

Remediation and Redevelopment Program – Rule Development Meeting

January 9, 2020 | 10:00 a.m. to 2:00 p.m.

Wisconsin Dept. of Natural Resources
GEF 2 | Room 513
101 S. Webster St. | Madison, WI 53701

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

Attendees: Molly Schmidt (DNR), Michael Prager (DNR), Gena Larson (DNR), Jenna Soyer (DNR), Carrie Webb (DNR), Phil Bower (DNR), Judy Fassbender (DNR), Mark Thimke (Foley & Lardner), Mark A. Rutkowski (Shannon & Wilson), Douglas McDaniel (Clean Harbors Environmental Services), Renee Exum (Michael Best), Don Gallo (Axley), Lynn Morgan (Waste Management), Dillon Plamann (Fehr Graham), Alison Levinson (Earthcom Consultants)

Agenda notes:

1. Welcome and Introductions.

Staff provided background on rule development meetings, stating that the purpose of holding the meetings was to provide an additional opportunity for rule input during the rule drafting period of the rulemaking process. Rule development meetings are not part of the formal rule making public input process. Subjects from scope statements are divided up and spread out over the drafting period for discussion at the rule development meetings. The timing of the public hearings and the other steps of the rulemaking process is available on the NR 700 Rule Changes web page. This meeting would be the last rule development meeting and staff would provide an overview of the rulemaking process later in the meeting.

Staff and guests introduced themselves.

2. Second draft of rule revisions relating to timelines in the NR 700 rule series.

DNR staff member Jenna Soyer presented an overview of the second draft. An attendee stated that the department should consider rewording the proposed language at s. NR 700.11 (5) to clarify the department's discretion in imposing penalties. Staff replied that the language may have been selected to mirror statutory language and that staff would review it as suggested. An attendee asked how the program tracked site progress reports. Staff replied that the reports were tracked via BRRS and that project managers reviewed the reports when received.

3. Second draft of rule revisions relating to fees under Wis. Admin. Code ch. NR 749.

DNR staff member Jenna Soyer presented an overview of the second draft.

4. Second draft of rule revisions relating to remedial action confirmation samples.

DNR staff member Judy Fassbender presented an overview of the second draft. An attendee asked whether, in the context of an engineering control, sampling is required. Staff replied that part of confirmation sampling for an engineering control would be to confirm whether it is working properly. The attendee added that the

sampling language gives the impression that it is based on a level as opposed to the performance of the remedy and suggested that staff review the language for performance-based remedies.

5. Second draft of proposed rule changes relating 2015 Wis. Act 204 changes and the definition of “continuing obligation”.

DNR staff member Molly Schmidt presented an overview of the second draft.

6. Second draft of proposed rule revisions relating to 2015 Wis. Act 204 changes and continuing obligations for interim actions.

DNR staff member Michael Prager presented an overview of the second draft. An attendee asked whether the basic goal was to incorporate NR 708 actions and staff confirmed that the attendee was correct.

7. Second draft of rules relating to 2015 Wis. Act 204 changes and the rights and responsibilities of owners and occupants at sites with residual contamination.

DNR staff member Michael Prager presented an overview of the second draft. An attendee suggested that staff read a recent legislative water quality task force report for information relating to rights of riparian owner with respect to what they can do within waterways. The attendee added that staff should watch for statutory changes related to this topic and how any changes might affect continuing obligations. Also, the task force report contained provisions regarding tar on driveways, which may interest staff working on PAH issues.

8. Overview of next steps in the administrative rulemaking process.

DNR staff member Molly Schmidt reviewed the next steps of the rulemaking process and the timeframe for the permanent and emergency rulemaking efforts. She stated that the next step would involve reviewing the economic impacts of the rules, and that a compiled set of rule changes would be published online as part of this step, in summer of 2020. Staff would continue to provide updates via the listserv that has been used for announcing the rule development meetings.

9. Conclude and Adjourn.