

Remediation and Redevelopment Program – Rule Development Meeting

July 9, 2019 | 10:00 a.m. to 2:00 p.m.

Wisconsin Dept. of Natural Resources
GEF 2 | Room G09
101 S. Webster St. | Madison, WI 53701

Meeting materials are available at: <https://dnr.wi.gov/topic/Brownfields/RuleChanges.html>.

Attendees:

Margaret Brunette, DNR; Frank Dombrowski, WE Energies; Nancy Frank, UW Milwaukee; Christine Haag, DNR; Renee Exum, Michael Best; Judy Fassbender, DNR; Gena Larson, DNR; Bill Nelson, DNR; Ben Peotter, Ayers Associates; Jodie Peotter, Tetra Tech; Michael Prager, DNR; Tina Reese, The Reese Group LLC; Molly Schmidt, DNR; Jenna Soyer, DNR; Mark Thimke, Foley & Lardner; Carrie Webb, DNR

Meeting Notes:

1. Welcome and Introductions.

Staff provided background on rule development meetings, stating that the purpose of holding these meetings was to provide an additional opportunity for rule input during the rule drafting period of the rulemaking process. Subjects from scope statements are divided up and spread out over the drafting period for discussion at public meetings. Rulemaking timeframe is short due to the legislation that passed in 2017 causing scope statements to expire. Staff and guests introduced themselves.

2. Introductory white paper regarding proposed rule revisions affecting submittal timelines in the NR 700 rule series (Wis. Admin. Code chs. NR 700, NR 716, NR 724, and NR 726).

DNR staff member Jenna Soyer presented an overview of the white paper relating to draft rule revisions affecting submittal timelines in the NR 700 rule series. Following the presentation, an attendee asked whether further discussion would occur on the item. Staff replied that a first draft of the rule would be presented at the November 6, 2019, Rule development Meeting. Pursuant to another question, staff explained that the introduction of timeframes for the submission of biannual reports required under Wis. Admin. Code § NR 700.11 would entail revisions to code to clarify that the department has the authority to require timeframes for these reports; however, an actual timeframe itself would not be stated in code. Attendees commented that flexibility is needed to account for delays outside the responsible party's control. Another attendee asked what the consequences would be for the violation of the proposed timeframe requirements. Staff responded that – similar to other instances of code violations – the department would issue a notice of noncompliance and follow the stepped enforcement process. An attendee emphasized that flexibility would be needed for any timeframes established for the reports due to variables such as lab testing timelines, etc. Other attendees stated agreement, adding that seasonal conditions and land transactions could cause delays in progress.

3. Introductory white paper regarding proposed rule revisions affecting fees required under Wis. Admin. Code ch. NR 749.

DNR staff member Jenna Soyer summarized a white paper relating to draft rule revisions affecting fees in ch. NR 749.

4. First draft of proposed rule revisions relating to submittal preparation requirements and other changes to Wis. Admin. Code ch. NR 712.

RR Program Director Christine Haag presented a first draft of rule revisions within Wis. Admin. Code ch. NR 712. Following the presentation, an attendee commented that the approach of writing notes within rules may be improved; this note was slightly out of place in terms of related content and guidance might be a more appropriate location for the information. Staff replied that the addition of the note was intended to address frequent questions at a certain point in the process; however, they could look at other approaches such as referencing a guidance document or looking at other locations. Another attendee commented that consulting firms maintain templates for Phase 1 reports and typically updated these templates following changes in law and practice. Firms would struggle to update templates in areas where direction is unclear. Regarding rule revisions referencing ch. NR 726, an attendee asked whether there was a lack of clarity between various parts of the revised section of code. Attendees and staff briefly discussed terms used in ch. NR 712; staff clarified that the definitions of “scientist” and “hydrogeologist” clarified whether a professional geologist would be qualified to carry out certain actions under code.

5. Conclude and Adjourn.

Staff stated that the next rule development meeting would be held on August 6, 2019, in Madison, and would include discussion of the following items:

- A white paper on rule changes related to the “continuing obligations” definition within ch. NR 714;
- A white paper on rule changes needed following 2015 Wis. Act 204 changes related to continuing obligations for interim actions;
- A white paper on rule revisions needed following 2015 Wis. Act 204 changes relating to the rights and responsibilities of owners and occupants at sites with continuing obligations;
- A first draft rule on revisions relating to 2015 Wis. Act 204 requirements for financial responsibility at sites where engineering controls are used to address contaminated sediment;
- A first draft rule on revisions relating to 2015 Wis. Act 204 requirements for insurance and other financial assurance requirements at Voluntary party Liability Exemption (VPLE) sites with contaminated sediment; and
- A second draft of rule changes regarding soil standards.

Staff thanked attendees for their time and requested that they send any further comments in via email to DNRRRNR700input@wisconsin.gov.