

# SUBGROUP: NR 700

Remediation and Redevelopment External Advisory Group



## MEETING NOTES

### Remediation and Redevelopment External Advisory Group – NR 700

Friday, Dec. 9, 2022

12:30-2:15 p.m.

Rm. G09, State Natural Resources Building (GEF 2)

101 S. Webster St. Madison, WI 53703

#### *Action items/assignments for next meeting*

- **ALL:** [Subscribe to the RR EAG listserv](#) to receive information about future meeting dates, agendas, resources, and other EAG-relevant items. Zoom attendees are automatically added to the listserv; if you would like to opt out, please email [Jody.Irland@wisconsin.gov](mailto:Jody.Irland@wisconsin.gov)
- **ALL:** Email [MollyE.Schmidt@wisconsin.gov](mailto:MollyE.Schmidt@wisconsin.gov) with initiatives or topics to explore at the next meeting

#### *Welcome and Roll Call*

##### **In Person**

- Judy Fassbender, DNR
- Jody Irland, DNR
- Molly Schmidt, DNR
- Michael Prager, DNR
- Phil Bower, DNR
- Mark Rutkowski, Shannon & Wilson
- Bill Nelson, Subgroup Chairperson, Godfrey & Kahn
- Alyssa Sellwood, DNR
- Tom Gaieck, Ayres Environmental
- Jodie Peotter, DNR
- Carrie Webb, DNR
- Brian Bartoszek, WEC Energy Group
- Donna Volk, Ramboll
- Jason Lowery, DNR
- Heidi Woelfel, GZA GeoEnvironmental
- Andrea Lorenz, Foth
- Nathan Kloczko, DHS
- Margaret Brunette, DNR
- Gena Larson, DNR
- Mark Gretebeck, Bay West
- Autumn Luedke, DNR
- Patrick Kenny, WEC Energy Group

##### **Zoom**

- Toni Schoen, SET Environmental
- Ned Witte, Godfrey & Kahn
- Curtis Hedmen, DHS
- Ray Tierney, SCS Engineers
- Jennifer Hagen, Ramboll
- Derek Punches, Stafford Law
- Audra Felix, DNR
- Nathalia Londono, ECS Limited

#### *Review of NR 700 Subgroup work plan*

- [Work plan](#)
- Three main objectives 1) advise on legislative actions affecting program and other initiatives ahead of rulemaking, 2) recommend revisions to the Wis. Admin. Code NR 700 rule series and help foresee potential hurdles, 3) recommend new or revised policies for consistent implementation of rules

#### *Subgroup Goals and Sidebars (Judy Fassbender, DNR)*

- Goals can include new rules, clarifications, modifications, and updates.
- The rulemaking process must be followed and takes about three years.
- Rulemaking is most successful with public support and this subgroup could assist with that.

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## Remediation and Redevelopment External Advisory Group



### *Administrative Law Overview and Basics of Rule Drafting (Subgroup Chair Bill Nelson, Godfrey & Kahn)*

- Rulemaking begins with a scope statement
  - Needs to be well planned and openly demonstrate its objectives and benefits to a variety of stakeholders
  - Frame the rule by how many sites it will affect and clarify regularity expectations
- Successful rulemaking should identify source of legal authority

### *Issue Paper Template (Molly Schmidt, DNR)*

- Reviewed [issue paper template](#)
- Issue papers can help focus a topic however there are additional methods for subgroups to advise on initiatives

### *Next Meeting Date and Agenda Items*

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- Potential agenda items can include
  - Improving Wis. Admin Code ch. NR 714, a rule chapter providing community engagement notification provisions, with better sidebars on effective engagement and best practices; there might be opportunities to work with the RR EAG Funding Sustainability group on this topic and NR 749 DNR fees
  - Identifying work priorities by the potential impact of improvements in the cleanup process
  - Exploring code provisions on electronic versus paper submittals and code references to the EPA's criteria for evaluation of human health risk
  - Creating expectations for site investigation reports, continuing obligation notifications under Wis. Admin. Code ch. NR 725, and interim action continuing obligation authorities that are currently in statute but not implemented in rule and therefore lack clear notification requirements

### *Adjourn*

# Remediation and Redevelopment External Advisory Group



Paper/Agenda #

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## [Issue Paper Title]

[Name of Subgroup]

[Author(s)]

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### TYPE OF RECOMMENDATION

[e.g., statutory, regulatory, administrative]

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### BACKGROUND

[Limit to no more than two pages]

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### PROPOSAL

[Limit to one paragraph]

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### RESOURCES NEEDED

[DNR staff participation estimated hours, external participation estimated hours]

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### ENVIRONMENTAL JUSTICE EVALUATION

[Explain how this proposal furthers Wisconsin DNR goals regarding environmental justice]

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### COMMENTS

[Notable comments from issue paper draft writing process from subgroup members, including alternative approaches considered]

*These draft issue papers and recommendations were developed by the Remediation and Redevelopment External Advisory Group and members of the public, and do not necessarily represent the opinions or the position of the Wisconsin Department of Natural Resources or other state agencies.*

# NR 700 Subgroup Administrative Rule Drafting

Bill Nelson

December 9, 2022

# Disclaimer

- ▶ All views expressed in this presentation are my own, not of the Wisconsin DNR

# Rules of the Game

- ▶ Share recent experience working on Administrative Rules for DNR
- ▶ Understand pinch-points of ruledrafting
- ▶ Understand source of major opposition to rules and influence to ensure success

# Recent Rulemaking Experience

- ▶ Wis. Admin. Code chs. NR 700-799
  - ▷ Sediment rules survived
- ▶ Wis. Admin. Code ch. NR 159
- ▶ Other rules

# Pinch Points

- ▶ Length of process
- ▶ NRB approvals
- ▶ JCRAR approvals
- ▶ Gov approvals
- ▶ Economic impact analysis



## DNR PERMANENT ADMINISTRATIVE RULE PROMULGATION PROCEDURE

[When Governor approval of scope received after April 2013] Rev. 7/10/18

### PHASE I – Scope Statement

1. Scope statement completed and approved by the Secretary.
2. Scope statement submitted to DOA for review of explicit authority.
3. DOA submits the scope statement to the Governor who may approve or reject the scope statement.
4. Governor issues written notice of approval via email to the Department rule officer.
5. Scope statement is submitted to Legislative Reference (LRB) for publication in the Administrative Register. The LRB will note the expiration date of the scope statement in the Register. 2017 WI ACT 39.
6. Scope statement is also submitted to chief clerks of the legislature for distribution to JCRAR, who may request a public hearing on the scope statement. 2017 WI ACT 57.
7. Yellow sheet is prepared to reserve time on NRB agenda for scope approval and conditional approval of the Notice of Public Hearing and Notice of Submittal to Legislative Council.

8. Green Sheet package is prepared to request NRB approval of scope statement and conditional approval of the Notices.

9. NRB meeting is held for approval of the scope statement and conditional approval of the notices.

### PHASE II – Rule Development

10. Proposed rule language is prepared in Board Order format.

11. Complete the analysis section of the board order.

12. Does the rule require incorporation by reference? If yes, be sure to update analysis. See step 23.

### PHASE III – Soliciting Comments on Economic Impact

13. Solicitation Notice is prepared for seeking comments on economic impacts of the proposed rule.

14. Drafting bureau meets with the Department Economist to determine Economic Impact level.

15. Fiscal estimate and Economic Impact Analysis (FE/EIA) prepared using Fiscal Estimate form DOA-249.

16. Solicitation Memo to NRB is prepared informing the Board of the department's intent to seek comments on economic impact.

17. Solicitation Memo and other documents are routed, then approved by the Secretary's office and submitted to NRB.

18. Solicitation Notice and other documents are sent by the drafting bureau to affected businesses, interested parties; rules officer posts on the DNR website.

### PHASE IV – Public Hearings

19. Public hearing documents are prepared for 15-day passive review by the NRB.

20. Rule documents sent to the Legislative Council for their 20-working day review; docs also sent to DOA and Chief Clerks for referral to JCRAR, 2017 WI Act 57

21. The public hearing notice is published in the Administrative Register.

22. Public hearing is held and public comment period closes.

### PHASE V – Final Rule Adopted by NRB and Governor

23. Board order for proposed rule may be modified as necessary based on public comments received and Incorporation by Reference if needed.

24. Yellow Sheet is prepared to hold a place on NRB agenda for adoption of proposed rule.

25. Green Sheet package is prepared and approved by the Secretary to request NRB adoption of the proposed rule.

26. NRB meeting is held requesting adoption of final rule.

27. Final rule and rule checklist is submitted by the rule officer requesting Governor approval.

28. The rule officer notifies JCRAR that the Department has submitted a rule to the Governor for approval.

**PHASE VI – Legislative Review** This is the 30 month deadline. The end result is that rulemaking must go from scope statement publication to legislative review within 30 months. 2017 WI ACT 57.

29. Report to Legislature and Notices prepared and submitted to Assembly and Senate Chief Clerks.

30. Standing Committee's review completed. (30 days; an additional 30 days can be requested by the committees).

31. JCRAR Reviews the rule and can object to the rule in whole or in part, or just review. Usually a 30 day review. Rule officer notes the final date of the review time period.

32. The Department rule officer prints the rule and it is signed by the Secretary; the rule officer files with LRB.

33. Rule proof received from LRB, the program reviews the proof copy and it's returned to the LRB by rule officer.

34. Final Rule is published in the end of month Administrative Register.

35. Rule becomes effective the first day of the month following publication in the Administrative Register.

# Ensure Success

- ▶ Pair initiatives in optimal fashion
- ▶ Bite size rules with specific, exacting objectives
- ▶ WMC Litigation Center