

RR Program External Advisory Group

For consideration: 2025 Meeting Strategy

January 2025

Proposed Strategy

Over the 2025 calendar year, in-person attendance at quarterly EAG meetings is encouraged. Pop-up locations in DNR regions around the state will make it easier for stakeholders to conveniently participate in the meetings in person, which will increase engagement between stakeholders and members of the RR program team. A training opportunity will be offered by the DNR for the EAG and other interested stakeholders in conjunction with the EAG meetings. While in-person attendance is encouraged, virtual attendance via Zoom will be available.

Objectives:

- Receive timely input and feedback on RR program topics through discussion with the full EAG
- Increase in-person interaction between stakeholders and the DNR RR program team
- Meet the request for training on RR program topics to grow knowledge and increase opportunities for engagement with stakeholders

Background

The Remediation and Redevelopment Program (RR Program) at the Wisconsin Department of Natural Resources (DNR) oversees the investigation and cleanup of environmental contamination and the redevelopment of contaminated properties. The RR program established an external advisory group (EAG) in an effort to receive constructive and practical input from, and provide information to, interested parties on a wide variety of regulatory and policy issues. In 2022 and 2023 the EAG, with support from the DNR, created EAG subgroups. The subgroups are dedicated to the development of recommendations and deliverables related to funding sustainability, NR 700, vapor intrusion, contaminated sediment and environmental justice.

The DNR supported thirteen meetings of the EAG and EAG subgroups in 2024. All meetings were offered as a hybrid or virtual meeting. Since 2020, in-person attendance has declined in favor of virtual attendance. In October 2024, the DNR's current rulemaking efforts were suspended and no timeframe for future rulemaking is set.

At the EAG meeting in October 2024, the group discussed the impact of suspended rulemaking efforts on the EAG and the subgroups and requested that subgroups consider next steps. The group also requested further discussion of the structure of the EAG and the subgroups and options for training newer consultants.

On December 5, 2024, the members of the Funding Sustainability, NR 700 and Vapor Intrusion subgroups discussed the status of white papers. In addition, the subgroups discussed the EAG's request to consider the group's structure and function moving forward and options for improved engagement.

Recommended Approach for 2025

The EAG subgroups will complete three issue papers currently in development. Two of the papers will be presented in January 2025 and the third will be presented by July 2025.

Following discussion in December, the subgroups recommend the following meeting strategy for 2025:

- Members are strongly encouraged to attend the four scheduled EAG meetings in-person.

- Regional DNR staff members will host “pop-up” locations, in addition to the primary EAG meeting location, to provide regional in-person attendance options. The in-person attendance at all locations will enable consultants and regional staff to meet face-to-face, offering opportunities for additional discussion and engagement.
- The Vapor Intrusion subgroup will continue to meet quarterly in 2025. If the EAG determines further discussion is needed, other subgroup or ad hoc meetings will be scheduled.
- Agenda topics will include training and education on NR700 related topics to meet the needs of both newer and more experienced stakeholders.
- Meeting length will vary as needed to accommodate the meeting, lunchtime conversations and a training opportunity. Morning refreshments will be provided and pre-meeting networking will be encouraged.

NR 700 EAG Subgroup Issue Papers – Preview Comments from Volunteers

Remediation and Redevelopment External Advisory Group (RR EAG) Meeting - Jan. 23, 2025

Contents:

1. Issue Paper: Conceptual Site Models and Site Investigations (2/28/2024 DRAFT) with proposed comments from Lanette Altenbach, Sharlene Te Beest, Andrew Mott (combined draft)
2. 2025-01-09 WEC comments - Conceptual Site Models and Site Investigations Issue Paper
3. Issue Paper: RR Program Fees and Funding Sustainability (11/25/2024 DRAFT) with proposed comments from Lanette Altenbach, Sharlene Te Beest, Andrew Mott (combined draft)
4. Attachment A - Clarification on Indemnification language from Sharlene Te Beest - RR Program Fees and Funding Sustainability Issue Paper
5. 2025-01-09 WEC Comments - RR Program Fees and Funding Sustainability Issue Paper

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Issue Paper: Conceptual Site Models and Site Investigations (2/28/2024 DRAFT)

NR 700 EAG Subgroup

Judy Fassbender, Michele Norman, Jodie Thistle, Donna Volk, Josh Davenport, Toni Schoen

TYPE OF RECOMMENDATION

This issue paper includes recommendations for revising DNR administrative rules, creating or revising DNR guidance materials, and instituting changes to internal DNR processes.

BACKGROUND

The language in Wis. Admin. Code ch. NR 716 language can be ambiguous or confusing. The goal of this issue paper is to explore specific issues that arise under ch. NR 716 and identify solutions for improving clarity and regulatory efficiency. This issue paper was developed by DNR staff and volunteer members of the NR 700 EAG Subgroup and External Advisory Group.

This issue paper identifies seven (7) topics for future action:

- A. Conceptual Site Model
- B. Site Investigation ~~Workplan Scoping and Workplan Scoping Preparation~~
- C. DNR Technical Review Requests
- D. Groundwater
- E. Lab Data Interpretation
- F. Visual Aids
- G. Iterative SI & Comprehensive SIR

This issue paper summarizes results and recommendations; **Attachment A** provides full background and detailed proposals on each topic.

Commented [LA1]: 716.09 has Work Plan as two words

PROPOSAL

In summary, this issue paper identifies topics for administrative rule development, guidance template development, or for DNR internal process adjustments. **Attachment A** provides full background and detailed proposals on each topic.

RESOURCES NEEDED

Items identified within this issue paper for administrative rulemaking are, as a single rulemaking effort, estimated to take approximately 2,000 staff hours. ~~Rulemaking~~ ~~The rulemaking~~ also involves the support of an appointed rule advisory committee during rule development, public support and involvement during the rule development, economic impact, and public hearing processes.

Guidance development involves staff time and public input. The amount of staff time for these activities varies widely based on the type of ~~the~~ guidance (template, form, guidance) and whether it is new or revised.

Changes to internal DNR processes involve staff time and ~~varies vary~~ depending on the nature/impact of the change. In some cases, changes to internal DNR processes may involve the need for additional staff.

ENVIRONMENTAL JUSTICE EVALUATION

Changes proposed in this paper are intended to improve regulatory efficiency, which would benefit regulated parties through time/cost savings and improves the DNR's ability to carry out its statutory duties under Wis. Stat. ch. 292.11. Disadvantaged and underserved communities are more likely to live near contaminated sites and

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share a disproportionate burden of environmental pollution. Improvements are anticipated to benefit disadvantaged and underserved communities, as well as Wisconsin residents in general, through better protection of human health and the environment by:

- Reducing responses to insufficient documentation (reports);
- Identifying potential exposures to receptors earlier in the cleanup process;
- Creating documents or diagrams that may be used to communicate with the public about environmental issues at a site;
- Allowing more efficient responses more potential exposures to contamination; and
- Reducing the time spent on ~~investigation (getting to cleanup)~~ the investigation (getting to clean up) faster).

Commented [AM2]: About?

Parts of this proposal contemplate administrative rule revisions would result in increased fees for DNR technical assistance, which may have a disparate impact on small businesses and organizations that are cleaning up a contaminated site under Wis. Admin. Code chs. NR 700-799. During issue paper drafting, the participants raised the following concerns:

- The impact of requiring DNR approvals for additional reports, along with DNR review fees, on smaller entities and disadvantaged parties (under *B. Site Investigation (SI) Scoping*)
- Equity concerns with the identified approach of instituting a graduated scale for expediting reviews, such that regulated parties may pay a higher DNR technical assistance fee for faster review (under *C. DNR technical review requests*)

Increased or graduated-scale DNR service fees could have a disparate impact on small businesses and organizations that ~~are unable to~~ cannot compete with larger, better-resourced businesses and organizations. Residents of disadvantaged and underserved communities are unlikely to be impacted directly by increased DNR technical assistance fees; however, ~~these communities would benefit broadly from better protection of human health and the environment, as stated above.~~ as stated above, these communities would benefit broadly from better protection of human health and the environment.

COMMENTS

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ATTACHMENT A: BACKGROUND

A. Conceptual Site Model (CSM)

Issue background (CSM):

Administrative code does not explicitly name a CSM as a requirement, although many components of a CSM necessary to complete a site investigation are included in ch. NR 716. A CSM is an ongoing/living model or diagram that starts during site investigation scoping and builds with each iteration of the investigation as well as and when remedial actions are taken. However, administrative code does not define CSMs and does not clarify when CSM development should begin or how to present a CSM as part of the site investigation (SI) process, the remedial action options report (RAOR), the remedial action plan (RAP), or case closure request.

Wis. Admin. Code § NR 716.15(3)(a) requires the SI report to include the scoping information identified in § NR 716.07. Typically, RPs do not submit a Site Investigation Work Plan (SIWP) to the DNR, nor is a presentation of the § NR 716.07 scoping information included in the SI report; therefore, it is difficult for the DNR to understand what is being investigated, how the history of the site is related to the reported contamination, potential receptors, etc.

The CSM is critical to developing a complete SI report. A CSM in a flexible format is needed with updates throughout the investigation, remedy, and closure. Further, examples for simple vs. complex sites and well-defined parameters are needed. The results and data interpretation sections of the SI report should rely heavily on and reference the CSM.

With exception to scenarios when immediate or interim action is appropriate, the RP should demonstrate that the SI is complete before remediation/response action and before case closure is requested. Currently, this is often not the case. Many SI reports are submitted with or just prior to case closure and without enough information to demonstrate that the SI is complete. Also, frequently the case closure request is the first submittal received with a request for DNR technical assistance review (with fee) and response. Most cases are not closed following the initial case closure request, because additional SI work is needed.

Proposal (CSM):

Administrative code changes and guidance development are recommended.

- Code changes could implement the Interstate Technology and Regulatory Council (ITRC) definition of a CSM, which is "a three-dimensional visualization of site conditions that allows for evaluation of contaminant sources and affected media, migration pathways and potential receptors." This definition, which specifically calls for a three-dimensional visualization, may require clarification so that regulated parties have the flexibility to present a CSM that is appropriate for the complexity of the site. Clarify that a plan view and a section view is required; however, a complex 3-D visual computer model is not required.
- Code changes could require a CSM to be developed and maintained as a communication and decision-making tool throughout the Wis. Admin. Code chs. NR 700-799 process. Code changes could outline the following potential CSM steps:
 - Begin developing a CSM when a hazardous substance discharge is reported.
 - Evolve the CSM as scoping information is gathered.
 - Include the initial CSM in the submittal of an SIWP and include updated CSMs with subsequent submittals throughout process, including closure.
 - As site investigation data are collected, update the CSM.
 - Include the CSM in the SIR and show the nature, degree, and extent of contamination in

Commented [LA3]: I searched ITRC for "conceptual site model" and "CSM" and did not find this definition, nor any specific examples of CSMs. Some graphical presentations were shown in documents for specific conditions (LNAPL, DNAPL, fractured rock), but some of these were pretty complex sites.

I think a definition of CSM is appropriate with a specific list of what should be shown on one.

Historically, I have seen industrial sites that specifically do not want to show their site layout, nor how the leak or spill is related to the facility or anything else, usually to minimize the amount of work that should be done.

Commented [LA4]: I think this is very important to have this specifically called out in the code. Both the plan view and the cross-section and it may need to state simple site needs this and complex site needs more. Which brings up that simple and complex site should be defined.

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all affected media, migration pathways, and receptors of contamination.

- The CSM directly supports the RAOR/RAP in evaluating remedial options.
- Include the CSM in the closure application to demonstrate that the site investigation is complete, how the response/remedial actions addressed the contamination, and that engineering controls address residual contamination in a manner that is protective of human health and the environment.
- Guidance could supplement code revisions to assist regulated parties. CSM examples as part of a guidance document could be created for simple and complex sites. Templates may be needed.

Commented [LA5]: Perhaps should note that the CSM may be a series of CSMS- first the original from the work plan, then the one from the SI and a third (or more) from remedial efforts. If just one is required with each document, the reviewer will not be able to see the progression without pulling all of the prior reports.

B. Site Investigation (SI) Scoping

Issue background (SI Scoping):

The Site Investigation Work Plan (SIWP) requires scoping information (NR 716.09). Responsible parties do not submit SIWPs to the DNR for most cases, although they are required. Regulated parties risk a delay in the cleanup process if they do not submit a SIWP. Regardless of SIWP submission, the DNR may request additional work. If no SIWP is submitted, it is difficult for the DNR to understand how and why an investigation was scoped and other DNR reviews can take longer. Work plans should be required for each iteration of site investigation. The SI can expand in detail and complexity over time. It is difficult and time-consuming to determine compliance based on multiple SIWP reviews that don't include previous scoping information and evolving understanding of the site conditions.

Commented [LA6]: I concur, guidance may be needed to go with the code changes and should be implemented at about the same time.

The Site Investigation Report (SIR) requires scoping information (NR 716.15, NR 716.07). SIWP and SIRs are difficult for the DNR to review without adequate background information and presentation of general site conditions.

Commented [LA7]: Note that SI scoping is NR 716.07 and perhaps the reference in NR 716.09 is too vague – needs to be strengthened to make the scoping factors a mandatory inclusion in the work plan, not just “716.09(2)(d) “information gathered during scoping of the project, including applicable items”. Not everyone agrees about what is “applicable”, thus, much of the scoping is often not discussed in the work plan,

The pace of the investigation should be considered when developing a SIWP. For investigations where the responsible party needs to move forward quickly, but multiple field iterations are anticipated, consider stepped or dynamic work plan approaches that outline how an RP will move forward with additional investigation based on the initial fieldwork (e.g., stepping out monitoring wells based on specific pre-defined criteria).

Commented [LA8]: Yes, add requirement in SIWP. Another letter item between procedures and schedule that will require a discussion of how the planned SI will provide a resolution to the problem or how IF incremental SI is planned, then how this incremental step will lead to the next incremental part of the SI.

Phase I ESA /AAI or desktop ESA-like documents could provide background information. Other states like Minnesota and Indiana require a Phase I ESA as part of entry into some programs.

Commented [LA9]: This ties in with “potential resolution”. QA/QC and sampling and analysis approaches should be a required inclusion as well as any data evaluation techniques that are planned.

Proposal (SI Scoping): (note – outline and ppt seem different here):

Administrative code revisions are recommended:

- Require submission of SIWPs and scoping information, including CSM info, and potential resolution. Leave flexibility in code to add certain scoping information only when relevant to the site.
- Require SIWPs to be submitted for DNR technical assistance/review (with fees) when additional SI field work is proposed.
- Require subsequent SIWPs to be submitted with a DNR technical assistance fee (per plan) when additional investigation steps are proposed.
- Enable the DNR to direct the content of SIWPs (e.g., SIWP checklist) which may include quality assurance information or sampling and analysis schemes.
- Enable DNR to require iterative SIWPs to contain all previous background data and evolving understanding of site conditions based on field investigation results and/or clarify whether additional SIWPs require all previous background data that was submitted as part of previous SIWP.

Commented [LA10]: This should perhaps be a requirement for inclusion in the site investigation reports too. How many have your read, that leave you wondering how and why the investigation started?

Commented [ST11]: How does multiple step submission and DNR review support self implementation?

Commented [ST12R11]: “The department intends that responsible parties and other interested persons should be able to efficiently move through the process set forth in chs. NR 700 to 754 with minimal department oversight, except where the department has specified that more in-depth oversight is needed such as under s. 292.15 or s. 292.65, Stats., or through an enforceable order or agreement. “

Commented [ST13]: ...and whether or not the site is a wetland. (The way this is worded it implies all sites are wetlands)

Commented [LA14]: Yes, these should be required as they are necessary to understand why the proposed sampling and analysis are appropriate.

Further research and potential inclusion as administrative rule changes is recommended for the following:

- For required scoping information, consider requiring information the history of site, the receptors, and its status as a wetland (not archeological or climatologic information).

Even though it is not often said or consciously thought about, these items are used by those who proposed

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- Research requirements regarding “sensitive receptors” in other states and consider these approaches for inclusion in administrative rule changes.
- Consider inclusion of a requirement to submit Sampling and Analysis Plans (SAPs).
- Consider inclusion of a requirement to submit Standard Operating Procedures (SOPs).
- Consider including the ability for DNR to request Quality Assurance Project Plans (QAPPs) at specific sites in addition to the ~~the~~ quality assurance and control information currently required under NR 716.13.
- Consider establishing a combined DNR technical assistance fee for SI/RAORs and RAOR/RAPs.

Commented [LA15]: These could be sections within the work plan.

C. DNR technical review requests

Issue background (DNR technical review requests):

The DNR receives very few technical assistance requests (with fee) for SIWPs, SIRs, or RAORs. ~~The lack of DNR technical oversight for these submittals may result in compounding fees) for SIWPs, SIRs, or RAORs. The lack of DNR technical oversight for these submittals may compound~~ issues and delays and reduce efficiency in cleanup.

When an RP requests the DNR’s technical assistance (with fee) for ~~an SIWP, the RP may need to wait 60 days before beginning field work.~~ SIWP, the RP may need to wait 60 days before beginning fieldwork.

However, if no technical assistance (with fee) is requested, the timeframe is shortened to half that time, 30 days. This regulatory scheme results in a disincentive for RPs to seek technical assistance from the DNR.

Requiring technical assistance (with fee) for all SIWP submittals is likely to result in feedback to the RP that ensures compliance with administrative code early on and keeps the project on track. However, under the current requirements the RP may experience delays in field work because the regulatory scheme outlines that field work may not begin for up to 60 days after submittal.

Requiring a graduated fee for expediting technical assistance reviews (i.e., paying a higher fee provides faster turnaround time from the DNR) may partially address the efficiency issue. However, a graduated fee may not be the best method to prioritize technical assistance and may result in prioritizing RPs that can afford a higher fee, which is inequitable to disadvantaged parties. For example, an individual property owner may not have means to pay a fee, much less a larger fee, to expedite technical assistance for their case, whereas a large real estate developer may be able to do so.

Consideration for expedited technical assistance based on human health risk may be more appropriate. For example, a faster turnaround for a site with TCE contamination and human receptors, for example, is more equitable and is likely to result in better health outcomes.

Proposal (DNR technical review requests):

Administrative rule revisions are recommended for consideration:

- Provide a consistent timeframe (60 days) for submissions that request DNR technical assistance (with fee) and those that do not request DNR technical assistance (with fee)
- Incentivize submittal of a technical assistance request (with fee) by reversing the current waiting period to begin field work (e.g., set review time to 90/180 days without a DNR technical assistance request and 30/60 days with a DNR technical assistance request).
- Require DNR technical assistance for SIWPs, SIRs, RAORs, and RAPs.
- Allow a graduated scale for expediting DNR turnaround time (i.e., pay higher fee provides faster DNR review, or higher risk sites receive priority DNR turnaround time). Consider either the inclusion of certain

Commented [ST16]: Wholeheartedly agree! The entire point of the rules is protection of human health and environment.

Commented [ST17]: Is the 90-180 day timeframe realistic for sites which are associated with a construction project? (Either road or building). While this may ease some of the immediate workload, it means that a site whose SI is proposed in the summer won’t be able to begin work until the dead of winter.

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environmental justice and/or high risk prioritization criteria to allow sites to have priority, or an exemption to environmental justice and/or high risk prioritization criteria should be used to give sites priority, or an exemption should allow such sites to receive priority without an increased fee.

- Establishing (or maintaining) the payment of fees on a payment-per-report basis.
- Consider available strategies for addressing documents that are submitted to the DNR without a fee (for example, declining to review these documents, or requiring all document fees be paid prior to closure).

Commented [ST18]: Expedited timeframe should only apply to high risk sites.

Commented [LA19]: As some RPs cannot afford the cost of an appropriate site investigation and the fee just adds to the burden. There should be a way for "unable to pay" RPs to demonstrate that they really are cash strapped, and if their site/release is high priority, receive grant or other funding to at least evaluate the amount of risk. And perhaps, just a waiver for the fee would be sufficient for them to start.

D. Groundwater

Issue background (Groundwater):

MNA: Section NR 716.13(13) requires MNA parameters to be collected during the SI with analysis and interpretation of geochemical indicators and parameters. Often when Monitored Natural Attenuation (MNA) is a potential a remedy or partial remedy, the consultant's justification of MNA as a remedy is limited to decreasing contaminant concentrations and does not include interpretation of geotechnical indicators and parameters. This issue occurs frequently enough to merit addressing. If MNA will likely be a component of the remedial action (which is true in many cases), the SIWP should include collection of MNA parameters. The SI report should summarize the MNA parameters and the sub-surface conditions that are present to support contaminant degradation. Field parameters at a minimum should be included, along with slug and conductivity information.

Temp wells: It is unclear that the correct use of temporary wells (i.e., wells that do not comply with NR 141 construction requirements) and grab samples is for field screening purposes. These results are generally not considered to be representative of groundwater conditions and are not sufficient for regulatory compliance (i.e., the results may not be used to demonstrate that concentrations of contaminants in groundwater are below an enforcement standard). Administrative code requires DNR approval for a temp well variance (for wells not complying with ch. NR 141) prior to use in a site investigation.

Also note that industry terms and DNR definition of temporary wells differ.

There is opportunity to define temp wells and clarify time frames in ch. NR 141. Also, this issue affects the SIWP, which should include methods or standard operating procedures prior to significant implementation of work. Whether permanent or temporary, the focus for wells in this context should be on collection of groundwater samples that are free of sediment and representative of the water unit.

Proposal (Groundwater):

Administrative rule revisions are recommended for consideration:

- Clarify when field monitoring of DO, ORP, pH, temp, alkalinity is required under state administrative code and clarify that it must be submitted as part of SI report.
- Require that certain MNA parameters be included in the SIWP based on contaminants identified during discharge notice. Require field parameters along with slug and conductivity information.
- Add clarity regarding temporary groundwater monitoring wells and grab samples; clarify terminology to be consistent with industry terms.
- Further clarify types of temporary wells used by industry and when pre-approval is required for use of monitoring points that are not compliant with ch. NR 141.

Guidance may also be considered in addition or as an alternative for the following items:

- Temp well guidance could be reestablished (possibly following respective changes in ch. NR 141).
- Further clarify types of temporary wells used by industry and when pre-approval is required for use of monitoring points that are not appropriate for comparison with groundwater quality standards (non-compliant with ch. NR 141).

Commented [LA20]: The MNA parameters should be specifically defined in the code.

Commented [LA21]: The desired field parameters should be specifically listed and perhaps an optional list included too

Commented [LA22]: Too many consultants used 1.5 inch PVC with a surface stick up protector to pretend they were permanent wells and thus appeared to be a cheaper alternative as a consultant. This practice should be discouraged, by clarifications in the code.

Commented [LA23]: Just a note: Attorneys will argue that "guidance" is not a requirement, merely "guidance".

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- Address this topic in a guidance document?
DNR internal procedure recommendations may be considered:
- MNA shortcomings could be addressed during DNR response to SIWP (in addition to other approaches).
Based on contaminant identified during discharge notice, certain MNA parameters could be identified.

Commented [LA24]: Not sure what "this topic" is.....

E. Lab Data Interpretation

Issue background (lab data interpretation):

Data interpretation: Most site investigation reports (SIRs) do not include the interpretation of data required under § NR 716.15(3)(h). Often, the results are presented, but there is no discussion of how the nature, degree and extent has been defined in all environmental media and impacts to receptors, or how field conditions, laboratory results, data gaps and other limiting conditions affect the data interpretation.

J-flagged lab data: If lab results are estimated or "J-flagged," those lab results require interpretation; however, there is typically no discussion of how the RP/consultant considered the J-flagged data to be representative of site conditions. At times when they are discussed, the consultant dismisses the results due to the J-flag (i.e., misinterprets that they are non-detect due to the flag or that the flag renders the results as low concentrations, without consideration to either the laboratory's detection and reporting limits or the regulatory standards).

Method Detection Limits: Increased method detection limits (e.g., due to dilution or interference) that result in "no detect" (or J-flags) of a contaminant of concern when the method detection limit is at or above the residual contaminant level (RCL) or enforcement standard.

Exceptions noted by the lab during analysis of environmental samples: The SIR should discuss any samples noted by the lab as not being received in an appropriate condition (e.g., sediment in water, air in VOC vial, outside temperature limits). Many times when the lab identifies that the environmental samples have been received in a condition that may affect the results, it is not discussed in the SIR. For example, if the samples were not received on ice or there is air in a sample vial, the data results may be affected. Many other states require a QAQC discussion and evaluation in reports.

Proposal (lab data interpretation):

Data interpretation: Further discussion of the issue, causes, and potential resolutions for lack of interpretation of data required under NR 716.15 (3)(h) is needed. Some approaches that have been identified for consideration are:

- Consider whether administrative review for completeness applies (DNR internal process change)
- Define status report in ch. NR 700 and expectations (rule change)
- Use the SI outline and dictate results interpretation
- If no interpretation is made, DNR may state that the site will be considered "out of compliance" and a template response letter is generated stating a standard time frame to come back into compliance and assess a fee on parcel based on this.

J-flagged lab data: Further discussions of issues ("J-flagged" interpretation and discussion of how data is representative of site conditions), causes, and potential resolutions is needed.

- What would data interpretation include? Compare laboratory detection and reporting limits to regulatory standards (RCLs, ESs).

Some approaches identified are:

- Consider administrative rule changes requiring a data interpretation section in SI Report.
- Consider administrative rule changes defining a "j-flag" to not qualify as such (i.e., be the same as non-j-flag) until evidence is given in the contrary (e.g., not detected anywhere else, no source, and not in groundwater and soil, both lab detection and reporting limits are below cleanup standards).
- This would all be part of a SAP and QAPP. Define a QAQC process.

Commented [LA25]: I agree with this section.

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Method Detection Limits: Further discuss this issue, causes, and potential resolution.

- Direct the RR program to work with DNR's lab certification program to define how this information is managed by the lab in their the lab manages this information in its Quality Assurance and Quality Control (QAQC) program.
- Incorporate this information into a QAQC document submitted with initial site report.
- Include in report of elevated detection limits
- Clarify whether this will be interpreted as above the RCL standard (see NR 720.07(2))
- Consider requiring data validation section in SI Report

Exceptions noted by the lab during analysis of environmental samples: Administrative rule revisions are recommended:

- Require QA/QC report discussion and data validation section in SIR

F. Visual Aids

Issue background (Visual Aids):

Variability in Flow Direction. Variations in flow direction must be illustrated on water table and potentiometric surface maps under NR 716.15(4)(b)1, however, typically, only one flow direction map is provided with no discussion of variability in flow direction, which can affect receptors and remedial options. Lack of data is often related to lack of MNA information.

Isoconcentration Maps. Maps should include data to support illustration/depiction of the extent of contamination displayed as isoconcentration lines. See NR 716.15(4)(c). Maps should include both isoconcentration lines and data.

Cross Sections. Include data to support illustration/depiction of extent of contamination displayed as isoconcentration lines. See NR 716.15(4)(d). Cross sections should pass through the source area(s) and along potential/known migration pathways to potential receptors.

Photographs. Photographs are required, but rarely submitted, to document site work (§ NR 716.15(4)(f)). Occasionally, DNR staff have learned through site visits that site work was reported inaccurately. Photos may assist in documenting completed work.

Proposal (Visual Aids):

Further discussion of issues, causes, and potential resolution(s) is needed. Some approaches identified are:

Administrative rule changes:

- Clarify exactly what DNR wants for visual aids and update "visual aids" and other terms to be consistent with current federal and state usage.
- Clarify when photographs are appropriate and what types of photos DNR is requesting.
- Require a figure and table numbering scheme similar to the requirement for closure submittals. Updates to these figures would be required as the SI expands that for closure submittals. As the SI expands, updates to these figures would be required.
- Grant monies for a database for laboratory data, similar to the GEMS monitoring well network, for which the date of event and lab data are uploaded based on Facility ID and associated with a single monitoring well to allow swift downloading and plating.
- DNR may be able to provide a consistent list of visual aids and items to include, but site variability and complexity needs-need to be considered if additional/other information is needed.
- Put the data on the map.
- Data is required at least 4 in different seasons.

DNR internal process changes:

- Consider whether administrative review for completeness applies.

Commented [LA26]: The closure number scheme is related to the required elements specific to the case closure request and may not be appropriate here.

Using the case closure figures often results in the one-line around contamination drawing instead of isoconcentration maps, as a short cut to closure to prevent having to make yet one more figure.

Commented [LA27]: The WDNR should evaluate carefully, the cost of maintaining such a database. Databases can be corrupted and the wrong data ends up in them. Corrections too may not be that easy, but could require more costly staff time.

Commented [ST28]: This is not a visual aid requirement, it's a data gathering requirement. Should go under groundwater.

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- In combination with an administrative rule requirement (listed above) for a figure and table numbering scheme, consider whether grant monies may be available for implementing a GEM-style data portal where data is uploaded based on Facility ID. Borings on SI that expand over one acre would be geocoded to the state plane.

Commented [LA29]: Should also include funding for on-going database maintenance.

Commented [ST30]: Recording data location by FID does not allow for compilation of a complete site map. Data should be recorded by individual GPS location and connected to an FID. (I may be misunderstanding the proposal).

G. Iterative Nature of SI & Comprehensive SIR

Issue background (Iterative Nature of SI & Comprehensive SIR):

Often, multiple SI reports are submitted to the DNR. The DNR recognizes that the SI is an iterative process; however, if multiple SIRs and technical reports with SI data have been submitted, a comprehensive report is needed to integrate and interpret all the data that has been collected to respond to the hazardous substance discharge. Frequently, DNR staff must review multiple reports to determine if the degree and extent of contamination has been defined in all environmental media. This is an inefficient and time-consuming process.

Proposal (Iterative Nature of SI & Comprehensive SIR):

Further discussion of issues, causes, and potential resolutions is needed. Some approaches identified include the following administrative rule revisions:

- Revise administrative code to clarify the requirement for submission of a comprehensive SI that consists of all relevant data and visual aids, considering the time gap between sampling events, as applicable.
- Consider code revisions that would allow for hourly assessed DNR technical assistance fees at a “cost not to exceed” for any submittal. Base on established submittal templates.

Consider clarification in guidance of the following:

- Issues surrounding contamination crossing property lines, including entry permissions and liability issues.

Commented [LA31]: Be careful about the use of the word “relevant”. This means different things to different people.

I agree with a comprehensive SI – and this should include all of the background information from the initial work plan, plus all of the data collected during each investigative effort.

Maybe a code change in NR 726, as part of completeness review, include a requirement for a complete or comprehensive SI as well as updated CSMs and the ROAR, and remedial design plans if remediation was necessary and had occurred.

Issue Paper: Conceptual Site Models and Site Investigations (2/28/2024 DRAFT)

WEC Comments

Topic A – **Conceptual Site Model (CSM)**: The proposal calls for modifying the code to explicitly include the development and revision of a CSM starting early in the NR 700 process (at least with the SIWP). Modifications would be made as additional information about the site is collected and the revised CSM included in subsequent deliverables. The official ITRC definition of a CSM would also be adopted in the code. This would not affect WEC as this is and has been our standard approach for how we have evaluated and investigated our sites. The only challenge WEC sees would be if an RP stayed with the voluntary process (i.e., no official “approval” required for anything except the closure request). The RP wouldn’t get concurrence from DNR on their depiction of the CSM during the process, potentially creating issues during the closure request. RPs could consider submitting fees and obtaining approval for the SIR with the CSM (see below) if there was some assurance that upon approval no further SI activities would be required.

Topic B – **Site Investigation (SI) Scoping**: This is where DNR gets into specific requirements for making submissions (with fees) of certain deliverables mandatory vs. voluntary. DNR is prescriptive about the content of these deliverables (i.e., SAPs, QAPPs, SOPs, etc.) and what their role(s) would be in working through the process of finalizing/approving the SIWP. This could add substantial cost and delay to the process, especially for large or complex sites. In addition, it would likely be burdensome and require additional resources for DNR to implement/support. A preferred alternative would be to require at least one technical assistance meeting (with fee) at a suitable point in the process to gain concurrence on the approach and scope of the plan. WEC often does this with our sites and find it’s valuable for DNR and ourselves.

Topic C - **DNR technical review requests**: Could be a viable alternative to Topic B, assuming DNR proposals for expediting review/response are adopted and a reasonable fee schedule is adopted.

Topic D – **Groundwater**: These proposals should not have a substantial impact on WEC operations as we already conform to most if not all of what is being proposed with regard to the use (or non-use) of temporary wells, monitoring and reporting of MNA parameters and slug/conductivity testing.

Topic E - **Lab Data Interpretation**: DNR is proposing additional “interpretation” of J flagged data and MDLs/RLs as part of the SIR. It is not entirely clear what the consultant/laboratory would be required to provide beyond the standard qualifiers/notes that are already on the lab reports. One “recommendation” regarding any exceptions noted by the lab is to require data validation and a full QA/QC report as an appendix to the SIR. This seems burdensome (although the U.S. EPA requires it for all samples related to the RI and PDI) and would add considerable cost to the SI (potentially impact smaller “mom and pop” RPs. It is unclear why this is a concern when there already is a regulatory requirement that all SI related data be analyzed and submitted by WI-certified labs.

Topic F - **Visual Aids**: Not a significant concern for WEC as what DNR is asking for in terms of code changes or guidance is generally provided in our deliverables. The only exception would seem to be the idea for uploading monitoring data/lab reports to a centralized (DNR) database per facility ID (consistency on how WI-certified laboratories issue data?) and the requirement for data “in at least 4 different seasons” which may not always be the case for soils. DNR should define what this means particularly in relation to soils data.

WEC

Topic G - Iterative Nature of SI & Comprehensive SIR: This apparently pertains to situations where supplemental SI activities are undertaken after an initial SIR is submitted, resulting in multiple SI-related reports on file. DNR would like RPs to consolidate information/data into one “comprehensive” SIR. They are also contemplating an “hourly” fee for review of submittals. Since this situation arises because DNR often insists that additional/different data are needed following a review of the original SIR (despite approval of the SIWP), it would likely result in updating/representing known site information at multiple milestones. Perhaps DNR could request that RPs develop summary figure(s) and table(s) that include all the site data from multiple rounds of sampling, but preparing a whole separate additional report seems like an inefficient use of resources that would add substantial cost and likely impact project timelines for RPs.

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Issue Paper: RR Program Fees and Funding Sustainability (11/25/2024 DRAFT)

NR 700 EAG Subgroup

Contributors: Bill Nelson, Mark Rutkowski, Ed Buc, Frank Dombrowski, Ray Tierney, Chris Valcheff, Chris Bonniwell, Ben Vondra, Shelley Fox, Michael Prager, John Sager, Molly Schmidt, Judy Fassbender

TYPE OF RECOMMENDATION

This issue paper includes recommendations for revising DNR administrative rules, creating or revising guidance, and instituting changes to internal DNR processes.

BACKGROUND

The RR program oversees the investigation and cleanup of environmental contamination, provides a broad range and depth of staff expertise, and when requested with an appropriate fee submittal, provides technical reviews of documents. Wis. Stat. ch. 292 authorizes the DNR to collect fees for a variety of submittals that categorically include:

- Negotiated agreements;
- Liability clarification letters;
- Technical assistance (including review of submitted work plans and reports);
- Voluntary party liability exemption oversight; and
- Department database listings.

Responsible parties may submit most required reports without a fee if they do not seek DNR technical review. Fees associated with requested submittal reviews and other assistance range from \$350 for ~~the review~~ ~~of reviewing~~ a construction documentation report to \$1,400 for a negotiated agreement or a lease liability clarification letter for multiple properties. The complete DNR Fee Schedule is provided in Table 1 of s. NR 749.04, Wis. Admin. Code.

Over time the cost of providing these services has continued to increase due to inflation and other factors; however, program revenues from fees are fixed and have remained unchanged for over a decade. This issue paper examines alternatives for providing funding sustainability and program capacity with a focus on DNR technical assistance/services fees under Wis. Admin. Code ch. NR 749.

PROPOSAL

This paper identifies topics for administrative rule development, guidance or template development, and DNR internal process adjustments. This issue paper recommends four (4) topics for future consideration:

1. Increasing current ch. NR 749 Fees
2. Increasing the number of documents that must be submitted with a fee for review
3. Charging a premium for expedited reviews
4. Streamlining the structure of ch. NR 749 fees by reducing fee categories

Attachment A provides full background and detailed proposals on each topic. Additionally, **Attachment B** lists other items considered by the group that were deferred for further consideration.

RESOURCES NEEDED

Items identified within this issue paper for administrative rulemaking are, ~~as a single rulemaking effort, estimated to take approximately 2,000 staff hours. Rulemaking also involves the support of an appointed rule advisory committee during rule development, estimated to take approximately 2,000 staff hours as a single rulemaking effort. The rulemaking also involves the support of an appointed rule advisory committee during rule~~

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[development](#) and public support and involvement during the rule development, economic impact, and public hearing processes.

Guidance development also involves staff time and public input. The amount of staff time for these activities varies widely based on the type of document (template, form, guidance) and whether the guidance is new or revised.

Changes to internal DNR processes involve staff time and ~~varies vary~~ depending on the nature/impact of the change.

ENVIRONMENTAL JUSTICE EVALUATION

~~Changes proposed in this paper are intended to improve RR Program~~ [The changes proposed in this paper are intended to improve the RR Program's financial sustainability](#), which would support the DNR's ability to carry out statutory duties under the Hazardous Substance Spill Law, Wis. Stat. s. 292.11.

Disadvantaged and underserved communities, including low-income, tribal, indigenous, and communities of color, are more likely to live near contaminated sites. Generally, actions that support the DNR's ability to carry out its duties in administering the Hazardous Substance Spill Law are anticipated to benefit these communities and Wisconsin residents through better protection of human health and the environment.

However, most proposals discussed in this paper include policy changes that would ~~result in increased~~ [increase](#) fees. Increasing fees may have a disparate impact on certain entities' ability to pay, such as small businesses that are cleaning up a contaminated site under Wis. Admin. Code chs. NR 700-799. During issue paper drafting, the group and/or meeting participants raised concerns regarding the impact of increased fees on smaller entities in disadvantaged and underserved communities.

Additionally, group participants raised equity concerns with the third proposal, *3. Charging a premium for expedited reviews*. Allowing deep-pocketed entities to purchase expedited DNR reviews would not only have a disparate impact on entities that are cleaning up contaminated sites under Wis. Admin. Code chs. NR 700-799, ~~it would also have the effect of prioritizing DNR reviews according to~~ [would also have the effect of prioritizing DNR reviews according to](#) the economic circumstance of the regulated party rather than the potential health and environmental impacts from the contamination being addressed. Given the higher likelihood of impact from contamination on disadvantaged and underserved communities, this approach may have a compounding negative impact on environmental justice goals.

COMMENTS

Notable comments from [the](#) issue paper draft writing process and alternative approaches included the following comments.

- Regarding the third proposal, *3. Charging a premium for expedited reviews*, group members commented that potential impacts on disadvantaged and underserved communities may be reduced by allowing parties paying the expedited fee to self-select as a disadvantaged or underserved community. The fee would then revert to the standard fee, but the submittal would be treated as expedited. This self-selection is used in other areas (e.g., grant applications) and could be verified. Disadvantaged and underserved communities eligibility criteria could be adopted from an already established source that DNR recognizes, such as the EPA EJSreen Environmental Justice Screening and Mapping [Tool](#).
- Regarding the impact of fee increases, the group commented that large companies may be more capable

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Commented [ST1]: No environmental enforcement program should depend on fees for its sustainability, rather the legislature should appropriate funding sufficient to run the program. Then fees should be directed towards furthering remediation goals such as VI monitoring. (This is a personal observation and not a "slam" on the paper!)

Commented [ST2]: Is it the best use of DNR's already precious time to spend time verifying a self-designation?

Commented [LA3]: I think this is a valid way to provide environmental justice for disadvantaged or underserved communities.

Commented [ST4R3]: Is there a potential for a sliding scale fee based on income?

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of adapting to fee increases than small businesses and individuals. Rulemaking that impacts small businesses in Wisconsin must seek the review of the must seek the review of the DOA Small Business Regulatory Review Board (SBRRB).

Commented [AM5]: Was there something missing from the text?

ATTACHMENTS

Attachment A: Topics Proposed for Consideration

Attachment B: Deferred Topics

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ATTACHMENT A: TOPICS PROPOSED FOR CONSIDERATION

1. Increasing current ch. NR 749 fees

Issue background:

Chapter NR 749, Wis. Adm. Code, "Fees for Providing Assistance; Remediation and Redevelopment Program," establishes fees for assistance requested by those undertaking cleanup and redevelopment of contaminated properties subject to Wis. Admin. Code chs. NR 700 - 799. The fee amounts under Wis. Admin. Code s. NR 749.04, Table 1, were initially based on the average amount of time necessary to perform reviews. Review times are currently being reassessed. The fees under Wis. Admin. Code ch. NR 749 have not been revised since 2013, meaning that the flat fees for program services listed in the schedule have not increased within the last 10 years. While RR program Wis. Admin. Code ch. NR 749 fees have remained fixed, RR program's costs for providing services have continued to increase due external factors such as inflation and the labor market and is further discussed below. The result is that customers are paying less, relatively, for these services over time while the DNR's costs are steadily increasing.

Additionally, fees are not a stable source of revenue in part because most fees are not required for document submittals unless DNR review is requested. Responsible parties can choose to submit documents without fees at most project milestones and continue without RR staff review. Over the last three years, there has been significant fluctuation in fee revenues each year. Total fiscal Year (FY) 2023 fees were higher than the previous three years. Notably, case closure fees decreased by 40% in FY2023 compared to FY2020, due to legislative changes to program structure (the sunset of the PECFA program in FY2020).

The RR program prioritizes the use of limited funding to meet statutory and administrative responsibilities. Fee-based work, with established deadlines, is a high priority. RR program staff aim to provide timely customer service, clear, helpful, and consistent responses, with a greater amount and diversity of staff expertise. Several reasons exist why RR program's personnel costs have increased for fee-based work. For example, the program has begun using peer review groups to ensure consistency following the initial review by the project manager. Additionally, due to the complexity of some sites as well as the status of emerging contaminants, a staff specialist may become involved as needed for certain impacted media or substances (e.g., vapor intrusion, soil management, PCBs). The fee schedule establishes many of the fees at a flat \$700 or \$350 for time spent by two to three staff with high levels of experience and expertise. The cost of staff time exceeds the flat fee amount. If, as a matter of policy, customers should pay for the actual cost of services rendered by DNR staff, then an increase in the fee schedule is needed.

DNR input during the investigation, remediation and closure process is beneficial and the current fees are a good value, especially as compared with rates charged by regulators in other states. Continued quality and timely responses must be delivered by the DNR if rates are increased.

Proposal(s):

Increasing Wis. Admin. Code ch. NR 749 fees is one potential path toward improving funding sustainability; fee increases would require administrative rule revisions. Options to explore include:

- An across-the-board one-time increase in fees, either by amount or percentage.

Commented [ST6]: How will DNR manage increased case load if more RPs choose to pay fees? Is there a likelihood that quality and timely responses will also require an increase in staff? How will you address this?

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- A built-in percentage increase that is tied to inflation or another directly relevant external factor that increases “automatically” over time (without requiring additional rulemaking). For example, tying an annual increase in fees to the Consumer Price Index.
- Set fees to match the level of effort required for DNR review and response.
- A combination of these approaches.

2. Increasing the number of documents that must be submitted with fee for review

Issue background:

Increasing the number and type of documents that must be submitted with fees for DNR review may improve funding sustainability and may secondarily benefit regulatory efficiency. The cleanup process under Wis. Admin. Code chs. NR 700-799 was designed to be independently implemented (“self-implementing”) by regulated parties. Generally, code does not require regulated parties to pay fees for DNR reviews; however, it does require regulated parties to submit certain reports and information to the DNR.

DNR service fees typically apply only when a DNR technical or liability review is requested by a regulated party. Some DNR reviews may be required under code conditionally/occasionally, for example some remedial actions, if selected by the regulated party, will require a DNR fee-based review and approval. Case closure requests under Wis. Admin. Code ch. NR 726 require a fee and although the code requires regulated parties to meet closure requirements, the code does not require regulated parties to seek case closure.

Code does require regulated parties to submit certain reports regardless of whether regulated parties are requesting DNR review. Code requires the submission of a Site Investigation Workplan (SIWP) and a Site Investigation Report (SIR). Code requires a Remedial Action Plan for all remedial actions. If not review is requested, fees are not required for SIWPs SIRs and certain Remedial Action Plans.

In addition to addressing funding sustainability, adding certain reports to the list of items that must be submitted with a fee may address a frequent issue that impedes timely closure. Often, when sites get to closure, there is a gap in the completeness of the site investigation. Detailed DNR review of SIWP and SIR submittals is not completed unless a fee is submitted with the documents. Requiring a fee review of the SIR may help catch incomplete site investigations early in the process rather than at the end of the process, helping regulated parties avoid unanticipated delays that could have been resolved ahead of the closure request. Alternatively, fees could be required for only submittals involving sites that present an acute risk (for example, a site with residents affected by TCE vapor contamination). This approach would promote the expenditure of staff time on the sites that present high risk to the public.

Proposal:

Administrative rule revisions recommended for consideration include a mix of the following:

- Revise code to require entities that are conducting cleanup under chs. NR 700-799 to pay the fee for DNR review and approval of a Site Investigation Workplan.
- Revise code to require entities that are conducting cleanup under chs. NR 700-799 to pay the fee for DNR review and approval of a Site Investigation Report.
- Revise code to require entities that are conducting cleanup under chs. NR 700-799 to pay the fee for DNR review and approval of all Remedial Action Plans.
- Revise code to allow fees to be charged for subsequent iterations of work plans the code to allow fees to be charged for subsequent iterations of work plans and reports.

Commented [LA7]: This is a valid approach. From 2013 to 2024, the cost of money has increased between 31 and 35% (depending upon which source is used). At any rate, the review fees should be increased to cover a similar percentage, then tied on an annual basis to the CPI for the year.

- The increase could be effective 60 days after the annual CPI is announced.
- Staff time would be minimized because the calculation of the increase would be simple and the WDNR would need to release a public notice regarding the change in the fee schedule with an effective date.

Commented [LA8]: This factor should also be included in the first initial update to the 2013 fees.

Commented [ST9]: What about an hourly fee where time spent is charged against the specific site? The more complex or poorly investigated/documentated sites would be charged the highest fees.

Commented [ST10R9]: (Refer this comment to to Section B.)

Commented [LA11]: Note that NR 722 does require an evaluation of the remedial options first, then a remedial action plan, but only requires submission of a remedial action options report (RAOR). I think this confuses some RPs as well as consultants and the code should be clarified to state that the selected remedial option and its planned implementation are required.

As it is now, the implementation part is covered more under NR 724, which asks for a “Design Report” which for some brings confusion because they don’t think of excavation and disposal as requiring a “design”.

I am suggesting that these terms be reviewed and standardized more toward the Remedial Action Plan, mor...

Commented [ST12]: If no review...

Commented [ST13]: Another alternative is highest fees for highest risk. Rank sites by risk to human health and the environment and charge the highest fees to those sites posing the highest risk. However, this will not address the equity issue for RPs.

Commented [LA14]: I agree that all of the following are appropriate considerations regarding the fee schedules, and when considering restructuring the fee schedule, the naming issue and or incremental fee for a combined documents be clearly stated.

Commented [AM15]: Would need to limit iterations to a set number.

Commented [ST16]: Each of these first four seem to contradict the idea of Self Implementing rule. If the basic concept remains that the rule is self implementing, and an RP can follow clear guidance and directions to complete each of these steps, DNR review should not be required.

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- Consider higher fees for more complex sites, with complex criteria to include sites with acute VI risk, groundwater contamination that migrates offsite, contaminant migration in fractured bedrock, free product and similar.
- If Site Investigation Work Plans, Site Investigation Reports, and Remedial Action Plans are required to be submitted with fee for review, consider instituting one fee per document that covers all revisions required to obtain approval, and consider identifying which additional documents would be subject to required reviews (to preserve expediency and promote certainty).
- If SIWP, SIR, and RAP are required to be submitted with fee for review, consider instituting one fee per site that covers all revisions required to obtain approval, and consider identifying which additional documents would be subject to required reviews (to preserve expediency and promote certainty).
- Promote the use of technical assistance meetings and develop strategies for allowing these meetings to be held expeditiously.

3. Charging a premium for expedited reviews

Issue background:

Allowing for expedited reviews at an increased rate may provide increased funding sustainability. Allowing for expedited reviews, i.e., a faster review turnaround for a higher fee, would also provide a customer service improvement. Certain time-sensitive submittals that are frequently related to property transactions, such as a No Action Required (NAR) and No Further Action (NFA), could be prioritized for this type of policy and other reviews may also be considered. Factors for consideration prior to implementation include administrative considerations regarding staffing, costs and commensurate expectations, and fairness to responsible parties with limited resources.

Proposal:

Administrative rule revisions are recommended for consideration:

- Revise code to allow for expedited reviews at an increased rate for certain types of reviews such as NAR, NFA, and other submittals that can be evaluated quickly by technical staff.
- Require expedited reviews (and increased fees) for sites with acute risk concerns.
- Ensure fair and equitable expedited review of sites in disadvantaged and underserved communities financed partially through these increased rates.

4. Streamlining the structure of ch. NR 749 fees by reducing fee categories

Issue background

The table of fees within Wis. Admin. Code ch. NR 749 (s. NR 749.04, Table 1) establishes over twenty different fees of varying amounts for different types of assistance offered through the DNR RR program. This fee structure contemplates rare and exceptional circumstances, and the values in the chart are based on outdated calculations. Many of the fees could be combined, and the current fee schedule could be simplified and/or streamlined in a way that is easier to understand and administer.

One option for streamlining the fee structure would be to revise the structure of the entire table. A streamlined approach could entail a total of three to four items. One example of a restructure could be for fees to be redistributed into three categories of total value/amount: 1) pre-closure fees, 2) closure fees and liability clarification letter fees 3) post closure fees.

Another option for streamlining fees would be to focus on smaller streamlining adjustments. For instance, Wis. Admin. Code s. NR 749.04, Table 1.(d) lists fees for recording information on the DNR database (BRRTS).

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Commented [LA17]: I believe the fee schedule should be adjusted so that size and complexity of the site should be considered in establishing fees. This would result in a smaller fee for small simple sites that take less staff time and higher fees for larger sites.

And although a change to a fee that would be hourly was tabled, perhaps this could still be used on a limited basis for very complex or high risk sites, administered similarly to the VPLE program. Of course, the RP would need to be agreeable to this format, but it may be valid if the hourly costs were similar to the cost incurred if each document that was reviewed was submitted with the expedited fee.

Commented [ST18]: YES!!!! Multiple fees for multiple revisions penalizes the RP, when it is the consultant who performs the investigation and prepares the submittal. If the point is to get better submittals, grade the consultant's work and post the grades.

Commented [ST19]: Yes!

Commented [ST20]: Yes! Tech assistance meetings are a much better use of DNR time than verifying economics. (See comment on page 2)

Commented [ST21]: The customer service improvement would only be for a select sector that can afford the expedited fee. The resulting drain on limited DNR staff time could result in a decreased level of customer service for the remainder of the RPs.

Commented [LA22]: Yes to all 3 points

Commented [ST23]: Consider expedited reviews based solely on the risk to human health and the environment. Similar to the way DNR split off cases to send to DCOMM in the PECFA days, give the worst cases the most attention.

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The list provides five fees that must be paid depending on the type of site and the type of database entry; however, four of the five fees are for similar actions and amounts. These fees could be simplified into fewer options, and database fees overall could be streamlined.

In either approach, streamlining fee structure for efficiency may help offset foreseeable concerns related to cost implementation of increasing fees across the board.

Proposal

Further discussion and examination of feasibility is recommended. Streamlining can be accomplished through administrative rule changes. Guidance development following administrative code changes is recommended.

Commented [ST24]: Since the data for the database can be provided by the consultant/RP, establish a required format, and automate the system to upload the submittals directly to the appropriate site in BRRTS. Charge a standard reporting fee for upload, and make the consultants provide the GIS data as part of the upload, rather than having someone else geolocate the site.

Commented [LA25]: Yes, it will be best to update the code and then make the fee schedule match any wording modifications introduced. Although this may need to be considered at the same time as the other administrative code changes, so that the new names and new fees are all implemented together.

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ATTACHMENT B: DEFERRED TOPICS

This issue paper recommends deferring three topics from further consideration at this time:

1. Restructure fees from flat rate to hourly rate
2. Developing a Long-Term Stewardship Fee
3. Developing an Authorized Environmental Professional Program to decrease staff workload

1. Restructure fees from flat rate to hourly rate

Issue background:

Another option for structuring fees to increase fee revenue is allowing for a system of billing for project manager and/or document reviews directly. This approach may result in more equitable apportionment of costs for sites of varying size and complexity, by determining costs according to staff time spent on a review. The Voluntary Party Liability Exemption (VPLE) program is currently run on this type of system. VPLE allows for quarterly billing under a billing rate that is reviewed each fiscal year (July 1). Staff code time to site work and rates ~~includes include~~ overhead costs. The VPLE rate as of July 1, 2024, is \$125 an hour.

A similar model could be used where the DNR bills the responsible party and/or applicant on a quarterly basis. Some states use this framework successfully; however, for the RR program, switching to this new system for all sites versus VPLE sites would require a significant change in the administrative structure of the program. Between 2020 and 2022, the VPLE program processed one or fewer VPLE certificates of completion per year, whereas the RR program processed approximately 260 site closures ~~each year~~ yearly.

Increased administrative workload would include staff time for invoicing, issuing reminders, cost tracking, and more. A cost-benefit analysis is needed prior to implementing this type of approach to ensure that benefits from increased program revenue outweigh the increased administrative costs. Factors that may be considered for changes to an hourly fee structure include billing to reasonable and necessary staff, hourly rates as they may vary by staff level, yearly rate escalators, billing rate multipliers versus raw labor costs, established maximums for services, and methods of estimating review costs.

Changing the fee structure may be achievable through changes in administrative code; however, administrative and staffing changes needed to implement this system may require approval through budgetary/legislative approval processes.

Rationale for deferral:

Further discussion of this approach is not recommended due to high administrative costs and comparatively low benefits.

2. Developing a Long-Term Stewardship Fee

Issue background:

Another option for improving funding sustainability through fees would be the development of long-term stewardship fees. The need to ensure protection for human health and the environment continues past closure for sites with residual contamination; however, the RR program does not impose fees past closure. Long term stewardship fees should be developed to apply to sites that close with residual contamination. Development of a long-term fee may be achieved through administrative rule reviews in most cases; however, some approaches may also require legislative approval (e.g., the liability protection approach).

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Administrative rule revisions are recommended for consideration that could structure a post closure fee for sites closed with residual contamination. Several options for structuring this type of fee could include:

- Establish a five-year review/audit/assessment structure using a funding agreement, up-front payments on five-year increments, and an invoicing system for labor costs.
- Require financial assurance such as insurance – similar to the approach for the VPLE program.
- Require financial assurance similar to the engineered control contaminated sediment model (Wis. Admin Code ch. NR 756).
- Raise soil and groundwater database/GIS fees to cover the post closure audits/long-term site monitoring.
- Develop a liability protection approach in which the state provides a “covenant not to sue” in exchange for the regulated party’s payment of a one-time fee for site that will have residual impacts. North Carolina allows for this type of covenant through a “Brownfields Agreement” with a developer, with the cost of the agreement tailored to the site conditions, the existing site data, and the proposed land use.
- Develop/implement a Risk Management Program (RMP) similar to the U.S. EPA’s for sites that have residual contamination left in place. Fees paid for review and long term maintenance would be based on the degree of risk using U.S. EPA risk models or similar evaluation of risk (both human health and environmental).

Commented [ST26]: Audits and site monitoring should be separate from the GIS fee. Otherwise it becomes too tangled to figure out what is being covered by the fee for Legislative Audit purposes.

Commented [ST27]: Will this be in conflict with the constitution? The state can neither indemnify nor hold harmless any individual without express direction of the legislature. (Refer to “Attachment A Clarification on Indemnification Language” - it’s a WisDOT document, but it applies here too)

Commented [ST28]: How would these fees be used? Would they be given to new property owners who remove structural impediments or manage the residual contamination left by the RP? Or would DNR step in to perform remediation and maintenance of those sites? This recommendation has merit but would need further development.

Rationale for deferral:

Further discussion of this approach is deferred to allow the RR Program EAG Funding Sustainability Subgroup an opportunity to further develop this issue and provide an analysis of costs and benefits affecting all stakeholders, including responsible parties.

3. Developing an Authorized Environmental Professional Program to decrease staff workload

Issue background:

The group looked at the option of developing an Authorized Environmental Professional Program to approach funding sustainability through decreasing staff workload. An Authorized Professional Program would allow environmental professionals to administer certain reviews that are currently done by DNR staff after completing training and certification, similar to how the DNR Waterways Program allows private professionals to become Assured Wetland Delineators. Consultants could pay a fee and meet certain established professional requirements to be granted the authority to perform certain regulatory tasks, such as soil management plan approvals, historical fill approvals, and some types of site investigation approvals. This approach to funding sustainability benefits customers by expediting the affected regulatory processes. The DNR would provide peer review and oversight to ensure that decisions are consistent and statutory goals are met.

Commented [ST29]: Check with the waterway program to see how effective this is and whether or not they are satisfied with the results.

Further evaluation of this approach is needed, including evaluation of whether this program would present its participants (professional) with conflicts of interest and/or liability. Further research on the efficacy of similar programs in other states and consideration of costs to responsible parties is recommended prior to implementation.

This proposal would require a statutory change and an administrative rule change for implementation. The Wisconsin State Legislature has designated the Department of Natural Resources as the state agency responsible for the state’s duties under Wis. Stat. ch. 292. Many responsibilities are further delegated to the RR program under Wis. Admin. Code chs. NR 700-799.

Rationale for deferral:

Remediation and Redevelopment External Advisory Group



[Paper/Agenda #](#)

Further discussion of this approach is not recommended due to the necessity of legislative changes prior to implementation and due to the low likelihood of improved funding sustainability outcomes for the RR program.

DRAFT

ATTACHMENT A

"WisDOT cannot agree to "hold harmless" or to indemnify third parties by agreement. This is because:

1. Such agreements conflict with Wisconsin's Constitution, Article VIII, Sections 2, 3 and 4. WisDOT cannot pledge the credit of the state or contract State debt for payment of indemnification agreements.
2. The State of Wisconsin enjoys sovereign immunity, except as specified by the State Legislature. Wis. Const., Art. IV, Sec. 27. The Legislature has spoken in ss. 893.82 and 895.46, Stats. WisDOT cannot intervene to change the doctrine. *Lister v. Board of Regents*, 72 Wis. 2d 282, 240 N.W.2d 610 (1976). *[Ed. note: Lister also holds that no employee or officer may waive sovereign immunity without specific statutory authority to do so.]*
3. No state agency, without express legislative authority, can enter into a contractual indemnification agreement. State agencies must find any authority in the four corners of the statute book; if there is any doubt, the authority does not exist. *City of Appleton v. Transportation Commissioner*, 116 Wis. 2d 352, 342 N.W.2d 68 (Ct. App. 1983); *American Brass v. Wisconsin State Board of Health*, 245 Wis. 440, 15 N.W.2d 27 (1944).

Issue Paper: RR Program Fees and Funding Sustainability (11/25/2024 DRAFT)

WEC Comments

Regarding Proposal 1 (**Increasing current ch. NR 749 fees**): As WEC has conveyed to DNR in previous discussions, Proposal 1 would be the preferred approach from our point of view. There has been general agreement that increases to fee based revenue for DNR is necessary to support adequate Remediation and Redevelopment (R&R) staff and to ensure timely reviews and overall responsive service to “customers.” The simplest and most palatable way to do this is through a one-time base level increase for all deliverables subject to fees (it is our understanding that there hasn’t been any increase since 2013), compared to some form of annual or bi-annual escalator tied to the consumer price index (CPI). In addition, trying to assign a fee based on level of effort by DNR staff for specific documents would be difficult given the variation in staff experience/expertise and the high variability in complexity from one site to the next (i.e., a review of a RAOR for a large MGP would look very different and be far longer when compared to one for a spill that morphed into an ERP case).

Regarding Proposal 2 (**Increasing the number of documents that must be submitted with fee for review**): DNR seemed to be in favor of this approach, especially for site investigation work plans and reports and RAPs as this is where most closure denials ran into challenges. DNR has stated that more robust reviews would lead to more streamlined closures. This might be true, but this would defeat the purpose of the NR 700 process being “voluntary.” In addition, it would add substantial cost and delay to the upfront activities of remediating a site. If DNR guaranteed a timeframe (e.g., 60 days) by which these docs would be reviewed and/or approved it may be worth the review of additional deliverables. However, it is difficult to see this being a “one size fits all approach”. DNR is also considering charging extra for each iteration/revision. This may be easier for large RPs to manage but potentially could be more burdensome for “mom and pop” RPs, depending on the review fee amount (i.e., higher fees for more complex sites?). Overall this would slow the entire process down unless there was a guarantee of a timeframe by which DNR would complete the review/approvals and/or limit the number of iterations or revisions. In addition, ongoing fees (per revision) does not seem efficient from an RPs standpoint (would there be any incentive not to come back with multiple rounds of comments over relatively minor issues?) and would be difficult to for RP’s to quantify going into the “voluntary” process.

Regarding Proposal 3 (**Charging a premium for expedited reviews**): WEC believes this may create a “two tiered” system where RPs with more financial support (e.g., developers, etc.) would get their submittals expedited and smaller “mom and pops” RPs would take longer to work through the process. A grant program (this would sort of defeat the purpose of increased programmatic funding) may be an option to help disadvantaged RPs avail of the expedited process.

Regarding Proposal 4 (**Streamlining the structure of ch. NR 749 fees by reducing fee categories**): This seems like it may simplify the process but it would be difficult for DNR to assign a fair price for all the matters encompassed in “pre-closure fees” especially for more complex sites. WEC feels this would be a difficult alternative to implement effectively and fairly.

Issue Paper: RR Program Fees and Funding Sustainability (11/25/2024 DRAFT)

NR 700 EAG Subgroup

Contributors: Bill Nelson, Mark Rutkowski, Ed Buc, Frank Dombrowski, Ray Tierney, Chris Valcheff, Chris Bonniwell, Ben Vondra, Shelley Fox, Michael Prager, John Sager, Molly Schmidt, Judy Fassbender

TYPE OF RECOMMENDATION

This issue paper includes recommendations for revising DNR administrative rules, creating or revising guidance, and instituting changes to internal DNR processes.

BACKGROUND

The RR program oversees the investigation and cleanup of environmental contamination, provides a broad range and depth of staff expertise, and when requested with an appropriate fee submittal, provides technical reviews of documents. Wis. Stat. ch. 292 authorizes the DNR to collect fees for a variety of submittals that categorically include:

- Negotiated agreements;
- Liability clarification letters;
- Technical assistance (including review of submitted work plans and reports);
- Voluntary party liability exemption oversight; and
- Department database listings.

Responsible parties may submit most required reports without a fee if they do not seek DNR technical review. Fees associated with requested submittal reviews and other assistance range from \$350 for the review of a construction documentation report to \$1,400 for a negotiated agreement or a lease liability clarification letter for multiple properties. The complete DNR Fee Schedule is provided in Table 1 of s. NR 749.04, Wis. Admin. Code. Over time the cost of providing these services has continued to increase due to inflation and other factors; however, program revenues from fees are fixed and have remained unchanged for over a decade. This issue paper examines alternatives for providing funding sustainability and program capacity with a focus on DNR technical assistance/services fees under Wis. Admin. Code ch. NR 749.

PROPOSAL

This paper identifies topics for administrative rule development, guidance or template development, and DNR internal process adjustments. This issue paper recommends four (4) topics for future consideration:

1. Increasing current ch. NR 749 Fees
2. Increasing the number of documents that must be submitted with fee for review
3. Charging a premium for expedited reviews
4. Streamlining the structure of ch. NR 749 fees by reducing fee categories

Attachment A provides full background and detailed proposals on each topic. Additionally, **Attachment B** lists other items considered by the group that were deferred for further consideration.

RESOURCES NEEDED

Items identified within this issue paper for administrative rulemaking are, as a single rulemaking effort, estimated to take approximately 2,000 staff hours. Rulemaking also involves the support of an appointed rule advisory committee during rule development, and public support and involvement during the rule development, economic impact, and public hearing processes.

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.

Guidance development also involves staff time and public input. The amount of staff time for these activities varies widely based on the type of document (template, form, guidance) and whether the guidance is new or revised.

Changes to internal DNR processes involve staff time and varies depending on the nature/impact of the change.

ENVIRONMENTAL JUSTICE EVALUATION

Changes proposed in this paper are intended to improve RR Program financial sustainability, which would support the DNR's ability to carry out statutory duties under the Hazardous Substance Spill Law, Wis. Stat. s. 292.11. Disadvantaged and underserved communities, including low-income, tribal, indigenous, and communities of color, are more likely to live near contaminated sites. Generally, actions that support the DNR's ability to carry out its duties in administering the Hazardous Substance Spill Law are anticipated to benefit these communities and Wisconsin residents through better protection of human health and the environment.

However, most proposals discussed in this paper include policy changes that would result in increased fees. Increasing fees may have a disparate impact on certain entities' ability to pay, such as small businesses that are cleaning up a contaminated site under Wis. Admin. Code chs. NR 700-799. During issue paper drafting, the group and/or meeting participants raised concerns regarding the impact of increased fees on smaller entities in disadvantaged and underserved communities.

Additionally, group participants raised equity concerns with the third proposal, *3. Charging a premium for expedited reviews*. Allowing deep-pocketed entities to purchase expedited DNR reviews would not only have a disparate impact on entities that are cleaning up contaminated sites under Wis. Admin. Code chs. NR 700-799, it would also have the effect of prioritizing DNR reviews according to economic circumstance of the regulated party rather than the potential health and environmental impacts from the contamination being addressed. Given the higher likelihood of impact from contamination on disadvantaged and underserved communities, this approach may have a compounding negative impact on environmental justice goals.

COMMENTS

Notable comments from issue paper draft writing process and alternative approaches included the following comments.

- Regarding the third proposal, *3. Charging a premium for expedited reviews*, group members commented that potential impacts on disadvantaged and underserved communities may be reduced by allowing parties paying the expedited fee to self-select as a disadvantaged or underserved community. The fee would then revert to the standard fee but the submittal would be treated as expedited. This self-selection is used in other areas (e.g., grant applications) and could be verified. Disadvantaged and underserved communities eligibility criteria could be adopted from an already established source that DNR recognizes, such as the EPA EJScreen Environmental Justice Screening and Mapping Tool.
- Regarding the impact of fee increases, the group commented that large companies may be more capable of adapting to fee increases than small businesses and individuals. Rulemaking that impacts small businesses in Wisconsin must seek the review of the must seek the review of the DOA Small Business Regulatory Review Board (SBRRB).

ATTACHMENTS

Attachment A: Topics Proposed for Consideration
Attachment B: Deferred Topics

ATTACHMENT A: TOPICS PROPOSED FOR CONSIDERATION

1. Increasing current ch. NR 749 fees

Issue background:

Chapter NR 749, Wis. Adm. Code, "Fees for Providing Assistance; Remediation and Redevelopment Program," establishes fees for assistance requested by those undertaking cleanup and redevelopment of contaminated properties subject to Wis. Admin. Code chs. NR 700 - 799. The fee amounts under Wis. Admin. Code s. NR 749.04, Table 1, were initially based on the average amount of time necessary to perform reviews. Review times are currently being reassessed. The fees under Wis. Admin. Code ch. NR 749 have not been revised since 2013, meaning that the flat fees for program services listed in the schedule have not increased within the last 10 years. While RR program Wis. Admin. Code ch. NR 749 fees have remained fixed, RR program's costs for providing services have continued to increase due external factors such as inflation and the labor market and is further discussed below. The result is that customers are paying less, relatively, for these services over time while the DNR's costs are steadily increasing.

Additionally, fees are not a stable source of revenue in part because most fees are not required for document submittals unless DNR review is requested. Responsible parties can choose to submit documents without fees at most project milestones and continue without RR staff review. Over the last three years, there has been significant fluctuation in fee revenues each year. Total fiscal Year (FY) 2023 fees were higher than the previous three years. Notably, case closure fees decreased by 40% in FY2023 compared to FY2020, due to legislative changes to program structure (the sunset of the PECFA program in FY2020).

The RR program prioritizes the use of limited funding to meet statutory and administrative responsibilities. Fee-based work, with established deadlines, is a high priority. RR program staff aim to provide timely customer service, clear, helpful, and consistent responses, with a greater amount and diversity of staff expertise. Several reasons exist why RR program's personnel costs have increased for fee-based work. For example, the program has begun using peer review groups to ensure consistency following the initial review by the project manager. Additionally, due to the complexity of some sites as well as the status of emerging contaminants, a staff specialist may become involved as needed for certain impacted media or substances (e.g., vapor intrusion, soil management, PCBs). The fee schedule establishes many of the fees at a flat \$700 or \$350 for time spent by two to three staff with high levels of experience and expertise. The cost of staff time exceeds the flat fee amount. If, as a matter of policy, customers should pay for the actual cost of services rendered by DNR staff, then an increase in the fee schedule is needed.

DNR input during the investigation, remediation and closure process is beneficial and the current fees are a good value, especially as compared with rates charged by regulators in other states. Continued quality and timely responses must be delivered by the DNR if rates are increased.

Proposal(s):

Increasing Wis. Admin. Code ch. NR 749 fees is one potential path toward improving funding sustainability; fee increases would require administrative rule revisions. Options to explore include:

- An across-the-board one-time increase in fees, either by amount or percentage.

- A built-in percentage increase that is tied to inflation or another directly relevant external factor that increases “automatically” over time (without requiring additional rulemaking). For example, tying an annual increase in fees to the Consumer Price Index.
- Set fees to match the level of effort required for DNR review and response.
- A combination of these approaches.

2. Increasing the number of documents that must be submitted with fee for review

Issue background:

Increasing the number and type of documents that must be submitted with fees for DNR review may improve funding sustainability and may secondarily benefit regulatory efficiency. The cleanup process under Wis. Admin. Code chs. NR 700-799 was designed to be independently implemented (“self-implementing”) by regulated parties. Generally, code does not require regulated parties to pay fees for DNR reviews; however, it does require regulated parties to submit certain reports and information to the DNR.

DNR service fees typically apply only when a DNR technical or liability review is requested by a regulated party. Some DNR reviews may be required under code conditionally/occasionally, for example some remedial actions, if selected by the regulated party, will require a DNR fee-based review and approval. Case closure requests under Wis. Admin. Code ch. NR 726 require a fee and although the code requires regulated parties to meet closure requirements, the code does not require regulated parties to seek case closure.

Code does require regulated parties to submit certain reports regardless of whether regulated parties are requesting DNR review. Code requires the submission of a Site Investigation Workplan (SIWP) and a Site Investigation Report (SIR). Code requires a Remedial Action Plan for all remedial actions. If not review is requested, fees are not required for SIWPs SIRs and certain Remedial Action Plans.

In addition to addressing funding sustainability, adding certain reports to the list of items that must be submitted with a fee may address a frequent issue that impedes timely closure. Often, when sites get to closure, there is a gap in the completeness of the site investigation. Detailed DNR review of SIWP and SIR submittals is not completed unless a fee is submitted with the documents. Requiring a fee review of the SIR may help catch incomplete site investigations early in the process rather than at the end of the process, helping regulated parties avoid unanticipated delays that could have been resolved ahead of the closure request. Alternatively, fees could be required for only submittals involving sites that present an acute risk (for example, a site with residents affected by TCE vapor contamination). This approach would promote the expenditure of staff time on the sites that present high risk to the public.

Proposal:

Administrative rule revisions recommended for consideration include a mix of the following:

- Revise code to require entities that are conducting cleanup under chs. NR 700-799 to pay the fee for DNR review and approval of a Site Investigation Workplan.
- Revise code to require entities that are conducting cleanup under chs. NR 700-799 to pay the fee for DNR review and approval of a Site Investigation Report.
- Revise code to require entities that are conducting cleanup under chs. NR 700-799 to pay the fee for DNR review and approval of all Remedial Action Plans.
- Revise code to allow fees to be charged for subsequent iterations of workplans and reports.

- Consider higher fees for more complex sites, with complex criteria to include sites with acute VI risk, groundwater contamination that migrates offsite, contaminant migration in fractured bedrock, free product and similar.
- If Site Investigation Work Plans, Site Investigation Reports, and Remedial Action Plans are required to be submitted with fee for review, consider instituting one fee per document that covers all revisions required to obtain approval, and consider identifying which additional documents would be subject to required reviews (to preserve expediency and promote certainty).
- If SIWP, SIR, and RAP are required to be submitted with fee for review, consider instituting one fee per site that covers all revisions required to obtain approval, and consider identifying which additional documents would be subject to required reviews (to preserve expediency and promote certainty).
- Promote the use of technical assistance meetings and develop strategies for allowing these meetings to be held expeditiously.

3. Charging a premium for expedited reviews

Issue background:

Allowing for expedited reviews at an increased rate may provide increased funding sustainability. Allowing for expedited reviews, i.e., a faster review turnaround for a higher fee, would also provide a customer service improvement. Certain time-sensitive submittals that are frequently related to property transactions, such as a No Action Required (NAR) and No Further Action (NFA), could be prioritized for this type of policy and other reviews may also be considered. Factors for consideration prior to implementation include administrative considerations regarding staffing, costs and commensurate expectations, and fairness to responsible parties with limited resources.

Proposal:

Administrative rule revisions are recommended for consideration:

- Revise code to allow for expedited reviews at an increased rate for certain types of reviews such as NAR, NFA, and other submittals that can be evaluated quickly by technical staff.
- Require expedited reviews (and increased fees) for sites with acute risk concerns.
- Ensure fair and equitable expedited review of sites in disadvantaged and underserved communities financed partially through these increased rates.

4. Streamlining the structure of ch. NR 749 fees by reducing fee categories

Issue background

The table of fees within Wis. Admin. Code ch. NR 749 (s. NR 749.04, Table 1) establishes over twenty different fees of varying amounts for different types of assistance offered through the DNR RR program. This fee structure contemplates rare and exceptional circumstances, and the values in the chart are based on outdated calculations. Many of the fees could be combined, and the current fee schedule could be simplified and/or streamlined in a way that is easier to understand and administer.

One option for streamlining the fee structure would be to revise the structure of the entire table. A streamlined approach could entail a total of three to four items. One example of a restructure could be for fees to be redistributed into three categories of total value/amount: 1) pre-closure fees, 2) closure fees and liability clarification letter fees 3) post closure fees.

Another option for streamlining fees would be to focus on smaller streamlining adjustments. For instance, Wis. Admin. Code s. NR 749.04, Table 1.(d) lists fees for recording information on the DNR database (BRRTS).



The list provides five fees that must be paid depending on the type of site and the type of database entry; however, four of the five fees are for similar actions and amounts. These fees could be simplified into fewer options, and database fees overall could be streamlined.

In either approach, streamlining fee structure for efficiency may help offset foreseeable concerns related to cost implementation of increasing fees across the board.

Proposal

Further discussion and examination of feasibility is recommended. Streamlining can be accomplished through administrative rule changes. Guidance development following administrative code changes is recommended.

DRAFT

ATTACHMENT B: DEFERRED TOPICS

This issue paper recommends deferring three topics from further consideration at this time:

1. Restructure fees from flat rate to hourly rate
2. Developing a Long-Term Stewardship Fee
3. Developing an Authorized Environmental Professional Program to decrease staff workload

1. Restructure fees from flat rate to hourly rate

Issue background:

Another option for structuring fees to increase fee revenue is allowing for a system of billing for project manager and/or document reviews directly. This approach may result in more equitable apportionment of costs for sites of varying size and complexity, by determining costs according to staff time spent on a review. The Voluntary Party Liability Exemption (VPLE) program is currently run on this type of system. VPLE allows for quarterly billing under a billing rate that is reviewed each fiscal year (July 1). Staff code time to site work and rates includes overhead costs. The VPLE rate as of July 1, 2024, is \$125 an hour.

A similar model could be used where the DNR bills the responsible party and/or applicant on a quarterly basis. Some states use this framework successfully; however, for the RR program, switching to this new system for all sites versus VPLE sites would require a significant change in the administrative structure of the program. Between 2020 and 2022, the VPLE program processed one or fewer VPLE certificates of completion per year, whereas the RR program processed approximately 260 site closures each year.

Increased administrative workload would include staff time for invoicing, issuing reminders, cost tracking, and more. A cost-benefit analysis is needed prior to implementing this type of approach to ensure that benefits from increased program revenue outweigh the increased administrative costs. Factors that may be considered for changes to an hourly fee structure include billing to reasonable and necessary staff, hourly rates as they may vary by staff level, yearly rate escalators, billing rate multipliers versus raw labor costs, established maximums for services, and methods of estimating review costs.

Changing the fee structure may be achievable through changes in administrative code; however, administrative and staffing changes needed to implement this system may require approval through budgetary/legislative approval processes.

Rationale for deferral:

Further discussion of this approach is not recommended due to high administrative costs and comparatively low benefits.

2. Developing a Long-Term Stewardship Fee

Issue background:

Another option for improving funding sustainability through fees would be the development of long-term stewardship fees. The need to ensure protection for human health and the environment continues past closure for sites with residual contamination; however, the RR program does not impose fees past closure. Long term stewardship fees should be developed to apply to sites that close with residual contamination. Development of a long-term fee may be achieved through administrative rule reviews in most cases; however, some approaches may also require legislative approval (e.g., the liability protection approach).

Administrative rule revisions are recommended for consideration that could structure a post closure fee for sites closed with residual contamination. Several options for structuring this type of fee could include:

- Establish a five-year review/audit/assessment structure using a funding agreement, up-front payments on five-year increments, and an invoicing system for labor costs.
- Require financial assurance such as insurance – similar to the approach for the VPLE program.
- Require financial assurance similar to the engineered control contaminated sediment model (Wis. Admin Code ch. NR 756).
- Raise soil and groundwater database/GIS fees to cover the post closure audits/long-term site monitoring.
- Develop a liability protection approach in which the state provides a “covenant not to sue” in exchange for the regulated party’s payment of a one-time fee for site that will have residual impacts. North Carolina allows for this type of covenant through a “Brownfields Agreement” with a developer, with the cost of the agreement tailored to the site conditions, the existing site data, and the proposed land use.
- Develop/implement a Risk Management Program (RMP) similar to the U.S. EPA’s for sites that have residual contamination left in place. Fees paid for review and long term maintenance would be based on the degree of risk using U.S. EPA risk models or similar evaluation of risk (both human health and environmental).

Rationale for deferral:

Further discussion of this approach is deferred to allow the RR Program EAG Funding Sustainability Subgroup an opportunity to further develop this issue and provide an analysis of costs and benefits affecting all stakeholders, including responsible parties.

3. Developing an Authorized Environmental Professional Program to decrease staff workload

Issue background:

The group looked at the option of developing an Authorized Environmental Professional Program to approach funding sustainability through decreasing staff workload. An Authorized Professional Program would allow environmental professionals to administer certain reviews that are currently done by DNR staff after completing training and certification, similar to how the DNR Waterways Program allows private professionals to become Assured Wetland Delineators. Consultants could pay a fee and meet certain established professional requirements to be granted the authority to perform certain regulatory tasks, such as soil management plan approvals, historical fill approvals, and some types of site investigation approvals. This approach to funding sustainability benefits customers by expediting the affected regulatory processes. The DNR would provide peer review and oversight to ensure that decisions are consistent and statutory goals are met.

Further evaluation of this approach is needed, including evaluation of whether this program would present its participants (professional) with conflicts of interest and/or liability. Further research on the efficacy of similar programs in other states and consideration of costs to responsible parties is recommended prior to implementation.

This proposal would require a statutory change and an administrative rule change for implementation. The Wisconsin State Legislature has designated the Department of Natural Resources as the state agency responsible for the state’s duties under Wis. Stat. ch. 292. Many responsibilities are further delegated to the RR program under Wis. Admin. Code chs. NR 700-799.

Rationale for deferral:



Further discussion of this approach is not recommended due to the necessity of legislative changes prior to implementation and due to the low likelihood of improved funding sustainability outcomes for the RR program.

DRAFT

Issue Paper: Conceptual Site Models and Site Investigations (2/28/2024 DRAFT)

NR 700 EAG Subgroup

Judy Fassbender, Michele Norman, Jodie Thistle, Donna Volk, Josh Davenport, Toni Schoen

TYPE OF RECOMMENDATION

This issue paper includes recommendations for revising DNR administrative rules, creating or revising DNR guidance materials, and instituting changes to internal DNR processes.

BACKGROUND

The language in Wis. Admin. Code ch. NR 716 language can be ambiguous or confusing. The goal of this issue paper is to explore specific issues that arise under ch. NR 716 and identify solutions for improving clarity and regulatory efficiency. This issue paper was developed by DNR staff and volunteer members of the NR 700 EAG Subgroup and External Advisory Group.

This issue paper identifies seven (7) topics for future action:

- A. Conceptual Site Model
- B. Site Investigation Workplan Scoping
- C. DNR Technical Review Requests
- D. Groundwater
- E. Lab Data Interpretation
- F. Visual Aids
- G. Iterative SI & Comprehensive SIR

This issue paper summarizes results and recommendations; **Attachment A** provides full background and detailed proposals on each topic.

PROPOSAL

In summary, this issue paper identifies topics for administrative rule development, guidance template development, or for DNR internal process adjustments. **Attachment A** provides full background and detailed proposals on each topic.

RESOURCES NEEDED

Items identified within this issue paper for administrative rulemaking are, as a single rulemaking effort, estimated to take approximately 2,000 staff hours. Rulemaking also involves the support of an appointed rule advisory committee during rule development, public support and involvement during the rule development, economic impact, and public hearing processes.

Guidance development involves staff time and public input. The amount of staff time for these activities varies widely based on the type of the guidance (template, form, guidance) and whether it is new or revised.

Changes to internal DNR processes involve staff time and varies depending on the nature/impact of the change. In some cases, changes to internal DNR processes may involve the need for additional staff.

ENVIRONMENTAL JUSTICE EVALUATION

Changes proposed in this paper are intended to improve regulatory efficiency, which would benefit regulated parties through time/cost savings and improves the DNR's ability to carry out its statutory duties under Wis. Stat. ch. 292.11. Disadvantaged and underserved communities are more likely to live near contaminated sites and share a disproportionate burden of environmental pollution. Improvements are anticipated to benefit

disadvantaged and underserved communities as well as Wisconsin residents in general through better protection of human health and the environment by:

- Reducing responses to insufficient documentation (reports);
- Identifying potential exposures to receptors earlier in the cleanup process;
- Creating documents or diagrams that may be used to communicate with the public environmental issues at a site;
- Allowing more efficient responses more potential exposures to contamination; and
- Reducing the time spent on investigation (getting to cleanup faster).

Parts of this proposal contemplate administrative rule revisions would result in increased fees for DNR technical assistance, which may have a disparate impact on small businesses and organizations that are cleaning up a contaminated site under Wis. Admin. Code chs. NR 700-799. During issue paper drafting, the participants raised the following concerns:

- The impact of requiring DNR approvals for additional reports, along with DNR review fees, on smaller entities and disadvantaged parties (under *B. Site Investigation (SI) Scoping*)
- Equity concerns with the identified approach of instituting a graduated scale for expediting reviews, such that regulated parties may pay a higher DNR technical assistance fee for faster review (under *C. DNR technical review requests*)

Increased or graduated-scale DNR service fees could have a disparate impact on small businesses and organizations that are unable to compete with larger, better-resourced businesses and organizations. Residents of disadvantaged and underserved communities are unlikely to be impacted directly by increased DNR technical assistance fees; however, these communities would benefit broadly from better protection of human health and the environment, as stated above. .

COMMENTS

ATTACHMENT A: BACKGROUND

A. Conceptual Site Model (CSM)

Issue background (CSM):

Administrative code does not explicitly name a CSM as a requirement, although many components of a CSM necessary to complete a site investigation are included in ch. NR 716. A CSM is an ongoing/living model or diagram that starts during site investigation scoping and builds with each iteration of investigation as well as when remedial actions are taken. However, code does not define CSMs and does not clarify when CSM development should begin or how to present a CSM as part of the site investigation (SI) process, the remedial action options report (RAOR), the remedial action plan (RAP), or case closure request.

Wis. Admin. Code § NR 716.15(3)(a) requires the SI report to include the scoping information identified in § NR 716.07. Typically, RPs do not submit an SIWP to the DNR, nor is a presentation of the § NR 716.07 scoping information included in the SI report; therefore, it is difficult for the DNR to understand what is being investigated, how the history of the site is related to the reported contamination, potential receptors, etc.

The CSM is critical to developing a complete SI report. A CSM in a flexible format is needed with updates throughout the investigation, remedy and closure. Further, examples for simple vs. complex sites and well-defined parameters are needed. The results and data interpretation sections of the SI report should rely heavily on and reference the CSM.

With exception to scenarios when immediate or interim action is appropriate, the RP should demonstrate that the SI is complete before remediation/response action and before case closure is requested. Currently, this is often not the case. Many SI reports are submitted with or just prior to case closure and without enough information to demonstrate that the SI is complete. Also, frequently the case closure request is the first submittal received with a request for DNR technical assistance review (with fee) and response. Most cases are not closed following the initial case closure request, because additional SI work is needed.

Proposal (CSM):

Administrative code changes and guidance development are recommended.

- Code changes could implement the Interstate Technology and Regulatory Council (ITRC) definition of a CSM, which is “a three-dimensional visualization of site conditions that allows for evaluation of contaminant sources and affected media, migration pathways and potential receptors.” This definition, which specifically calls for a three-dimensional visualization, may require clarification so that regulated parties have the flexibility to present a CSM that is appropriate for the complexity of the site. Clarify that a plan view and a section view is required; however, a complex 3-D visual computer model is not required.
- Code changes could require a CSM to be developed and maintained as a communication and decision-making tool throughout the Wis. Admin. Code chs. NR 700-799 process. Code changes could outline the following potential CSM steps:
 - Begin developing a CSM when a hazardous substance discharge is reported.
 - Evolve the CSM as scoping information is gathered.
 - Include the initial CSM in the submittal of an SIWP and include updated CSMs with subsequent submittals throughout process, including closure.
 - As site investigation data are collected, update the CSM.
 - Include the CSM in the SIR and show the nature, degree and extent of contamination in all affected media, migration pathways, and receptors of contamination.

- The CSM directly supports the RAOR/RAP in evaluating remedial options.
- Include the CSM in the closure application to demonstrate that the site investigation is complete, how the response/remedial actions addressed the contamination, and that engineering controls address residual contamination in a manner that is protective of human health and the environment.
- Guidance could supplement code revisions to assist regulated parties. CSM examples as part of a guidance document could be created for simple and complex sites. Templates may be needed.

B. Site Investigation (SI) Scoping

Issue background (SI Scoping):

The Site Investigation Work Plan (SIWP) requires scoping information (NR 716.09). Responsible parties do not submit SIWPs to the DNR for most cases, although they are required. Regulated parties risk a delay in the cleanup process if they do not submit a SIWP. Regardless of SIWP submission, the DNR may request additional work. If no SIWP is submitted, it is difficult for the DNR to understand how and why an investigation was scoped and other DNR reviews can take longer. Work plans should be required for each iteration of site investigation. The SI can expand in detail and complexity over time. It is difficult and time-consuming to determine compliance based on multiple SIWP reviews that don't include previous scoping information and evolving understanding of the site conditions.

The Site Investigation Report (SIR) requires scoping information (NR 716.15, NR 716.07). SIWP and SIRs are difficult for the DNR to review without adequate background information and presentation of general site conditions.

The pace of the investigation should be considered when developing a SIWP. For investigations where the responsible party needs to move forward quickly, but multiple field iterations are anticipated, consider stepped or dynamic work plan approaches that outline how an RP will move forward with additional investigation based on the initial fieldwork (e.g., stepping out monitoring wells based on specific pre-defined criteria).

Phase I ESA /AAI or desktop ESA-like documents could provide background information. Other states like Minnesota and Indiana require a Phase I ESA as part of entry into some programs.

Proposal (SI Scoping): (note – outline and ppt seem different here):

Administrative code revisions are recommended:

- Require submission of SIWPs and scoping information, including CSM info, and potential resolution. Leave flexibility in code to add certain scoping information only when relevant to the site.
- Require SIWPs to be submitted for DNR technical assistance/review (with fees) when additional SI field work is proposed.
- Require subsequent SIWPs to be submitted with a DNR technical assistance fee (per plan) when additional investigation steps are proposed.
- Enable the DNR to direct the content of SIWPs (e.g., SIWP checklist) which may include quality assurance information or sampling and analysis schemes.
- Enable DNR to require iterative SIWPs to contain all previous background data and evolving understanding of site conditions based on field investigation results and/or clarify whether additional SIWPs require all previous background data that was submitted as part of previous SIWP.

Further research and potential inclusion as administrative rule changes is recommended for the following:

- For required scoping information, consider requiring information the history of site, the receptors, and its status as a wetland (not archeological or climatologic information).

- Research requirements regarding “sensitive receptors” in other states and consider these approaches for inclusion in administrative rule changes.
- Consider inclusion of a requirement to submit Sampling and Analysis Plans (SAPs).
- Consider inclusion of a requirement to submit Standard Operating Procedures (SOPs).
- Consider including the ability for DNR to request Quality Assurance Project Plans (QAPPs) at specific sites in addition to the the quality assurance and control information currently required under NR 716.13.
- Consider establishing a combined DNR technical assistance fee for SI/RAORs and RAOR/RAPs.

C. DNR technical review requests

Issue background (DNR technical review requests):

The DNR receives very few technical assistance requests (with fee) for SIWPs, SIRs, or RAORs. The lack of DNR technical oversight for these submittals may result in compounding issues and delays and reduce efficiency in cleanup.

When an RP requests the DNR’s technical assistance (with fee) for an SIWP, the RP may need to wait 60 days before beginning field work. However, if no technical assistance (with fee) is requested, the timeframe is shortened to half that time, 30 days. This regulatory scheme results in a disincentive for RPs to seek technical assistance from the DNR.

Requiring technical assistance (with fee) for all SIWP submittals is likely to result in feedback to the RP that ensures compliance with administrative code early on and keeps the project on track. However, under the current requirements the RP may experience delays in field work because the regulatory scheme outlines that field work may not begin for up to 60 days after submittal.

Requiring a graduated fee for expediting technical assistance reviews (i.e., paying a higher fee provides faster turnaround time from the DNR) may partially address the efficiency issue. However, a graduated fee may not be the best method to prioritize technical assistance and may result in prioritizing RPs that can afford a higher fee, which is inequitable to disadvantaged parties. For example, an individual property owner may not have means to pay a fee, much less a larger fee, to expedite technical assistance for their case, whereas a large real estate developer may be able to do so.

Consideration for expedited technical assistance based on human health risk may be more appropriate. For example, a faster turnaround for a site with TCE contamination and human receptors, for example, is more equitable and is likely to result in better health outcomes.

Proposal (DNR technical review requests):

Administrative rule revisions are recommended for consideration:

- Provide a consistent timeframe (60 days) for submissions that request DNR technical assistance (with fee) and those that do not request DNR technical assistance (with fee)
- Incentivize submittal of a technical assistance request (with fee) by reversing the current waiting period to begin field work (e.g., set review time to 90/180 days without a DNR technical assistance request and 30/60 days with a DNR technical assistance request).
- Require DNR technical assistance for SIWPs, SIRs, RAORs, and RAPs.
- Allow a graduated scale for expediting DNR turnaround time (i.e., pay higher fee provides faster DNR review, or higher risk sites receive priority DNR turnaround time). Consider either the inclusion of certain

environmental justice and/or high risk prioritization criteria to allow sites to have priority, or an exemption to allow such sites to receive priority without an increased fee.

- Establishing (or maintaining) the payment of fees on a payment-per-report basis.
- Consider available strategies for addressing documents that are submitted to the DNR without a fee (for example, declining to review these documents, or requiring all document fees be paid prior to closure.

D. Groundwater

Issue background (Groundwater):

MNA: Section NR 716.13(13) requires MNA parameters to be collected during the SI with analysis and interpretation of geochemical indicators and parameters. Often when Monitored Natural Attenuation (MNA) is a potential a remedy or partial remedy, the consultant's justification of MNA as a remedy is limited to decreasing contaminant concentrations and does not include interpretation of geotechnical indicators and parameters. This issue occurs frequently enough to merit addressing. If MNA will likely be a component of the remedial action (which is true in many cases), the SIWP should include collection of MNA parameters. The SI report should summarize the MNA parameters and the sub-surface conditions that are present to support contaminant degradation. Field parameters at a minimum should be included, along with slug and conductivity information.

Temp wells: It is unclear that the correct use of temporary wells (i.e., wells that do not comply with NR 141 construction requirements) and grab samples is for field screening purposes. These results are generally not considered to be representative of groundwater conditions and are not sufficient for regulatory compliance (i.e., the results may not be used to demonstrate that concentrations of contaminants in groundwater are below an enforcement standard). Administrative code requires DNR approval for a temp well variance (for wells not complying with ch. NR 141) prior to use in a site investigation.

Also note that industry terms and DNR definition of temporary wells differ.

There is opportunity to define temp wells and clarify time frames in ch. NR 141. Also, this issue affects the SIWP, which should include methods or standard operating procedures prior to significant implementation of work. Whether permanent or temporary, the focus for wells in this context should be on collection of groundwater samples that are free of sediment and representative of the water unit.

Proposal (Groundwater):

Administrative rule revisions are recommended for consideration:

- Clarify when field monitoring of DO, ORP, pH, temp, alkalinity is required under state administrative code and clarify that it must be submitted as part of SI report.
- Require that certain MNA parameters be included in the SIWP based on contaminants identified during discharge notice. Require field parameters along with slug and conductivity information.
- Add clarity regarding temporary groundwater monitoring wells and grab samples; clarify terminology to be consistent with industry terms.
- Further clarify types of temporary wells used by industry and when pre-approval is required for use of monitoring points that are not compliant with ch. NR 141.

Guidance may also be considered in addition or as an alternative for the following items:

- Temp well guidance could be reestablished (possibly following respective changes in ch. NR 141).
- Further clarify types of temporary wells used by industry and when pre-approval is required for use of monitoring points that are not appropriate for comparison with groundwater quality standards (non-compliant with ch. NR 141).

- Address this topic in a guidance document?

DNR internal procedure recommendations may be considered:

- MNA shortcomings could be addressed during DNR response to SIWP (in addition to other approaches). Based on contaminant identified during discharge notice, certain MNA parameters could be identified.

E. Lab Data Interpretation

Issue background (lab data interpretation):

Data interpretation: Most site investigation reports (SIRs) do not include the interpretation of data required under § NR 716.15(3)(h). Often, the results are presented, but there is no discussion of how the nature, degree and extent has been defined in all environmental media and impacts to receptors, or how field conditions, laboratory results, data gaps and other limiting conditions affect the data interpretation.

J-flagged lab data: If lab results are estimated or "J-flagged," those lab results require interpretation; however, there is typically no discussion of how the RP/consultant considered the J-flagged data to be representative of site conditions. At times when they are discussed, the consultant dismisses the results due to the J-flag (i.e., misinterprets that they are non-detect due to the flag or that the flag renders the results as low concentrations, without consideration to either the laboratory's detection and reporting limits or the regulatory standards).

Method Detection Limits: Increased method detection limits (e.g., due to dilution or interference) that result in "no detect" (or J-flags) of a contaminant of concern when the method detection limit is at or above the residual contaminant level (RCL) or enforcement standard.

Exceptions noted by the lab during analysis of environmental samples: The SIR should discuss any samples noted by the lab as not being received in an appropriate condition (e.g., sediment in water, air in VOC vial, outside temperature limits). Many times when the lab identifies that the environmental samples have been received in a condition that may affect the results, it is not discussed in the SIR. For example, if the samples were not received on ice or there is air in a sample vial, the data results may be affected. Many other states require a QAQC discussion and evaluation in reports.

Proposal (lab data interpretation):

Data interpretation: Further discussion of the issue, causes, and potential resolutions for lack of interpretation of data required under NR 716.15 (3)(h) is needed. Some approaches that have been identified for consideration are:

- Consider whether administrative review for completeness applies (DNR internal process change)
- Define status report in ch. NR 700 and expectations (rule change)
- Use the SI outline and dictate results interpretation
- If no interpretation is made, DNR may state that the site will be considered "out of compliance" and a template response letter is generated stating a standard time frame to come back into compliance and assess a fee on parcel based on this.

J-flagged lab data: Further discussions of issues ("J-flagged" interpretation and discussion of how data is representative of site conditions), causes, and potential resolutions is needed.

- What would data interpretation include? Compare laboratory detection and reporting limits to regulatory standards (RCLs, ESs).

Some approaches identified are:

- Consider administrative rule changes requiring a data interpretation section in SI Report.
- Consider administrative rule changes defining a "j-flag" to not qualify as such (i.e., be the same as non-j-flag) until evidence is given in the contrary (e.g., not detected anywhere else, no source, and not in groundwater and soil, both lab detection and reporting limits are below cleanup standards).
- This would all be part of a SAP and QAPP. Define a QAQC process.

Method Detection Limits: Further discuss this issue, causes, and potential resolution.

- Direct the RR program to work with DNR's lab certification program to define how this information is managed by the lab in their Quality Assurance and Quality Control (QAQC) program.
- Incorporate this information into a QAQC document submitted with initial site report.
- Include in report of elevated detection limits
- Clarify whether this will be interpreted as above the RCL standard (see NR 720.07(2))
- Consider requiring data validation section in SI Report

Exceptions noted by the lab during analysis of environmental samples: Administrative rule revisions are recommended:

- Require QA/QC report discussion and data validation section in SIR

F. Visual Aids

Issue background (Visual Aids):

Variability in Flow Direction. Variations in flow direction must be illustrated on water table and potentiometric surface maps under NR 716.15(4)(b)1, however, typically, only one flow direction map is provided with no discussion of variability in flow direction, which can affect receptors and remedial options. Lack of data is often related to lack of MNA information.

Isoconcentration Maps. Maps should include data to support illustration/depiction of the extent of contamination displayed as isoconcentration lines. See NR 716.15(4)(c). Maps should include both isoconcentration lines and data.

Cross Sections. Include data to support illustration/depiction of extent of contamination displayed as isoconcentration lines. See NR 716.15(4)(d). Cross sections should pass through the source area(s) and along potential/known migration pathways to potential receptors.

Photographs. Photographs are required, but rarely submitted, to document site work (§ NR 716.15(4)(f)).

Occasionally, DNR staff have learned through site visits that site work was reported inaccurately. Photos may assist in documenting completed work.

Proposal (Visual Aids):

Further discussion of issues, causes, and potential resolution(s) is needed. Some approaches identified are:

Administrative rule changes:

- Clarify exactly what DNR wants for visual aids and update "visual aids" and other terms to be consistent with current federal and state usage.
- Clarify when photographs are appropriate and what types of photos DNR is requesting.
- Require a figure and table numbering scheme similar to the requirement for closure submittals. Updates to these figures would be required as the SI expands.
- Grant monies for a database for laboratory data, similar to the GEMS monitoring well network, for which the date of event and lab data are uploaded based on Facility ID and associated with a single monitoring well to allow swift downloading and plating.
- DNR may be able to provide a consistent list of visual aids and items to include, but site variability and complexity needs to be considered if additional/other information is needed.
- Put the data on the map.
- Data is required at least 4 in different seasons.

DNR internal process changes:

- Consider whether administrative review for completeness applies.
- In combination with an administrative rule requirement (listed above) for a figure and table numbering scheme, consider whether grant monies may be available for implementing a GEM-style data portal

where data is uploaded based on Facility ID. Borings on SI that expand over one acre would be geocoded to the state plane.

G. Iterative Nature of SI & Comprehensive SIR

Issue background (Iterative Nature of SI & Comprehensive SIR):

Often, multiple SI reports are submitted to the DNR. The DNR recognizes that the SI is an iterative process; however, if multiple SIRs and technical reports with SI data have been submitted, a comprehensive report is needed to integrate and interpret all the data that has been collected to respond to the hazardous substance discharge. Frequently, DNR staff must review multiple reports to determine if the degree and extent of contamination has been defined in all environmental media. This is an inefficient and time-consuming process.

Proposal (Iterative Nature of SI & Comprehensive SIR):

Further discussion of issues, causes, and potential resolutions is needed. Some approaches identified include the following administrative rule revisions:

- Revise administrative code to clarify the requirement for submission of a comprehensive SI that consists of all relevant data and visual aids, considering the time gap between sampling events, as applicable.
- Consider code revisions that would allow for hourly assessed DNR technical assistance fees at a “cost not to exceed” for any submittal. Base on established submittal templates.

Consider clarification in guidance of the following:

- Issues surrounding contamination crossing property lines, including entry permissions and liability issues.