

NR 727 Continuing Obligation Requirements and Reopening Closed Cases

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NR 727.01 Purpose. The purpose of this chapter is to specify the minimum responsibilities of responsible parties, owners and occupants of properties where continuing obligations have been imposed in a closure approval letter, in a remedial action plan approval, or for local government units where continuing obligations have been imposed by the department under ch. NR 708; to specify the process for updating closure conditions, continuing obligations and information included in the department database; and to specify the criteria for reopening a closed case. This chapter is adopted pursuant to ss. 227.11 (2), 287.03, 289.06, and ch. 292, Stats.

NR 727.02 Applicability. (1) This chapter applies to the responsibilities for continuing obligations and related actions at sites or facilities that are subject to regulation under ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department.

NR 727.03 Definitions. The definitions in s. NR 700.03 apply to this chapter.

NR 727.05 Continuing obligation responsibilities. (1) A party or person who owns or occupies a property where a continuing obligation has been imposed under either s. NR 708.17, NR 722.15, or NR 726.13, shall: (a) comply with the requirements imposed by the agency, without regard to when the person obtained or occupied the property. This may include any continuing obligation necessary to ensure that conditions at the property, site or facility remain protective of public health, safety and welfare and the environment, including but not limited to maintaining an industrial land use for the property, properly abandoning a monitoring well, notifying the agency prior to changing the land use; maintaining a cap, cover or other performance standard in compliance with the maintenance plan, maintaining a building or conducting an investigation and cleanup if a building or structural impediment is removed, or operating and maintaining a vapor mitigation system..

Note: Ch. 292, Wis. Stats., allows for legally enforceable agreements (private contracts) between parties to address the continuing obligations imposed by an agency. Since the agency is not a party to these agreements, the property owner remains responsible for compliance with a continuing obligation if an issue arises.

(b) conduct the following actions in compliance with the conditions specified by the agency, as applicable:

1. operate and maintain the response required,

2. maintain an inspection log, and keep it on the premises or at the location specified in the maintenance plan until the continuing obligation has been satisfied or removed, and submit the log to the agency at the frequency required,

3. conduct long-term monitoring.

(c) allow reasonable access to the agency for inspection of any required continuing obligations.

(d) manage any residual contamination in accordance with applicable state and federal laws.

(2) For cases where a continuing obligation is required under either s. NR 708.17, NR 722.15, or NR 726.13, the property owner shall notify anyone purchasing the property of the responsibility to comply with the continuing obligation.

(3) For cases where occupants are responsible for maintenance of a continuing obligation under either s. NR 708.17, NR 722.15, or NR 726.13, the property owner shall include the continuing obligation in the lease agreement.

(4) In order to maintain the off-site exemption under s. 292. 13, Stats., the property owner, or occupant if applicable, shall avoid:

(a) interference with response actions taken, and

(b) actions that may make the contamination worse or that would cause or worsen the discharge of a hazardous substance to the environment.

NR 727.07 Continuing obligation notifications (1) NOTIFICATION OF THE AGENCY WITH ADMINISTRATIVE AUTHORITY. For situations where a continuing obligation has been imposed under either s. NR 708.17, NR

722.15, or NR 726.13, the property owner shall notify the agency within 45 days prior to taking any of the following actions, to determine whether further action may be necessary to protect human health, safety, welfare and the environment.

(a) Change from industrial to non-industrial land use. This includes cases with soil standards based on industrial land use exposure assumptions.

(b) Removal of a structural impediment. This includes cases with a structural impediment that prevented completion of the investigation and/or remediation.

(c) Removal of a cover or cap or a portion thereof. This includes cases with a soil cover, cap or engineered containment structure.

(d) Change in use of a vapor mitigation system. This includes cases with a passive or active vapor mitigation system.

(e) Change in use of the site or facility from active use of the compounds of concern. This includes cases where a site or facility was closed, while using the compound of concern in their operations, which will now cease using the compounds of concern.

Note: For example, when chemicals are used in the operation of a business, air quality standards within buildings are typically set by OSHA. In these cases, sites or facilities may have received closure with contamination in place, but without being able to fully evaluate the vapor migration pathway. If the use of the property changes such that the compounds of concern are no longer used, it would be necessary to evaluate the vapor intrusion pathway.

(f) Construction of a building over residual soil or groundwater contamination by volatile compounds. This includes cases where a building didn't exist at closure, but where construction of a building without adequate vapor control may result in a completed exposure pathway.

(g) Change in site-specific exposure assumptions. This includes cases where use of the site or facility or property will result in different exposure assumptions than were used for closure.

Note: This may include sites or facilities where exposures applicable to adults change to a use applicable to a more sensitive population, such as elderly, children, or populations with medical conditions (adult or child day care, medical facilities). Another example is where the land use changes such that revised exposure assumptions are necessary. This would include sites or facilities with residual contamination that were closed based on an industrial land use scenario, but are now proposed to become private homes, condominiums, apartments, care centers or similar land use situations.

(h) Site-specific conditions. This includes any other situation where the agency required notification, on a case-by-case basis, including but not limited to changes in land use or use of a property.

727.09 Updating the department database or continuing obligations. In order to evaluate the situations in this section, the department may require that the person requesting a change submit information, as necessary.

(1) COMPLIANCE WITH CONTINUING OBLIGATIONS. The department may require additional response actions be taken at sites or facilities closed with deed restrictions or where continuing obligations have been imposed under either s. NR 708.17, NR 722.15 or NR 726.13, in cases where compliance with the restriction, condition or continuing obligation has not been maintained.

Note: The department conducts audits of cases where continuing obligations have been imposed. In some cases, these audits identify a lack of compliance with the continuing obligation imposed, and measures are required to return the site to compliance.

(2) UPDATING A GROUNDWATER USE RESTRICTION. For cases that have been closed conditioned upon the recording of a groundwater use restriction, the responsible party or property owner may, at any time after groundwater contaminant concentrations fall below ch. NR 140 preventive action limits, ~~apply for unconditional case closure and may~~ request that the agency issue an affidavit that can be recorded at the county register of deeds office to give notice that the previously recorded groundwater use restriction is no longer required. The responsible party may also apply for ~~an~~ a preventive action limit exemption under s. NR 140.28 if concentrations fall below ch. NR 140 enforcement standards and the appropriate criteria under s. NR 140.28 are met. Once an exemption is granted under s. NR 140.28, the responsible party ~~may apply for unconditional case closure and~~ may request that the agency issue an affidavit that can be recorded at the county register of deeds office to give notice that an exemption has been granted under s. NR 140.28 and that the previously recorded groundwater use restriction is no longer required.

Note: Prior to November, 2001, cases with groundwater enforcement standard exceedances were closed with a deed restriction, called a groundwater use restriction. The groundwater use restriction required department review and approval of a water supply well constructed or reconstructed on an affected property. Since November, 2001, these sites have been closed by adding them to a department database. NR 812 contains the requirement for department review and approval of any well constructed or reconstructed on a property listed on the department database. Responsible parties or property owners of sites, facilities or properties subsequently

meeting groundwater enforcement standards may request to have the deed restriction updated and the site or property removed from the department database, or that the information on the database be modified.

(3) UPDATING A DEED RESTRICTION. For cases that have been closed with a deed restriction that has since been satisfied, the responsible party or property owner may, at any time after the conditions necessitating a deed restriction have been either eliminated or satisfied and the restriction is no longer needed, request that the agency issue a written determination that can be referenced in an affidavit, confirming this situation. An affidavit can be then recorded at the county register of deeds office to give notice that some or all of the conditions, as applicable, in the previously recorded deed restriction are no longer required.

Note: Prior to June 3, 2006, cases meeting certain conditions were closed with a deed restriction in accordance with ch. NR 726. Since that time, the use of deed restrictions for closure have been replaced with conditions, in a closure letter under ch. NR 726 or in a remedial action approval under ch. NR 722.

(4) REMOVAL FROM THE DEPARTMENT DATABASE. For cases that have been included on the department database under s. NR 708.17, NR 722.15 or ch. NR 726.07, the responsible party, property owner or other party may apply to the agency for removal of the site or facility or property, as applicable, from the department database. A site may not be removed from the database until all applicable standards have been met, and all requirements imposed have been satisfied or nullified. A request may be submitted to the agency at any time after:

(a) groundwater contaminant concentrations are below ch. NR 140 enforcement standards,

(b) soil contaminant concentrations are below ch. NR 720 soil standards, and

(c) other requirements or continuing obligations imposed have been satisfied or nullified.

(5) MODIFICATION OF THE DEPARTMENT DATABASE. For cases that have been included on the department database under s. NR 708.17, NR 722.15 or ch. NR 726.07, the responsible party, property owner or other party may request that the department modify information on the department database at any time after:

(a) groundwater contaminant concentrations are below ch. NR 140 enforcement standards,

(b) soil contaminant concentrations are below ch. NR 720 soil standards, or

(c) other requirements or continuing obligations imposed have been satisfied or nullified.

Note: Cases may be included on the department database for more than one reason. If one or more, but not all of the conditions have been satisfied or nullified, the information on the database can be changed to reflect current conditions.

(6) DEED NOTICES. (a) Deed notices that are required for modification or removal of a site or facility or property from the department database, or for another agency decision, shall be drafted in compliance with all of the following requirements:

1. The document shall be drafted as an affidavit in the format required by s. 59.43 (2m), Stats.

2. The property's legal description shall be typed onto the form or a copy of the legal description shall be attached and incorporated by reference.

3. The document shall be signed by the property owner or owners, and their signatures shall be notarized.

(b) If a deed notice is required under this section, responsible parties shall record the deed notice within 90 days after the agency specifies that a deed notice is required.

NR 727.11 Fees. A request for a review, a determination, or processing a change to the department database under this chapter may not be considered by the department until proof of payment of the required fees has been received by the department's remediation and redevelopment program, in accordance with ch. NR 749.

(1) REVIEW FEE. For sites or facilities where the department has administrative authority to oversee the remediation of the site or facility, the fee listed in ch. NR 749 for review of a request to update a deed restriction, or to modify or remove a site or facility or property from the department database shall be submitted to the department with each request.

(2) DEPARTMENT DATABASE PROCESSING FEE. (a) For sites or facilities where the department has administrative authority to oversee the remediation of the site or facility, the fee listed in ch. NR 749 for processing the change to the department database shall be submitted to the department with each request.

(b) For sites or facilities where either the department of commerce or the department of agriculture, trade and consumer protection have administrative authority to oversee the remediation of the site or facility, the fee for processing the change to the department database shall be submitted to the department of natural resources with each request.

NR 727.13 Reopening closed cases. **(1)** The department may require additional response actions, including monitoring, for any case which has previously been closed by the department, if :

(a) information regarding site or facility conditions indicates that contamination on or from the site or facility poses a threat to public health, safety or welfare or the environment, or

(b) a property owner fails to comply with a condition of closure, a deed restriction, or with the certificate of completion issued pursuant to s. 292.15, Stats., or fails to maintain or comply with a continuing obligation.

(2) If additional response action is required for a previously closed case, the department:

(a) Shall indicate in writing to the responsible parties that additional response action is needed at the site or facility and provide the responsible parties with information regarding the nature of the problem and category of response action that is needed.

(b) May require the responsible parties to achieve compliance with the applicable public health and environmental laws, including chs. NR 700 to 75446 where applicable, within a time period established by the department.

(3) The party who conducted the cleanup, or a person who owns the source property, may request reopening of a closed case, or may conduct additional remedial actions.