

Summary of Proposed Changes to the NR 700 Series of Administrative Rules October, 2009

Background: The NR 700 rule series provides comprehensive requirements for addressing the investigation and remediation of contaminated property. Although additions and revisions to these rules have been made since they were originally promulgated in 1994, those changes were focused on very specific issues. Many statutory, policy and technical changes have occurred since that time and those areas are the subject of these proposed revisions.

This document provides a brief summary of the proposed changes for each of the rules where the Remediation and Redevelopment (RR) Program has completed the initial rule drafting. A copy of each draft rule is also included in a red line/strikeout format to make the proposed changes as clear as possible. As additional rules are completed an updated summary and the draft rule language will be posted. It is the RR Program's intention to seek initial comments over approximately 6 months, make appropriate changes and then request authorization from the Natural Resources Board to hold formal public hearings on the proposed changes in the spring.

Since the proposed changes to NR 720 (Soil Cleanup Standards) will be significant, we are initially planning to deal with that rule separately from the remainder of the rule changes.

Summary of the Proposed Changes:

NR 169; Dry Cleaner Environmental Response Program – The changes being proposed to NR 169 are a result of the decision to eliminate the majority of NR 710 (Site Discovery, Screening, and Ranking). Three additional definitions have been added to define the terms high, medium and low priority. This will simplify the process the Department uses to assign dry cleaners sites a priority category. In addition, a definition has been added which defines solvent vapor action level to include vapor concentrations that are at or above a 1-in-100,000 excess lifetime cancer risk for carcinogens and a hazard index at or above 1 for non-carcinogens.

NR 700; General Requirements – The most significant changes to NR 700 are eliminating the simple site process and adding a requirement for all sites to submit semi-annual progress reports. The simple site process has rarely been used over the last 15 years, especially more recently, and removing the language simplifies several other rules as well. Semi-annual progress reports are intended to provide a straightforward method for tracking site progress. Several other changes to the rule include:

- Adding a definition of “Department Database” in order to provide a term that is consistent with the statutory language,
- Definitions were added for “Limit of Detection” and “Method Detection Limit” since those terms are now used in NR 716,

- A definition of “Sustainability” has been added since revisions to NR 722 include proposed language for evaluating sustainability as part of remedy selection, and
- NR 700.11 has been modified to require the submission of a Site Investigation within 60 days of receiving notification that an investigation is required. This language is consistent with proposed changes to NR 716.

NR 706; Hazardous Substance Discharge Notification and Source Confirmation Requirements – A number of changes are being proposed including:

- Removing most of the references to the LUST program as these are either no longer needed or covered by other rule language,
- Clarifying that discharges to the environment may include long-term applications or permitted discharges,
- Providing more specific details on how to report non-emergency discharges.
- Clarifying that even if a discharge is exempt from notification it must be adequately responded to, and
- Adding a provision to report the source and cause of discharges from LUST systems in order to comply with the 2005 Federal Energy Act.

NR 708; Immediate and Interim Actions – The most significant change to this rule is the addition of a section on Local Governmental Unit or Economic Development Corporation Exemptions, based on s. 292.11(9)(e)4, Wis. Stats. This section identifies the requirements that apply if the Department determines that additional action is necessary to make the site protective based on the intended use.

Several other minor changes proposed include:

- Giving the Department the ability to consider soil removal actions of greater than 100 cubic yards as an immediate, non-emergency action on a case-by-case basis,
- Requiring responsible parties to provide Wisconsin Transverse Mercator coordinates, and
- Clarifying that a Site Investigation may not always be necessary after the completion of an interim action.

NR 710; Site discovery, screening and ranking – This rule was originally established to provide DNR with a process for ranking sites with environmental contamination. DNR is proposing to eliminate this rule in part because the statutory provision for DNR to inventory sites was repealed and the process for scoring a site using the hazard ranking system is no longer needed to determine the priority of a site. Two sections (NR 710.05 – Identification of RP’s and 710.09 – Superfund Site Assessment) along with several definitions are being retained and moved to Chapter NR 700.

NR 712; Personnel qualifications for conducting environmental response actions – The proposed changes clarify that NR 712 applies to field work associated with Phase I/II environmental site assessments. In addition, environmental site assessments that are submitted to satisfy the requirements of the NR 700 rule series must be prepared by environmental professionals as currently set forth in NR 712. The definition of

hydrogeologist is being expanded to require licensing as a hydrogeologist or registration as a geologist with the Department of Regulation and Licensing.

NR 714; Public Participation and Notification – This rule has undergone fairly significant organizational changes in order to make the rule flow more smoothly. From a content standpoint, the major changes include:

- The language requiring the Department to maintain lists and inventory sites has been removed and replaced with references to the Department’s public database,
- Language that specifically referenced LUST’s has been removed or made more general in order to apply to a broad array of cleanup situations, and
- The section that required the Department to notify the public of cases being considered for closure that do not comply with all applicable Federal and State standards has been removed since that language is inconsistent with the case closure process.

NR 716; Site Investigations – There are a number of proposed changes to this rule including:

- Clarifying the importance of evaluating and estimating the mass of contamination in the source area,
- Requiring that the field investigation be initiated within 60 days of submittal of the work plan. If the responsible party pays a fee for DNR review of the work plan, then the field investigation must be initiated within 60 days from the date the Department approves the work plan,
- Better well protection requirements in order to help reduce the number of wells that are destroyed and ultimately can’t be properly abandoned,
- Adding a new section (NR 716.14) to better clarify the process for notification of sampling results. This section was also made consistent with internal DNR procedures,
- Adding a provision that requires the Site Investigation Report to be submitted to the Department within 60 days after completion of the field work and receipt of the data,
- Clarifying the requirements in ch. NR 141 (Groundwater Monitoring Well Requirements) regarding the establishment of a horizontal grid system for locating monitoring wells,
- Updating the SW-846 references, and
- Numerous organizational changes in order to make the rule flow more smoothly.

NR 718; Management of solid wastes excavated during response actions – References to specific sections in ch. NR 720 (Soil Cleanup Standards) have been removed and replaced with more generic ones in anticipation of forthcoming changes to that rule. The requirement to sample petroleum contaminated soil for Gasoline Range Organics (GRO) and Diesel Range Organics (DRO) have been eliminated and compound specific information will instead be relied on. The requirement to provide Wisconsin Transverse Mercator Coordinates for the sites covered by this rule has been added.

NR 722; Standards for Selecting Remedial Actions – The most significant change to this rule was the addition of language on long-term environmental sustainability in several locations. With respect to State funded cleanups, the proposed language indicates that significant consideration will be given to remedies that maximize long-term benefits. Rule language has also been added that requires responsible parties to evaluate the long-term sustainability of the remedial options.

Other changes include:

- Clarifying the Department’s authority to require evaluation of Vapor Intrusion pathway,
- The term “institutional controls” was replaced with “continuing obligations”, and
- Adding language that allows the Department to impose certain conditions as a part of approving a remedial action plan in order to ensure the site remains protective. These provisions are being included based on the authority contained in s. 292.12, Stats.

NR 724; Remedial and Interim Action Design, Implementation, Operation, Maintenance and Monitoring Requirements – There are 4 major changes being proposed for this rule are summarized as follows:

- Removing rule language dealing with “simple” sites. The Department will be proposing changes to NR 700 to eliminate the simple site process, since in practice it has been seldom used. The changes to section 724.05 are consistent with the proposed changes to NR 700.
- The Department is proposing to require electronic copies of documents in addition to paper versions be provided. This is intended to help the RR Program continue to move toward making more information available electronically.
- The rule language in section 724.13 is being changed to specify that O&M Progress Reports be submitted semi-annually to coincide with General Progress Reports being proposed for inclusion in NR 700. In addition, the rule language specifying the content of O&M Progress Reports has been removed. It is the Department’s intent to identify all of the necessary that needs to be provided on a “fillable” PDF form that would be available on our web page.
- Section 724.19 is being modified to remove the reference to “soil and groundwater” and replacing it with the phrase “any applicable environmental standards” since other standards could be applicable to environmental cleanup situations.

NR 725; Notification Requirements for Residual Contamination and Continuing Obligations – This is a new rule that identifies notification requirements to persons whose property will be affected by continuing obligations. The rule specifies those situations where a continuing obligation is required. The rule also provides details that must be included with a notification letter.

NR 726; Case Closure – There are a number of changes to this rule with the most significant being:

- Adding closure criteria for site with vapor contaminant sources.
- Expanding language that specifies the information that must be provided for sites that will be entered on the department's database.
- Clarify that sites where the department approves a remedial action plan or directs a local governmental unit or economic development corporation to take action can be placed on the database if continuing obligations are imposed.
- Specifying that a case may not be closed if the remaining level of contamination is likely to cause an exceedance of a solvent vapor action level in indoor air.
- Inclusion of language that requires property owners to inform any purchaser if continuing obligations exist.
- Providing detailed language of those situations where the closure letter must specify the on-going continuing obligations.

NR 727; Continuing Obligation Requirements and Reopening Closed Cases – This is a new rule that includes the following provisions:

- Requirements the property owners must comply with when one or more continuing obligations have been imposed.
- Specifies those situations where the property owner must notify the agency with administrative authority before making changes that may affect a continuing obligation.
- Direction for updating previously recorded groundwater use restrictions or deed restrictions as well as identifying the process that must be followed when modifying or removing a site from the Department's database.
- A section identifying when review fees are required for changing the database or an existing restriction.
- The section on reopening closed cases (formerly in NR 726) has been expanded to allow for reopening cases if a property owner fails to comply with closure requirements imposed by the Department, and also the responsible party or current property owner to request the site be reopened.

NR 728; Enforcement and Compliance Authorities – The most significant change to this rule is in section NR 728.11. That section now allows the department to put a site on our database if the responsible party has failed to take the necessary response action, following a 30 day notice. NR 728.13 has been added in order to retain the language that provides the Department with the authority to file deed affidavits on properties where contamination has been identified but an adequate investigation or remediation has not been implemented.

Other changes to this rule include:

- The title has been changed to identify that this rule also covers compliance issues that are not necessarily enforcement related,
- The rule language and associated definition was revised by replacing the word "contract" with "agreement" in order to provide a broader definition that covers all of the options available,

- A section entitled “Fees related to enforcement actions” was added to clarify the Department now has authority to assess and collect fees for persons subject to an order. This authority is provided under section 292.94 of the statutes, and
- An additional provision was added to section 728.09 to cover those situations where an order is necessary to prevent the discharge of a hazardous substance. This authority is provided under section 292.11(4) of the statutes.

NR 746; Risk Screening and Closure Criteria for Petroleum Product Contaminated Sites, and Agency Roles and Responsibilities – All of the technical provisions in the rule are being removed. The primary reason for removing this language is that DNR rarely uses this rule to evaluate or close-out petroleum contaminated sites. This is because in order to be eligible, a site must meet the risk screening criteria contained in s. NR 746.06. However, petroleum contaminated sites that meet the definition of high risk (i.e. those sites under the jurisdiction of DNR) almost always do not meet the risk screening criteria and therefore can not pursue closure under NR 746. In addition, DNR will be proposing to remove the table values in NR 720 and replace them with the algorithms that would allow specific numerical standards to be calculated. This change is being pursued because when input parameters change (i.e. the toxicity value of a specific compound) the table value becomes inaccurate. A number of the Table 1 and 2 values in NR 746 need revising and removing the Tables altogether will avoid this problem in the future.

The rule language related to the procedural process that must be followed by DNR and Commerce includes several minor modifications, but in general is being retained. This includes: tracking site progress, classification and transfer of sites, staff training, and dispute resolution.

NR 749; Fees for providing assistance; remediation and redevelopment program – The major change to this rule is an increase in the fees of approximately 40%. The fees have not been changed since they were originally promulgated in September, 1998 and this change represents an average annual increase of about 3.2% per year.

Several other changes are also being proposed which include:

- Adding a section (s. NR 749.05) that provides responsible parties and others with the option to pay an hourly fee for project oversight as part of a negotiated agreement.
- Clarification that DNR has the ability to require payment of fees as part of negotiated agreements or enforcement actions in accordance with s. 292.94(d) of the statutes.
- Reorganizing the fee table to group the type of assistance provided into similar categories.

NR 750; Fees for providing oversight for the contaminated land recycling program – A number of changes are being proposed to this chapter including:

- Removing or modifying a number of definitions,
- Requiring applicants to provide a copy of the property deed and a map showing the boundaries of the property as part of the initial application,

- Adding language that would allow the department to withdraw the applicant from the process if reasonable progress on the site investigation and remediation is not made,
- Providing notification to the department any time the property boundaries change but no later than 60 days prior to submitting a request for a certificate of completion,
- Increasing the advanced deposit, and
- Clarifying that payment of fees is required for sites added to the GIS Registry.