

DRAFT rule revisions for 12/3/2019 Rule Development Meeting

Comments on this draft may be sent to DNRRNR700input@wisconsin.gov.

Subject matter (group/subgroup): Other / Notification and Closure

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Changes:

NR 716.14(1) is amended to read:

NR 716.14 (1) SAMPLES FROM WATER SUPPLY WELLS. (a) Responsible parties shall report all water supply well sampling results to the department and to the well owner, and occupant as applicable, within 10 business days after receiving the sampling results. The report to the department shall include;

1. ~~the~~ The Wisconsin unique well number for drinking water wells,
2. a map showing the sampling and well locations, which meets the requirements of s. NR 716.15 (4),
3. ~~a~~ A preliminary analysis of the cause and significance of any contaminant concentrations observed in the samples
4. ~~and an~~ An identification of any substances that attain or exceed ch. NR 140 preventive action limits, as well as any other substances observed in the samples for which there are no ch. NR 140 groundwater quality standards.

(b) The responsible party shall notify both the remediation and redevelopment project manager and the regional drinking and groundwater specialist or water supply engineer of all water supply well sample results.

~~Note: The appropriate remediation and redevelopment project manager can be determined for the site in question at <http://dnr.wi.gov/topic/Brownfields/documents/rr/county.pdf>. The appropriate regional drinking and groundwater specialist or water supply engineer can be determined by viewing the staff listing at <http://dnr.wi.gov/topic/DrinkingWater/contact.html>.~~

Note: The department will provide information to well owners of the results of sampling in accordance with manual code 4822.1.

NR 725.05(2)(a) is amended to read:

NR 725.05(2)(a) Groundwater contamination which attains or exceeds ch. NR 140 enforcement standards remains after completion of the remedial action and the property is not serviced by a municipal water system, unless otherwise directed by the department.

Note to readers: please see additional related changes in the draft rule titled "Emerging Contaminants", which will also be presented along with this draft rule at the October 1, 2019, Rule Development Meeting.

NR 725.05(2)(L) is amended to read:

NR 725.05(2)(L) Contamination in soil or groundwater from volatile compounds remains after completion of the remedial action, in an area that does not have buildings subject to human occupancy at the time of closure.

Note: Notification is provided to the current property owner when that person is not the responsible party conducting the cleanup, and to any other property owner where vapors may pose a health issue if buildings are to be constructed in the future, or if other land use changes or actions could result in a completed vapor pathway. Chapter NR 726 specifies closure conditions regarding the option of using vapor control technologies to limit or prevent future exposures.

Note: The department may also require notification for site-specific reasons upon review of a closure request, in accordance with s. NR 726.13, upon review of an interim action plan in accordance with s. NR 724, or upon review of a remedial action plan in accordance with s. NR 722.15 (2) (e). Responsible parties

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are encouraged to contact the department project manager with questions about tailoring the notification for site-specific circumstances.

NR 725.05(2)(bm) is created to read:

NR 725.05(2)(bm) Continuing obligations when directed by the department.

NR 725.07(1) is amended to read:

NR 725.07 General notification requirements. (1) Notification form. The responsible party, or other party required to provide notification by the department, shall provide the notification of contamination ~~and~~ or continuing obligations on a form provided by the department, that contains the standard provisions in the form. All notifications shall also include the provisions about ~~the~~ any applicable continuing obligations on the affected properties or rights-of-way. The closure-related paragraphs shall be altered to fit the situation, as applicable.

Note: The notification form, "Notification of Continuing Obligations and Residual Contamination," 4400-286, may be found at <http://dnr.wi.gov/topic/Brownfields/Pubs.html>.

Note: For local governmental units or economic development corporations that are directed to take an action, or for sites receiving a remedial action plan approval, the language regarding closure needs to be changed to reflect the applicable situation.

NR 725.07 (3) is amended to read:

NR 725.07 (3) Notification of the department of transportation. Notifications for department of transportation rights-of-way shall be sent either electronically, or via certified mail, return receipt requested, or standard mail with use of a complete mailing address.

Note: Send notifications for DOT rights-of-way electronically to: DOTHazmatUnit@dot.wi.gov, or by mail to: Wis. DOT Bureau of ~~Equity and Environmental Services~~ Technical Services, Environmental Services -- Hazmat, 4802 Sheboygan Ave. Room 451, PO Box 7965, 5 South, Madison, WI 53707-7965. Include "Notification of Contamination" in the subject line of the e-mail. The Department of Transportation (DOT) sends a receipt electronically (e-mail). Email is the preferred notification method.

NR 726.05 (4) is amended to read:

NR 726.05 (4) Response action goals. For sites or facilities considering closure under this chapter, the closure request shall document that the remaining level of contamination is not likely to:

- (a) Pose a threat to public health, safety, or welfare or the environment.
- (b) Cause a violation of ch. NR 140 groundwater quality enforcement standards at any applicable point of standards application, except where the department has granted an exemption under s. NR 140.28 for a specific hazardous substance or the criteria under s. NR 726.05 (6) are met.
- (c) Cause a violation of surface water quality standards in chs. NR 102 to 106.
- (d) Cause a violation of air quality standards contained in chs. NR 400 to 499.
- (e) Cause a vapor action level in indoor air to be attained or exceeded.

Note: Vapor action level is defined in s. NR 700.03 (66p) as "the concentration of vapors from volatile compounds is at or above the 1-in-100,000 (1×10^{-5}) excess lifetime cancer risk or is at or above a hazard index of 1 for non-carcinogens."

(f) Cause a violation of drinking water standards set forth in ch. NR 809 and ch. NR 812, or other site-specific standards that have been developed for the site and approved by the department.

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NR 726.09(1) is amended to read:

NR 726.09 Closure documentation requirements. (1) CASE CLOSURE REQUEST FORM. A request for case closure shall be submitted on a form supplied by the agency and shall be accompanied by documentation that the criteria in s. NR 726.05 (1) to (8) are satisfied. ~~One paper copy and one~~ An electronic copy of the complete closure request shall be submitted to the department, unless otherwise directed by the department. All information submitted shall be legible. Providing illegible information may result in a submittal being considered incomplete until corrected.

~~Note: Copies of the WDNR case closure request form (form 4400-202) and the associated impacted property notification information form (4400-246) for sites or facilities over which the department has administrative authority may be accessed at:~~

~~<http://dnr.wi.gov/files/PDF/forms/4400/4400-202.pdf>,~~

~~or may be obtained from any regional office of the department, or by writing to the Department of Natural Resources, Bureau for Remediation and Redevelopment, P.O. Box 7921, Madison, Wisconsin 53707.~~

~~Note: Electronic copies should be submitted in the Adobe portable document format (PDF) on optical disk media. Guidance on electronic submittals can be accessed at <http://dnr.wi.gov/files/PDF/pubs/rr/RR690.pdf>.~~

NR 726.09(2) is renumbered and amended to read:

NR 726.09(2) GENERAL REQUIREMENTS. In order to demonstrate that applicable federal, state and local public health and environmental laws have been complied with, and to provide information on the location and nature of any residual contamination at the site or facility, the person who is requesting case closure shall submit all of the following information, that is applicable, as ~~attachments to~~ part of the case closure request, in the format that is specified in this subsection, and in the order that is specified in the form.

(a) An executive summary of the contamination sources, degree and extent of contamination in all affected media, remedial actions taken to address the contamination, and the types and locations of any continuing obligations proposed to address exposure to residual contamination.

(b) A description of general site information and history including site location, land usage and zoning.

(c) A site location map that outlines all properties and rights-of-way within the contaminated site boundaries on a United States Geological Survey topographical map or plat map in sufficient detail to permit the parcels to be located easily. This map shall include parcel identification numbers. This map shall identify the location of all municipal and potable wells within 1200 feet of the site. Maps and cross sections shall be to scale, and use a graphic scale. The north arrow shall be pointing to the top of the map.

(d) A summary of site investigation activities completed at the site or facility including the scope of field investigation, degree and extent of contamination, and all potential receptors and migration pathways.

~~(a)(e)~~ Documentation showing that site investigation requirements in ch. NR 716 have been met or, where applicable, documentation which meets the requirements in ch. NR 508, the groundwater assessment requirements in s. NR 140.24 (1) (b), or both.

~~(b)(f)~~ A description of the interim and remedial actions taken at the site or facility. ~~For sites or facilities where residual soil contamination exceeds ch. NR 720 soil standards at the time that case closure is requested, include a demonstration that the remedial action taken, and any interim action that was taken that constituted the final response action for soil contamination, satisfies the requirements of chs. NR 720 and 722, where applicable. including nature, degree and extent of any residual contamination that will remain at the site, and how exposure pathways were addressed. For sites or facilities where residual sediment contamination attains or exceeds ecological and human health risks as specified in ch. NR 722 at the time that case closure is requested, include a demonstration that the remedial action taken, and any interim action that was taken that~~

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constituted the final response action for sediment contamination, satisfies the requirements of ch. NR 722 and to assure attainment and maintenance of surface water quality standards as established in accordance with s. 281.15 (1), Stats., and as set forth in chs. 102 through 106 or as otherwise directed by the Department.

1. For sites or facilities where residual soil contamination exceeds ch. NR 720 soil standards at the time that case closure is requested, include a demonstration that the remedial action taken, and any interim action that was taken that constituted the final response action for soil contamination, satisfies the requirements of chs. NR 720 and 722, where applicable.

~~(e) Maps and cross sections shall be to scale, and use a graphic scale. The north arrow shall be pointing to the top of the map.~~

~~(d) 2.~~ For sites or facilities where soil excavation, sediment dredging, or active soil remediation occurred, include:

~~1. a.~~ A table of ~~soil~~ analytical results with collection dates identified. ~~Soil analytical~~ Analytical data tables shall clearly indicate depth of sample, soil/sediment type and whether the sample represents pre-remedial or post-remedial conditions. At sites or facilities where soil excavation or sediment dredging occurred, the ~~soil~~ analytical data tables shall indicate whether the ~~soil~~ data point represents soil that was removed or ~~soil~~ that remains in place.

~~2. b.~~ A map that shows the locations of all ~~soil~~ samples collected.

Note: Where a soil performance standard cover is the only action taken, that is not considered active soil remediation. This requirement applies to all sites where soil excavation or active soil remediation occurred, not just those to be included on the department database under s. NR 726.07.

~~(e) 3.~~ Where the agency has required groundwater quality sampling to be conducted, results from a minimum of 8 successive quarterly rounds of sampling to demonstrate compliance with either the applicable requirements of ch. NR 140 or the requirements of s. NR 726.05 (6), unless otherwise directed or approved by the agency.

Note: Under ch. NR 722, alternate sampling schedules may be proposed, based on site geology, contaminants of concern, remedial action applied and redevelopment plans. The department expects that more monitoring may be necessary at complex sites, or where statistical analysis will be used for data evaluation. Conversely, less post-remediation monitoring may be appropriate for certain sites with significant source removal, readily degradable compounds or other well-established site conditions.

~~(f) 4.~~ For sites or facilities with sediment contamination, or soil vapor contamination, sampling data demonstrating that the remedial action selected in accordance with ch. NR 722 has restored the environment to the extent practicable and minimized the harmful effects of the hazardous substances ~~on the air, lands, and waters of the state~~ to protect health, safety, and welfare and the environment.

(g) Submit to the department documentation that all other closure conditions have been satisfied, within 120 days after the department provides a ~~conditional~~ remaining actions needed closure response.

Note: This requirement is meant to cover well abandonment and any other minor condition identified in a ~~conditional~~ remaining actions needed closure letter. It does not apply to the continuing obligations specified in the final closure letter. Ch. NR 141 requires the documentation of well abandonment on a form supplied by the department. The well abandonment form, 3300-005, can be accessed at <http://dnr.wi.gov/topic/DrinkingWater/documents/forms/3300005.pdf> by visiting <http://dnr.wi.gov> and searching "3300-005".

(h) Where attempts to locate monitoring wells for abandonment are unsuccessful, submit documentation of the efforts made, to the department.

(i) Any other information that the department specifically requests.

PLEASE NOTE that the rule revision listed above includes rule revisions discussed at previous Rule Development Meetings. See draft rule revisions for 9/5/2019 Rule Development Meeting, titled, [A first draft of miscellaneous proposed rule revisions including updates to terminology, submittal format requirements, and other changes](#) and [A first draft of proposed rule revisions relating to contaminated sediments](#). There are

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additional related changes in the draft rule titled “Emerging Contaminants”, which will also be presented along with this draft rule at the October 1, 2019, Rule Development Meeting.

NR 726.09(3) is amended to read:

NR 726.09 (3) NOTIFICATIONS. Responsible parties or other persons requesting closure shall submit a copy of all the notifications required under ch. NR 725 or under s. NR 726.13 (1) (c) with written proof of the date on which the letters were received.

~~Note: These notifications will be in the case file, but will no longer be included as part of the PDF on the department database. A list of addresses of all affected properties and a cover letter detailing the continuing obligations per property will be included as part of the PDF on the department database.~~

NR 726.11(3) is amended to read:

NR 726.11 (3) PHOTOGRAPHS. For sites or facilities with a cover or other performance standard, a structural impediment or a vapor mitigation system, include one or more photographs documenting the condition and extent of the feature at the time of the closure request. Pertinent features shall be visible and discernable. Photographs shall be submitted with a title related to the site name and location, compass direction and the date on which it was taken.

NR 726.11(5) is amended to read:

NR 726.11 (5) MAPS AND CROSS SECTIONS. All the following information shall be included in a ~~department database~~ an attachment to the case closure request:

(a) A site location map that outlines all properties within the contaminated site boundaries on a United States Geological Survey topographical map or plat map in sufficient detail to permit the parcels to be located easily. This map shall identify the location of all municipal and potable wells within 1200 feet of the site. If there is only one parcel, this map may be combined with the map required in par. (b).

(b) A detailed site map of all contaminated properties within the contaminated site boundaries, showing buildings, roads, property boundaries, contaminant sources, utility lines, monitoring wells, and potable wells. This map shall also show the location of all contaminated public street and highway rights-of-way and railroad rights-of-way in relation to the source property and in relation to the boundaries of contamination exceeding applicable standards.

(c) For sites or facilities where soil contamination exceeds residual contaminant levels as determined under ch. NR 720 at the time that case closure is requested:

1. A map that shows the location where all soil samples were collected and identifies, with a single contour, the horizontal extent of each area of contiguous residual soil contamination that exceeds residual contaminant levels, as determined under ch. NR 720, within the contaminated site boundaries. Include soil sample results, and identify the location and type of any structural impediment.

2. A geologic cross section showing the vertical extent of residual soil contamination that exceeds residual contaminant levels as determined under ch. NR 720, if one was required as a part of the site investigation report, soil types, any fill materials, locations and elevations of geologic rock units, surface features, contaminant source locations(s), sample locations(s) and results, subsurface migration pathways, and any active remediation or treatment zones. If there is groundwater contamination on the site that attains or exceeds any ch. NR 140 enforcement standard in addition to residual soil contamination, one geologic cross section may be submitted to show the vertical extent of both soil and groundwater contamination.

(d) For sites or facilities where groundwater attains or exceeds any ch. NR 140 enforcement standard at the time that case closure is requested:

1. A geologic cross section, if one was required under ch. NR 716, that includes the vertical extent of residual contamination in soil and groundwater, the location and extent of the source of the contamination,

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surface features, subsurface migration pathways, isoconcentrations for all groundwater contamination attaining or exceeding ch. NR 140 preventive action limits that remains when case closure is requested, any active remediation or treatment zones, water table and piezometric elevations, location and elevation of geologic units, bedrock and confining units, if any.

2. An isoconcentration map of the contaminated properties within the contaminated site boundaries, if such a map was required under ch. NR 716. An isoconcentration map shall show the areal extent of groundwater contamination attaining or exceeding ch. NR 140 preventive action limits and the areal extent of groundwater contamination attaining or exceeding ch. NR 140 enforcement standards, with the groundwater flow direction indicated, using the most recent data, with sample collection dates identified. If an isoconcentration map was not required under ch. NR 716, submit a map showing the horizontal extent of contamination exceeding applicable standards based on the most recent data; or where standards have not been promulgated, the horizontal extent of contamination remaining after the remedial action.

3. A groundwater flow map, representative of groundwater movement at the site. If groundwater flow direction varies by more than 20 degrees over the history of water level measurements at the site, 2 groundwater flow maps showing the maximum variation in groundwater flow direction shall be submitted.

(e) For sites or facilities where samples were collected other than soil or groundwater, include a map showing the sampling locations and results, with type of sample and collection date identified.

(f) For sites or facilities where vapor samples were taken to investigate the vapor intrusion pathway in relation to residual soil and groundwater contamination, a map showing location and results of any sub-slab, indoor air, soil vapor, soil gas, and ambient air testing. Include locations and footprints of affected structures and utility corridors, and where residual contamination poses a future risk of vapor intrusion.

Note to readers: please see additional related changes in the draft rule titled “Emerging Contaminants”, which will also be presented along with this draft rule at the October 1, 2019, Rule Development Meeting.

NR 726.11(6) is amended to read:

NR 726.11 (6) DATA SUMMARY TABLES. For information submitted for sites or facilities where inclusion on a department database is required under s. NR 726.07, shading and cross-hatching may not be used on data summary tables unless prior approval is obtained from the department. All the following information shall be included in ~~a department database attachment~~ to the case closure request:

(a) *Soil.* For sites or facilities where soil contamination exceeds residual contaminant levels as determined under ch. NR 720 at the time that case closure is requested include a table of the analytical results showing results for the most recent samples, for all contaminants found in pre-remedial sampling, with sample collection dates identified. Results equal to or greater than ch. NR 720 and background threshold values shall be clearly identified. Soil data tables shall identify the saturation level and soil strata from which samples were collected.

(b) *Groundwater.* For sites or facilities where groundwater attains or exceeds any ch. NR 140 enforcement standard at the time that case closure is requested, include:

1. A separate table of only the 8 most recent analytical results from all monitoring wells, and any potable wells for which samples have been collected, with sample collection dates identified. Results equal to or greater than ch. NR 140 standards shall be clearly identified.

2. A table including, at a minimum, the previous 8 water level elevation measurements from all monitoring wells, with the date measurements were made. If free product is present at the site, it shall be noted in the table.

3. A completed groundwater monitoring well information form.

Note: The Groundwater Monitoring Well Information Form is required in s. NR 716.15. It can be obtained at http://dnr.wi.gov/topic/Groundwater/documents/forms/4400_89.pdf.

(c) *Other.* For sites or facilities where samples other than soil or groundwater were collected, include a table specifying the sample type, sample number or location, sample results, and collection date.

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(d) Vapor. For sites where vapor samples were taken to investigate the vapor intrusion pathway in relation to residual soil and groundwater contamination, a table of analytical results showing sample type, collection method, analytical method, date of sample collection, and time period for sample collection. Results equal to or greater than applicable vapor levels shall be clearly identified.

Note to readers: please see additional related changes in the draft rule titled “Emerging Contaminants”, which will also be presented along with this draft rule at the October 1, 2019, Rule Development Meeting.

NR 726.11(7) is amended to read:

NR 726.11 (7) DOCUMENTATION FOR MONITORING WELLS. For sites or facilities where a monitoring well has not been abandoned in accordance with the requirements of ch. NR 141 at the time of case closure, wells that the property owner has requested to keep and not abandon at this time, and wells required by the agency under s. NR 726.05 (7) (a) for continued monitoring after closure, the following information shall be included in a ~~department database attachment~~ to the case closure request.

(a) A site location map with the surveyed locations identified on the map for those groundwater monitoring wells that have not yet been abandoned;

(b) The well construction report for each monitoring well that needs to be abandoned; and

(c) The most recent recorded deed with legal description for each property on which a monitoring well is located.

Note: ~~This would include wells that have not been located for abandonment, wells that the property owner has requested to keep and not abandon at this time, and those wells required by the agency under s. NR 726.05 (7) (a) for continued monitoring after closure.~~ Proper abandonment is required once the wells are no longer used. ~~The well construction report, form 4400-113A can be obtained at http://dnr.wi.gov/topic/Groundwater/documents/forms/4400_113_1_2.pdf.~~

PLEASE NOTE that the rule revision listed above includes rule revisions discussed at previous Rule Development Meetings. See draft rule revisions for 9/5/2019 Rule Development Meeting, titled, [A first draft of miscellaneous proposed rule revisions including updates to terminology, submittal format requirements, and other changes.](#)

NR 726.13(1)(a)6. is created to read:

NR 726.13(1)(a)6. Cause a violation of drinking water standards set forth in ch. NR 809 and ch. NR 812 or other site-specific standards that have been developed for the site and approved by the department.

Note to readers: please see additional related changes in the draft rule titled “Emerging Contaminants”, which will also be presented along with this draft rule at the October 1, 2019, Rule Development Meeting.

Plain language explanation/analysis:

The rule changes above are administrative changes that will improve closure request submittals and clarify notification requirements.

Comparable state or federal rules or policies:

Not applicable.

Economic impact comments:

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The rule changes above are generally administrative and unlikely to have a negative economic impact.