



DNR REMEDIATION & REDEVELOPMENT PROGRAM GUIDANCE FOR PUBLIC COMMENT



The Remediation and Redevelopment Program is seeking input on the publication below. Email the staff contact listed below to share feedback.

DOCUMENT TRACKING NUMBER

RR-982

DOCUMENT TITLE

Guidance Post-Closure Modifications

BACKGROUND/SUMMARY

The purpose of this guidance is to aid in the preparation and review of post-closure modification (PCM) submittals to the Wisconsin Department of Natural Resources (DNR). Information about the types of PCMs, the process, fees and types of responses available from the DNR is provided. This guidance is for use by property owners, responsible parties, environmental consultants and DNR staff. It is based on authority provided under Wisconsin Statutes (Wis. Stat.) § 292.12(6) and Wisconsin Administrative Code (Wis. Admin. Code) ch. NR 727.

PUBLIC COMMENT PERIOD CLOSE DATE

October 5, 2023

STAFF CONTACT & EMAIL ADDRESS (FOR PUBLIC COMMENTS)

[Jenna Soyer](#)

Please use subject line: "RR-982 Comments"



Guidance: Post-Closure Modifications

Purpose

The purpose of this guidance is to aid in the preparation and review of post-closure modification (PCM) submittals to the Wisconsin Department of Natural Resources (DNR). Information about the types of PCMs, the process, fees and types of responses available from the DNR is provided. This guidance is for use by property owners, responsible parties, environmental consultants and DNR staff. It is based on authority provided under Wisconsin Statutes (Wis. Stat.) § 292.12(6) and Wisconsin Administrative Code (Wis. Admin. Code) ch. NR 727.

Introduction

Post-closure modifications (PCMs) are changes made to a property, site or facility, as defined in Wis. Admin. Code § NR 700.03, with continuing obligations (COs) applied in the DNR case closure letter under Wis. Admin. Code ch. NR 726.

A PCM submittal may be used to notify the DNR of a proposed change to a CO. DNR notification is required at least 45 days before making certain changes to a CO, such as removing or replacing a cover or changing the land use, as described in Wis. Admin. Code § NR 727.07. Following notification, the DNR determines if further action is necessary to protect human health, safety, welfare or the environment.

In the event that a CO was satisfied, modified or nullified at a property, site or facility, a PCM submittal, accompanied with the appropriate fee, may be used to request modification to, or removal from, the DNR’s database, Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web (BOTW), under Wis. Stat. § 292.12(6). The DNR will then review and respond to the submittal.

Common PCMs are summarized in Table 1. Additional information regarding PCMs is included in DNR publication RR-987, Post-Closure Modifications – Changes to Property Conditions after a State-Approved Cleanup (go to dnr.wi.gov, search “RR-987”).

PCM Requests

A PCM request may include an entire site, facility, property or a portion of a site, facility or property. The request may include all the planned changes; however, if all changes are unlikely to occur within the same time frame, separate requests should be submitted to address subsequent phases.

Adjoining properties may be addressed in one PCM request. If there are different property owners for adjoining properties within a site covered by a single closure letter, one request may be submitted for the site. This option is meant to address sites that were subdivided and for which a common action is being considered on the adjoining parcels. Alternatively, each property owner may submit a separate PCM request.

Each PCM request requires a separate fee (see Table 1 for fees associated with common PCM requests).

Did an agency other than the DNR close your site?

Submit PCM requests and applicable fees for sites closed by the former Department of Commerce, the Department of Safety and Professional Services (DSPS) or by the DNR to the DNR. PCM requests for sites closed by the Department of Agriculture, Trade and Consumer Protection (DATCP) should be submitted to DATCP; fees for PCM requests to DATCP must be submitted to DNR.

Submittal Process

The PCM process includes the following basic steps:

1. **Prior to submittal:** Notification is recommended to property owners, right-of-way (ROW) holders occupants of the affected property, and other parties affected by a proposed change. The DNR recommends using notification requirements and process that are defined in Wis. Admin. Code ch. NR 725 and providing notification to these parties at least 30 days prior to submittal of the PCM request.
2. **PCM submittal to the DNR:** The DNR recommends that applicants submit PCM requests using DNR Form 4400-237, Technical Assistance, Post-Closure Modifications and General Liability Clarification Requests (Go to dnr.wi.gov, search “4400-237”). The submittal must be accompanied by the applicable Wis. Admin Code. ch. NR 749 fees. For information on how to submit this form and applicable fees, visit <https://dnr.wisconsin.gov/topic/Brownfields/Submittal.html>.
 - DNR notification is required at least 45 days before making certain changes to a CO, such as removing or replacing a cover or changing the land use, as described in Wis. Admin. Code § NR 727.07.
 - If the proposed change is a remedial action (e.g., removing or replacing a cover), the PCM request should include the plans, reports and specifications in accordance with Wis. Admin. Code. § NR 724.05.
 - For proposed changes that are not remedial actions (e.g., change in land use), the DNR recommends that applicants provide adequate information, figures, maps, photographs, sample data results, etc., as appropriate to explain the intended change to the property, site or facility. Include the BRRTS activity number from the case closure letter.
3. **DNR review and response to the PCM request:** The DNR may request additional information prior to responding to the request.
 - If the DNR determines that the requested change(s) will be protective of human health, safety, welfare or the environment, the response may be a notice to proceed, which identifies what changes the DNR approves.
 - If the submittal included a proposed remedial action, the DNR may issue a response indicating that DNR approval is required prior to proceeding with the proposed action (Wis. Admin. Code § NR 724.07).
 - The DNR may determine that additional actions are necessary to protect human health, safety, welfare or the environment. In rare cases, a decision may be made to reopen a site if the criteria of Wis. Admin. Code § NR 727.13 are met.
 - If the PCM submittal was to notify the DNR of a change that was already made (e.g., property boundaries changed), the response may be an addendum to the closure letter, clarifying the change to the applicable CO(s) or to the site contamination boundaries.
 - The DNR’s response and any applicable documentation will be uploaded to BOTW.
4. **Proposed Action is Conducted:** The applicant may proceed with the changes as identified in the response from the DNR.

To notify or to determine the correct ROW holder, contact the Wisconsin Department of Transportation (WI DOT) if the road is a state trunk or U.S. highway, including business routes.

If the ROW affected is part of a connecting or county highway or local road, contact the applicable city, village or county office.

The DNR project manager assigned to the site may be determined by using BRRTS on the Web (BOTW). Go to dnr.wi.gov and search “BOTW.”

5. Documentation:

- If the change included a remedial action, documentation of construction and completion shall be submitted to the DNR per Wis. Admin. Code § NR 724.15. Revisions to the affected operation and maintenance plans must also be submitted per Wis. Admin. Code § NR 724.13(4), as applicable.
- Upon completion of changes that are not remedial actions (e.g., change in land use), the DNR recommends that the applicant provides documentation sufficient to document the change to the DNR. Documentation may include updated maps, figures, photographs, etc., as appropriate.

6. DNR Review of and Response to Documentation Submitted: Upon receipt and review of the documentation, the DNR will provide a response.

- The response may be an addendum to the case closure letter; this would follow a notice to proceed and DNR's receipt of documentation of the construction and completion and/or changes.
- For situations where a CO has not been substantively affected or changed, the response may be an email, letter or other written response; the response may simply indicate that documentation was added to the site file.

Satisfying or Extinguishing a Deed Restriction

In situations where work at the site satisfied COs, or a deed restriction no longer accurately reflects COs applicable to the property, a deed restriction can be satisfied or extinguished, as applicable, through the PCM process. The original deed restriction remains in the property record. A deed notice that references a written determination on the satisfaction or termination of the deed restriction is recorded to update the property record. The deed notice and written determination are prepared by the DNR. Pursuant to Wis. Admin. Code § NR 727.09(3), a deed restriction may be extinguished when COs applicable to the property have been satisfied. Alternatively, a deed restriction may be extinguished because it no longer accurately reflects the current COs applicable to the property. In that event, the deed notice and written determination will direct the public to BOTW for the most current information about COs applicable to the property.

The DNR will prepare the deed notice in a format consistent with Wis. Admin. Code § NR 726.13 and present it to the county Register of Deeds office for recording. For more information on the process for satisfaction of the conditions in a deed restriction, go to dnr.wi.gov and search "RR-045."

Table 1: PCMs, Other Actions and Applicable Fees

PCM	Description	DNR Notification or Written Approval Required ¹	NR 749 Fee ² and End of Process DNR Response
General Summary	<p>DNR approval is required for action to be taken as identified in the closure letter, deed restriction or Wis. Admin. Code ch. NR 727, or if the applicant requests a change to the COs applied at closure or for changes in site boundaries (clarification of contaminated site boundaries).</p> <p>Certain actions are prohibited without prior written DNR approval, as defined in either the closure letter or a maintenance plan, typically when a cover has been required.</p> <p>Notification to the DNR is required at least 45 days before taking certain actions, under Wis. Admin. Code § NR 727.07. If the DNR approves a requested change, it will provide written approval under Wis. Stat. § 292.12(6).</p>	See approval letter or deed restriction for sites closed before 2007.	<p>\$1050 + database fees</p> <p>Responses vary depending on the type of request.</p> <p>Fees also apply to actions taken at a Voluntary Party Liability Exemption (VPLE) site that has already received a Certificate of Completion (COC)</p>
Replacement of a cover (for soil)	<p>Repair or replacement of a cover with the same material or equally protective material over the same extent; any soil that was disturbed is replaced in the same depth and location from which it was removed, or soil is disposed at a landfill.</p> <p>This type of action is typically due to limited utility work. (See publication RR-987, <i>Post-Closure Modifications – Changes to Property Conditions after a State-Approved Cleanup</i>).</p>	Notification and approval required	<p>No fee for a DNR response</p> <p>Response may be via email.</p>
Cover repair or replacement with no soil removal, disturbance or regrading (cover for soil)	Repair, removal or replacement of a cover with an equally protective cover over the same extent, where there is no removal, disturbance or regrading of site soil.	Notification and approval required	<p>No fee for a DNR response.</p> <p>Response may be an email.</p>
Cover repair or replacement with soil removal, disturbance, or regrading (cover for soil)	Repair, removal or replacement of a cover with an equally protective cover over the same extent, where there is removal, disturbance or excavation or regrading of site soil.	Notification and approval required	<p>\$1050 + database fees</p> <p>Response is likely a closure addendum letter.</p>

PCM	Description	DNR Notification or Written Approval Required ¹	NR 749 Fee ² and End of Process DNR Response
Filling on covered or paved areas (cover for soil)	<p>Adding fill on a required cover, including paved areas required to maintain a surface cover.</p> <p>The closure letter or maintenance plan typically prohibits this activity without prior DNR approval.</p>	Notification and approval required	<p>\$1050 + database fees</p> <p>Response is likely a closure addendum letter.</p>
Plowing over a cover (for soil)	<p>Plowing for agricultural purposes where a cover has been required.</p> <p>The closure letter or maintenance plan typically prohibits this activity without prior DNR approval.</p>	Notification and approval required	<p>\$1050 + database fees</p> <p>Response is likely a closure addendum letter.</p>
Construction or placement of a building or other structure on a cover (for soil)	<p>Construction or placement of a building or other structure on a required cover.</p> <p>The closure letter or maintenance plan typically prohibits this activity without prior DNR approval.</p>	Notification and approval required	<p>\$1050 + database fees</p> <p>Response is likely a closure addendum letter.</p>
Structural Impediment Removal	<p>Removal of a structural impediment.</p> <p>Upon removal, completion of a site investigation or remedial action may be required under Wis. Admin Code ch. NR 727.</p>	<p>Notification required</p> <p>DNR may require additional action.</p>	<p>\$1050 + database fees</p> <p>Response is typically a closure addendum letter.</p> <p>A site may be reopened, based on site-specifics.</p>
Change from industrial to non-industrial land use	<p>Change in land use from industrial (required CO) to non-industrial use.</p> <p>These PCM requests are for sites with industrial soil standards applied at closure. Application of industrial soil standards is based on industrial land use exposure assumptions.</p>	Notification and approval required	<p>\$1050 + database fees</p> <p>Response is likely a closure addendum letter.</p>
Vapor Intrusion (VI) – Change in use of a vapor mitigation system	<p>Change in use of a vapor mitigation system, either a passive or active system (shutting off, change to system operation or design, etc.).</p>	<p>Notification required</p> <p>DNR may require additional action.</p>	<p>\$1050 + database fees</p> <p>Response is likely a closure addendum letter.</p>

PCM	Description	DNR Notification or Written Approval Required ¹	NR 749 Fee ² and End of Process DNR Response
VI – change in property use from non-residential to residential use setting; or discontinue use of compound of concern and change in property use from specific commercial use to another commercial use	<p>Change in land use from a non-residential setting to a residential setting, including where vapor risk screening levels were based on non-residential setting exposure assumptions at closure.</p> <p>This may include sites or facilities where exposures applicable to non-residential settings were applied at closure (i.e., commercial or industrial uses), but there is a proposed change in use to a residential setting (i.e., single or multiple family dwellings, or educational, childcare and senior care facilities). This may also include sites or facilities where use of the compound of concern is discontinued and there is a change in use since case closure from one commercial use (e.g., operating dry cleaner) to another commercial use (e.g., retail store).</p>	Notification required DNR may require additional action.	\$1050 + database fees Response is likely a closure addendum letter.
VI – future concern (new construction, renovation or expansion of existing structure on property)	Changes in construction of an existing building (modifications, expansion, remodeling) or construction of a new building within a property where the future vapor intrusion concern was identified at the time of case closure. This category applies to the entire footprint of the property assigned with this CO.	Notification required DNR may require additional action.	\$1050 + database fees Response is likely a closure addendum letter.
Change to a site-specific CO	Case-by-case site-specific conditions, as specified in the closure letter, including changes in use or occupancy of a property.	Notification required DNR may require additional action.	\$1050 + database fees Response is likely a closure addendum letter.
Changes to a sediment cap or other sediment engineered control	Changes to a sediment cap/engineered control including removal, repair or enhancement.	Notification and approval required	\$1050 + database fees Response is likely a closure addendum letter.
Satisfaction of one or more COs	A site or property now satisfies one or more or all COs imposed on the site or on an affected property or properties.	Notification is not required, but is recommended	\$1050 + database fees for a DNR response Response is likely a closure addendum letter and satisfaction of deed restriction as applicable

PCM	Description	DNR Notification or Written Approval Required ¹	NR 749 Fee ² and End of Process DNR Response
Site or one or more affected properties meets soil or groundwater standards applied at closure	A site or property now has contaminant levels which are less than either soil residual contaminant levels or groundwater enforcement standards or both.	Notification is not required, but is recommended	\$1050 + database fees for a DNR response Response is likely a closure addendum letter and satisfaction of deed restriction as applicable.
Property boundary changes (in relation to COs applied)	Property boundary changes have occurred due to redevelopment, splitting or combining properties and the applicant wants the site contamination boundaries redefined. This is typically done by excluding certain parcels where COs were not imposed.	Notification is not required, but is recommended	\$1050 + database fees for a DNR response Response is likely a closure addendum letter and satisfaction of deed restriction as applicable.
Updating or Extinguishing a Deed Restriction	Applicant requests a PCM for a site or property with a deed restriction. In some cases, applicants request termination of a deed restriction and a closure addendum letter where COs applicable to the property are satisfied or the deed restriction no longer accurately reflects COs applicable to a property. A deed notice must be recorded to terminate a deed restriction. If all the conditions of the deed restriction have been met (satisfied or extinguished), the deed notice and written determination are prepared by the DNR. The written determination summarizes the actions taken to satisfy the COs. If the applicant wants to file a deed notice that references a closure letter addendum, without having satisfied all the conditions of the deed restriction, DNR will prepare the deed notice and written determination, which will direct the public to BOTW for the most current information regarding COs and may include a reference to the closure addendum letter.	n/a	\$1050 + database fees Response is a closure addendum letter, deed notice, and written determination.

PCM	Description	DNR Notification or Written Approval Required ¹	NR 749 Fee ² and End of Process DNR Response
Filling and sealing of monitoring wells (MWs)	<p>Submittal of filling and sealing forms for remaining MWs, per the closure letter/CO, under Wis. Admin. Code ch. NR 141. To document filling and sealing, use the Well/ Drillhole/ Borehole Filling and Sealing Form 3300-005. Go to dnr.wi.gov and search “Form 3300-005.”</p> <p>The DNR will document in BOTW that the CO has been met once all MWs required to be filled and sealed have been filled and sealed with Action Code 104 if this was the only CO, or with Action Code 235 if COs other than MW filling and sealing were required and still apply. Filling and sealing forms are tracked using Action Code 43, and forms are included in the site file in BOTW.</p>	Submittal of the well forms is required. Notification and approval prior to well filling and sealing are not required.	<p>No fee if no response is requested</p> <p>\$1050 if a DNR response is requested.</p> <p>Response would be a closure addendum letter.</p>
Submittal of Post-Closure Sample Results	Sample results collected post-closure (typically via Phase II Environmental Site Assessments) must be submitted to the DNR if contaminant concentrations exceed detection limits and the compound is not naturally occurring. The DNR will consider whether the data is from the previous discharge and if an action might be needed. Typically, only data from a pathway not previously investigated, compounds not previously found, or compounds at significant levels result in further action being considered.	Notification required. DNR may require additional action.	

Notes:

1. Per Wis. Admin. Code chs. NR 724, NR 727, and Wis. Stat. § 292.12(6) or
2. A Wis. Admin. Code ch. NR 749 fee is not required when:
 - a DNR response is not requested
 - the party is required to notify the DNR or to submit certain information, but where DNR approval is not required. *If a response is desired, a fee is required.*

The Wisconsin Department of Natural Resources (DNR) is committed to promoting diversity, fairness, equity and the principles of environmental justice. We ensure that we do not discriminate in employment, programs, decisions, actions or delivery of services. If you have questions or to request information in an alternative format (large print, Braille, audio tape, etc.), please contact us at 888-936-7463 or <https://dnr.wisconsin.gov/About/Nondiscrimination>