

Remediation and Redevelopment Program – Rule Development Meeting

August 6, 2019 | 10:00 a.m. to 2:00 p.m.

Wisconsin Dept. of Natural Resources

GEF 2 | Room G27A

101 S. Webster St. | Madison, WI 53701

Conference call option: 1-855-947-8255 / Passcode 6961 559#

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

Attendees: Molly Schmidt (DNR), Michael Prager (DNR), Gena Larson (DNR), Jodie Peotter (DNR), Judy Fassbender (DNR), Shar TeBeest (DOT), Jenna Soyer (DNR), Alyssa Sellwood, Erica Lawson (Tetra Tech), Renee Exum (Michael Best), Madi Johansen (DNR), Brad Grimstead (Pioneer), Ben Peotter (Ayers), Carrie Webb (DNR), Dustin Helmenstine (American Risk Management Resources Network), Marcus Mussey (SJ Geophysics), Snejana Karakis (Ramboll), Bill Nelson (DNR), Frank Dombrowski (WE Energies), Laurie Parsons (TRC)

Agenda:

1. Welcome and Introductions.

Staff explained the purpose of the meetings and provided an overview of the process, scope, and timeline for drafting rules.

2. Introductory white paper regarding proposed rule revisions relating to the definition of “continuing obligations” within Wis. Admin. Code ch. NR 714.

Staff provided a summary of the white paper (see presentation and paper). No comments.

3. Introductory white paper on proposed rule revisions needed following 2015 Wis. Act 204 changes related to continuing obligations for interim actions

Staff provided a summary of the white paper (see presentation and paper). No comments.

4. Introductory white paper on proposed rule revisions needed following 2015 Wis. Act 204 changes relating to the rights and responsibilities of owners and occupants at sites with continuing obligations.

Staff provided a summary of the white paper (see presentation and paper). An attendee asked whether the ability for the department to impose continuing obligations prior to closure is a new or existing authority? Staff replied that the code didn't reflect the department's ability to impose obligations at the time of an interim action – the draft rules would address it.

5. First draft of proposed rule revisions relating to 2015 Wis. Act 204 requirements for financial responsibility at sites where engineering controls are used to address contaminated sediment. Group action item: comments regarding first draft of proposed rules.

Staff provided a summary of the rule revisions (see presentation). An attendee asked about the content of the proposed rule at Wis. Admin. Code s. NR 756.04(2)(b)(3) and (4): what is the difference between a planned change to the structural impediment and an unplanned removal of structural impediment (dam, bridge, etc.)? Staff replied that the latter was due to a weather event or third-party action. An attendee asked whether the financial assurance money would need to sit in an account for an indeterminate amount of time for an

unplanned removal? Staff replied that this would not necessarily occur. As the rule is currently drafted, there are multiple options to fulfill financial responsibility, some of which do not require putting money in an account.

Staff stated that they would consider how to improve the distinction between planned and future removal of structural impediment due to third party. An attendee suggested that a note with an example be added.

6. First draft of proposed rule 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.

Staff presented a summary of the draft rule (see draft rule and presentation). An attendee asked how deductibles would work. Staff replied that the current draft does not address the issue and that it would need to be addressed. One option considered was to provide for allowing fees that are paid to the department to be used toward the deductible. The main goal of these policies is to avoid eliminating projects that are close to water where the major portion of the cleanup is not associated with sediment or the water portion of the project. As proposed, a responsible party would pay for insurance for 25 years then receive VPLE coverage. One attendee commented that this approach does not seem to be useful for large, urban sediment sites.

An attendee asked what the department's intent was for limiting waivers to the short list of bio-accumulators. Staff replied that this policy was from the statute, not the rule; however, the department was not proposing to expand the list through the rule. The overall idea was likely based on the uncertainty of providing VPLE to sediment sites, and limiting that uncertainty a bit. An attendee commented that, as written, VPLE wouldn't be offered on any urban river because these compounds are almost always present. For example, in the Milwaukee River there are likely to be PCBs found at low levels most places. Does this language rule out these projects? Staff replied that the department may be able to look into a waiver option if the remedy does not address the bio-accumulators if there's no hazardous substance release. The statute (Wis. Stats. ch. 292.15(2)(af) 3m) does not appear to allow for flexibility for these substances. Staff added that the department would look into this issue further to ensure that the implementation of the rule does not unintentionally rule out a large portion of potential sites.

7. Second draft of proposed rule revisions relating to soil standards

Staff presented a summary of the draft rule (see draft rule and presentation). An attendee asked whether the intent of the language was to provide consistency for instances when the U.S. EPA expands list of carcinogenic PAHs. Staff replied that this was the intent.

An attendee commented that eliminating the cumulative risk goal may have unintended consequence of taking away flexibility for larger complex sites. Staff replied that the cumulative risk for non-PAH contaminants is still in the rule. An attendee stated that the revision eliminating "hazard quotient" in the rule language may cause a problem. Staff replied that they would look into this.

8. Conclude and Adjourn.