

(d) Unless otherwise directed by the department, signs required under this subsection shall be maintained and legible for the duration of the response action until ~~the case is closed out~~ final case closure is received in accordance with ch. NR 726, or until no further action is required by the department in accordance with s. NR 708.09.

Note: In addition to the requirements of this chapter, responsible parties are also required to satisfy the public notification requirements in other chapters, including NR 716 and NR 726. These requirements include providing information to owners, and occupants as appropriate, of property affected by contamination for which the responsible party is conducting environmental response actions. This includes (1) notification of sampling results, and (2) notification that the responsible party will request approval of a remedial action where residual contamination will remain on the property. The department is required to provide notification of the conditions of the final case closure approval to all affected parties.

~~(4) REQUESTS FOR SITE OR FACILITY-SPECIFIC INFORMATION.~~

~~Interested persons may request, in writing, that the department keep them informed of the response actions being taken at a site or facility. The department shall maintain a list of persons interested in a specific site or facility and provide them with copies of any department approvals or rejections for all of the following documents:~~

- ~~(a) Site investigation workplans.~~
- ~~(b) Site investigation reports.~~
- ~~(c) Remedial action options reports.~~
- ~~(d) Department responses to requests for case closure in s. NR 726.07 (1) and final decisions on case closures in s. NR 726.07 (2).~~

~~(6) ADDITIONAL PUBLIC PARTICIPATION ACTIVITIES. If the responsible parties or the department determine that additional public participation activities are required to supplement the public notification required under sub. (2), after considering the factors listed in sub. (1), the responsible parties shall, unless otherwise directed by the department, conduct one or more of the following activities:~~

- ~~(a) Contact government officials. Contact local government, law enforcement, emergency response and health officials to inform them of the circumstances and the actions that are underway to contain, reduce or eliminate the threat of the contamination.~~
- ~~(b) Contact interested individuals. Contact persons who have asked to be kept informed of site or facility activities at various points in the process.~~
- ~~(c) Contact media. Prepare radio, newspaper or television announcements.~~
- ~~(d) Hold informational meetings. Hold public informational meetings.~~
- ~~(e) Distribute leaflets. Distribute leaflets door-to-door in the vicinity of the site or facility.~~
- ~~(f) Establish a clearinghouse. Establish an information clearinghouse or hotline number.~~
- ~~(g) Other. Use other appropriate mechanisms to contact and inform the public.~~