

Continuing Obligations Rule Changes (RR-14-23) – Second Draft (9/5/2024)
September 20, 2024, Rule Advisory Committee Meeting

Notes on formatting for the Rule Advisory Committee:

- Per request, this second draft provides the proposed rule changes in chapter format rather than board order format.
- Provisions that have revised, new, or repealed text within them are in **purple text**.
- Subsections that have rule changes are highlighted yellow at the subsection number (e.g., NR 720.12 **(2)**), or, if an entire section is changed, then the start of the section is highlighted yellow (e.g., **NR** 720.12).

Chapter NR 700

GENERAL REQUIREMENTS

NR 700.01	Purpose.	NR 700.08	Superfund site assessment.
NR 700.02	Applicability.	NR 700.10	Identification of responsible parties.
NR 700.03	Definitions.	NR 700.11	Submittals.
NR 700.05	Confidentiality of information.	NR 700.13	Sample preservation and analysis.
NR 700.07	Incorporation by reference.		

Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494.

NR 700.01 Purpose. (1) The purpose of this chapter is to provide definitions of terms used in chs. NR 700 to 754, to incorporate by reference specified regulations or materials, and to grant confidential status for records, reports and other information furnished to or obtained by the department for use in the administration of chs. NR 700 to 754.

(2) The purpose of chs. NR 700 to 754 is to establish consistent, uniform standards and procedures that allow for site-specific flexibility, pertaining to the identification, investigation and remediation of sites and facilities which are subject to regulation under chs. 289 and 292, Stats. 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. These rules are adopted pursuant to ch. 160, Stats., ss. 227.11 (2), 281.19 (1), 287.03 (1) (a), 289.05 (1), 289.06, 289.31 (7), 289.43 (8), 291.05 (6), Stats., and ch. 292, Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023: am. (1), (2) Register October 2013 No. 694, eff. 11-1-13.

NR 700.02 Applicability. (1) This chapter and chs. NR 702, 704, and 708 to 754 apply to actions taken by the department under the authority of chs. 289 and 292, Stats.

(2) This chapter and chs. NR 706 to 754 apply to actions taken by responsible parties at sites, facilities or portions of a site or facility that are subject to regulation under chs. 289 and 292, Stats., regardless of whether there is direct involvement or oversight by the department.

Note: The department of agriculture, trade and consumer protection has the authority under s. 94.73, Stats., to issue corrective action orders to parties who are responsible for the discharge of an agricultural chemical, to require that the responsible parties take action that is necessary to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to the air, lands or waters of this state. The department of agriculture, trade and consumer protection has confirmed their intention to require that this chapter and chs. NR 708 to 727 and 749 be applied to actions taken by responsible parties as directed by the department of agriculture, trade and consumer protection under s. 94.73, Stats. For actions directed by the department of agriculture, trade and consumer protection under s. 94.73, Stats., submittals under chs. NR 708 to 727 and 749 shall be sent to the department of agriculture, trade and consumer protection, and approvals required by these chapters shall be obtained from the department of agriculture, trade and consumer protection.

Note: Persons who are not responsible parties and who voluntarily take a response action at a site or facility that is subject to regulation under ch. 289, Stats., or s. 292.31 or 292.11, Stats., are not required to comply with the standards and procedures in chs. NR 700 to 754 unless the person is seeking the liability exemption under s. 292.15, Stats. However, the department may not consider case closure under ch. NR 726 for the site or facility until the applicable rules in chs. NR 700 to 754 have been complied with, and a person who did not originally fall within the definition of a responsible party may become a responsible party if the

actions taken by that person cause or worsen the discharge of a hazardous substance or if the person takes possession or control of the site or facility.

Note: Persons who wish to conduct response actions that will be consistent with the requirements of CERCLA and the National Contingency Plan (NCP) may request that the department enter into a contract with them pursuant to s. 292.31 or a negotiated agreement under s. 292.11 (7) (d), Stats. However, a CERCLA-quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to 754 in order to be consistent with CERCLA and the NCP.

(2m) This chapter and chs. NR 706 to 728, 750, and 754 apply to actions taken by persons who are seeking a liability exemption under s. 292.15, Stats.

(3m) The department may exercise enforcement discretion on a case-by-case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or requirements are applicable, the more restrictive shall control. The department shall, after receipt of a written request and appropriate ch. NR 749 fee from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable to a site or facility.

Note: Sites or facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., may also be subject to regulation under other statutes, including the solid waste statutes in ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to these statutes. In addition, federal laws such as CERCLA, RCRA, or TSCA may also apply to a site or facility or portions of a site or facility. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; renum. (3) and (4) to be (5) and (6), cr. (3), Register, March, 1995, No. 471, eff. 4-1-95; cr. (4), Register, April, 1995, No. 472, eff. 5-1-95; am. (1), (3) (intro.), (a) and (b), (4), (5), cr. (2m), (3) (d), (4) (b), (5) (b), Register, February, 1996, No. 482, eff. 3-1-96; am. (2), Register, February, 1997, No. 494, eff. 3-1-97; correction in (3) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541; correction in (3) (b) made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; CR 12-023: am. (1), (2), (2m), r. (3) to (5), renum. (6) to (3m) and am. Register October 2013 No. 694, eff. 11-1-13.

NR 700.03 Definitions. The following definitions apply to chs. NR 700 to 754:

(1e) "Agency with administrative authority" or "agency" has the meaning specified in s. 292.12 (1) (a), Stats.

Note: ~~Section 292.12 (1) (a), Stats., reads: Under s. 292.12 (1) (a), Stats., "Agency with administrative authority" means "the department of agriculture, trade and consumer protection with respect to a site over which it has jurisdiction under s. 94.73 (2) Stats., or the department of natural resources with respect to a site over which it has jurisdiction under s. 292.11 (7) chs. 289, 291, or 292, Stats."~~

(1m) "Approve" or "approval" means a written acceptance by the department of a plan, report or other document that has been submitted to the department for review.

(1s) "Attenuation factor" means the ratio of the indoor air concentration arising from vapor intrusion to the subsurface vapor concentration at a point or depth of interest in the vapor intrusion pathway.

Note: Under ch. NR 720, the department allows the use of default attenuation factors from US EPA guidance, or the responsible party may collect enough information to develop a site-specific attenuation factor.

(2) "Background soil quality" means:

(a) Soil quality that is attributable to the parent material from which the soil was derived and the natural processes which produce soil, or from contamination attributable to atmospheric deposition including the following constituents; lead, polynuclear aromatic hydrocarbons, or polychlorinated biphenyls, but not attributable to hazardous substance discharges or the discharge of pollutants, as that phrase is defined in s. 283.01, Stats.

(b) Soil quality that is found at or within reasonable proximity to the site or facility, at a depth comparable to that of the area to be remediated, in the same soil layer and in an area unaffected by hazardous substances discharges or the discharge of pollutants.

(3) "Business days" means Monday through Friday excluding the holidays listed in s. 230.35 (4) (a), Stats.

(3m) "Case closure" has the meaning specified in s. 292.12 (1) (b), Stats.

Note: Under s. 292.12 (1) (b), Stats., "case closure" means "a determination by the agency with administrative authority, based on information available at the time of the review by the agency with administrative authority, that no further remedial action is necessary at a site."

(4) "CERCLA" means the federal comprehensive environmental response, compensation and liability act (CERCLA), 42 USC 9601 to 9675.

(4m) "CERCLIS" means the comprehensive environmental response, compensation and liability information system, as compiled by the U.S. EPA.

Note: The federal CERCLIS list is available from the U. S. EPA, by writing to: WI Freedom of Information Act Officer, U.S. EPA Region V, 77 W. Jackson Blvd, Chicago, IL 60604.

(5) "CFR" means the code of federal regulations.

(5m) "Commissioning" means the process of verifying and documenting that an installed vapor mitigation system, point of entry treatment system, or remedial system is operating and performing according to the objectives set out in the design plan.

(6) "Consultant" means a person or business under contract to perform a response action taken under, or subject to regulation under, chs. NR 702 to 754.

(6m) "Contaminated site boundary" or "contaminated site boundaries" means any area within which a hazardous substance has been discharged such that the air, land, or waters have been affected by a discharge or where environmental pollution exists.

Note: Both the source property and other properties affected by the discharge may be included within the "contaminated site boundary." Sub. (59m) defines "source property" as "the property on which the hazardous substance discharge which is under investigation or cleanup, originally occurred." Other properties may be affected by migration of the hazardous substance through soil or groundwater.

(7) "Contamination" or "contaminated" means:

(a) Where the air, land or waters of the state have been affected by the discharge of a hazardous substance; or

(b) Where environmental pollution exists.

(8) "Contingency plan" means a document setting out an organized, planned and coordinated course of action to be followed in the event of a hazardous substance discharge or imminent threat of a hazardous substance discharge.

(8m) "Continuing obligation" means any responsibility, requirement, limitation, or combination thereof, that an agency with administrative authority imposes as a condition of approving an interim action, approving a remedial action, or issuing a case closure letter for a site or facility at which residual contamination remains after the conclusion of an

interim action or a remedial action at the site or facility, that is imposed under ch. 292, Stats., or any agreements or contracts authorized under ch. 292, Stats.

(9) "Day" means calendar day, except where the phrase "business day" is used.

(10) "Debris" means material resulting from the construction, demolition or razing of buildings, roads and other structures and materials that have been discarded at a site or facility.

(11) "Department" means the department of natural resources.

(11m) "Department database" means the publicly accessible database available on the internet as required by ss. 292.12, 292.31, and 292.57, Stats.

Note: The Remediation and Redevelopment Program maintains a database called the "Bureau for Remediation and Redevelopment Tracking System" or "BRRTS". The program also maintains an internet accessible version of this database, called "BRRTS on the Web", or "BOTW". "BOTW" includes information on properties where a hazardous substance discharge has or may have taken place. The program also maintains a web-based mapping system called "Remediation and Redevelopment Sites Map" or "RRSM", that allows users to view information from the BRRTS database using a geographic information system (GIS) application. Both these applications may be found at <http://dnr.wi.gov/topic/Brownfields/clean.html>.

(12) "Department-funded response action" means a response action undertaken by the department using the authority of s. 292.11, 292.31 or 292.41, Stats., which is funded in whole or in part by appropriations in s. 20.370 (2) or 20.866 (2), Stats.

(13) "Discharge" has the meaning specified in s. 292.01 (3), Stats.

Note: Under s. 292.01 (3), Stats., "discharge" means, but is not limited to, "spilling, leaking, pumping, pouring, emitting, emptying or dumping."

(14) "Dispose" or "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid or hazardous waste into or on any land or water in a manner which may permit the waste to be emitted into the air, to be discharged into any waters of the state or otherwise to enter the environment.

(15) "Emergency" means a situation which requires an immediate response to address an imminent threat to public health, safety, or welfare or the environment.

(16) "Enforcement standard" has the meaning specified in s. NR 140.05 (7).

Note: Section NR 140.05 (7) defines "enforcement standard" to mean "a numerical value expressing the concentration of a substance in groundwater which is adopted under s. 160.07, Stats., and s. NR 140.10 or s. 160.09, Stats., and s. NR 140.12."

(17) "Engineering control" has the meaning specified in s. 292.01 (3m), Stats.

Note: Under s. 292.01 (3m), Stats., "engineering control" means an "object or action designed and implemented to contain contamination or to minimize the spread of contamination, including a cap, soil cover, or in-place stabilization, but not including a sediment cover."

(18) "Environment" means any plant, animal, natural resource, surface water (including underlying sediments and wetlands), groundwater, drinking water supply, land surface and subsurface strata, and ambient air within the state of Wisconsin or under the jurisdiction of the state of Wisconsin.

(19) "Environmental pollution" has the meaning specified in s. 291.01 (4), Stats.

Note: Section 291.01 (4), Stats., defines "environmental pollution" to mean "the contamination or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life."

(20) "Environmental standards" mean those cleanup standards, performance standards, standards of control and

other substantive and procedural requirements, criteria or limitations promulgated as a regulation or rule under or pursuant to federal environmental or state environmental or facility citing laws that specifically address a hazardous substance, pollutant, remedial action, location or other circumstances found at a site or facility.

(21) "Facility" means "approved facility" as defined in s. 289.01 (3), Stats., "approved mining facility" as defined in s. 292.01 (1m), Stats., and "nonapproved facility" as defined in s. 289.01 (24), Stats.

Note: Under s. 289.01 (3), Stats., "approved facility" means "a solid or hazardous waste disposal facility with an approved plan of operation under s. 289.30 or a solid waste disposal facility initially licensed within 3 years prior to May 21, 1978, whose owner successfully applies, within 2 years after May 21, 1978, for a determination by the department that the facility's design and plan of operation comply substantially with the requirements necessary for plan approval under s. 289.30." Under s. 292.01 (1m), Stats., "approved mining facility" is defined by reference to the definition of approved mining facility in s. 289.01 (4), Stats., and also includes a mining waste site as defined in s. 295.41 (31), Stats., "Approved mining facility" as defined in s. 289.01 (4) means "an approved facility which is part of a mining site, as defined under s. 293.01 (12), used for the disposal of solid waste resulting from mining, as defined under s. 293.01 (9), or prospecting, as defined under s. 293.01 (18)." Chapter 293, Stats., applies to nonferrous metallic mining. "Mining waste site" as defined under s. 295.41 (31), Stats., means any land or appurtenances thereto used for the storage or disposal of ferrous mining waste. Subch. III of ch. 295, Stats., applies to ferrous metallic mining. "Nonapproved facility" as defined in s. 289.01 (24), Stats., means "a licensed solid or hazardous waste disposal facility which is not an approved facility."

(22) "Free product" means a discharged hazardous substance or environmental pollution that is present in the environment as a floating or sinking non-aqueous phase liquid.

(23) "Groundwater" has the meaning specified in s. 160.01 (4), Stats.

Note: Section 160.01 (4), Stats., defines "groundwater" to mean "any waters of the state, as defined in s. 281.01 (18), Stats., occurring in a saturated subsurface geological formation of rock or soil." See "waters of the state" definition in sub. (67).

(24) "Groundwater quality standards" mean site-specific standards developed pursuant to ch. NR 140 and groundwater quality standards adopted by the department in ch. NR 140, including enforcement standards, preventive action limits, indicator parameters and alternative concentration levels.

(25) "Hazardous substance" has the meaning specified in s. 299.01 (6), Stats.

Note: Section 299.01 (6), Stats., defines "hazardous substance" to mean "any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department."

(26) "Hazardous waste" has the meaning specified in s. 291.01 (7), Stats.

Note: Section 291.01 (7), Stats., defines "hazardous waste" to mean any "solid waste identified by the department as hazardous under s. 291.05" Federal laws and rules may have broader or different definitions than the state does. If so, federal hazardous waste laws must be complied with, in addition to state laws.

(27) "High groundwater level" means the higher of the elevation to which the soil is saturated and observed as a free water surface in an unlined hole, or the elevation to which the soil has been seasonally or periodically saturated as indicated by soil color patterns throughout the soil profile.

(28) "Immediate action" means a response action that is taken within a short period of time after the discharge of a hazardous substance occurs, or after the discovery of a hazardous substance discharge or environmental pollution, to halt the discharge, contain or remove discharged hazardous

substances or remove contaminated environmental media, in order to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to air, lands and waters of the state and to eliminate any imminent threat to public health, safety, or welfare that may exist. This term includes both emergency and non-emergency immediate actions.

Note: Examples of immediate actions may be found in s. NR 708.05 (4). If further action will be required after a non-emergency response action is taken, that action would meet the definition of "interim action" in s. NR 700.03 (29). The principal distinction between a non-emergency, immediate action and an interim action is that a site investigation will generally be required in conjunction with an interim action, but not with a non-emergency immediate action. In addition, interim actions will be closed out using the criteria in ch. NR 726, not the "no further action" criteria in s. NR 708.09 which apply at the completion of an immediate action.

(28m) "Industrial land use" means the utilization of a parcel of real estate for manufacturing operations that use machinery and mechanical power to produce products or services, including electrical power, or for a service business that provides storage facilities, product distribution or maintenance or repair services for machinery.

Note: Examples of industrial land uses include manufacturing and assembly plants; warehouses; scrap salvage operations; foundries and forging plants; metal pressing, stamping and spinning plants; electroplating facilities; tanneries; chemical processing facilities; electrical generating plants and electrical substations; slaughter houses and meat processing plants; fertilizer and pesticide packaging plants; bottling plants; wholesale bulk fuel storage and distribution facilities; railroad yards; and businesses that sell and repair motor vehicles, recreational vehicles, transportation containers or construction machinery and equipment.

(29) "Interim action" means a response action taken to contain or stabilize a discharge of a hazardous substance, in order to minimize any threats to public health, safety, or welfare or the environment, while other response actions are being taken or planned for the site or facility.

Note: Examples of interim actions may be found in s. NR 708.11. "Interim action" does not include emergency or non-emergency immediate actions. An interim action is followed by subsequent response actions at the site or facility, unless the department determines in compliance with the requirements of ch. NR 726, that no further response action is necessary after a site investigation has been conducted.

(30) "Interim action options report" means a report which identifies and evaluates various interim action options with the goal of selecting an option which meets the environmental standards for the interim action being undertaken.

(30g) "Limit of detection" has the meaning specified in s. NR 149.03 (41).

Note: Section NR 149.03 (41) defines "limit of detection" or "LOD" to mean "the lowest concentration or amount of analyte that can be identified, measured, and reported with confidence that the concentration is not a false positive value." For department purposes, the LOD approximates the method detection limit (MDL) and is determined by the method cited in s. NR 149.03 (46) (MDL). See sub. (33m) for MDL.

(30r) "Limit of quantitation" has the meaning specified in s. NR 149.03 (42).

Note: Section NR 149.03 (42) defines "limit of quantitation" or "LOQ" to mean "the lowest concentration or amount of an analyte for which quantitative results can be obtained."

(31) "Long-term monitoring" means systematic evaluation of the selected remedial or interim action option through collection and inspection of soil data, groundwater data, surface water data, sediment data, and other relevant data.

(32) "Management of a hazardous substance" means the treatment, storage or disposal, including recycling, of a hazardous substance.

(33) "Media" means air, surface water, groundwater, sediments and land surface and subsurface strata, including soil.

(33m) "Method detection limit" or "MDL" has the meaning specified in s. NR 149.03 (46).

Note: Section NR 149.03 (46) defines the "method detection limit" to mean "the minimum concentration of an analyte that can be measured and reported with 99% confidence that the stated concentration is greater than zero, determined from analyses of a set of samples containing the analyte in a given matrix. The method detection limit is generated according to the protocol specified in 40 CFR 136, Appendix B."

(34) "Migration pathway" means natural geologic features or cultural features, including but not limited to water mains, sewage laterals, drain tiles and road beds, which allow the movement of a hazardous substance or environmental pollution in liquid, solid, dissolved or vapor phase.

(34m) "Minority business" means a business certified by the department of safety and professional services pursuant to s. 16.287 (2), Stats.

(35) "Municipal population" means the number of people residing in the municipality according to the most recent department of administration estimates.

(36) "Municipality" has the meaning specified in s. 292.01 (11), Stats.

Note: Section 292.01 (11), Stats., defines "municipality" to mean, "any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, or metropolitan sewage district."

(37) "National priorities list" means the list, compiled by the U.S. environmental protection agency (EPA) pursuant to section 105 (8) (b) of CERCLA, of hazardous substance releases in the United States that are priorities for investigation and remedial action.

(38) "National contingency plan" or "NCP" means 40 CFR part 300.

(38m) "Natural attenuation" means the reduction in the concentration and mass of a substance and its breakdown products in groundwater, due to naturally occurring physical, chemical, and biological processes without human intervention or enhancement. These processes include, but are not limited to, dispersion, diffusion, sorption and retardation, and degradation processes such as biodegradation, abiotic degradation and radioactive decay.

(39) "Naturally occurring background" means the quality of individual media in the vicinity of a discharge of a hazardous substance or environmental pollution that has not been affected by a hazardous substance discharge or environmental pollution.

(39s) "Occupant" means any individual with a recognized legal interest to possess or use a premise, building, or property, including an owner, tenant, lessee, licensee, or other individual.

(39m) "Non-residential setting" means a setting other than a residential setting, used for commercial or industrial purposes.

(40) "Operation and maintenance" means measures designed to monitor, operate and maintain the effectiveness of response actions.

(41) "Operator" has the meaning specified in s. 292.31 (8) (a) 1., Stats.

Note: Section 292.31 (8) (a) 1., Stats., defines "operator" to mean "any person who operates a site or facility or who permits the disposal of solid waste at a site or facility under his or her management or control for consideration, regardless of whether the site or facility remains in operation and regardless of whether the person operates or permits the disposal of solid waste at the time any environmental pollution occurs. This term includes a subsidiary or parent corporation."

(42) "Owner" has the meaning specified in s. 292.31 (8) (a) 2., Stats.

Note: Section 292.31 (8) (a) 2., Stats., defines "owner" to mean "any person who owns or who receives direct or indirect consideration from the operation of a site or facility regardless of whether the site or facility remains in operation and regardless of whether the person owns or receives consideration at the time any environmental pollution occurs. This term includes a subsidiary or parent corporation."

(42m) "Pathway" means the route a substance takes in traveling to a receptor or potential receptor or the specific portal of entry, such as lungs, skin or digestive tract, that the substance takes to potentially express its toxic effect, or both.

Note: The food chain pathway for cadmium, for example, refers to cadmium being taken up in plant tissue and the plant tissue being ingested by an organism.

(43) "Person" has the meaning specified in s. 292.01 (13), Stats.

Note: Section 292.01 (13), Stats., defines "person" to mean "an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency, or federal agency."

(43g) "Phase I environmental site assessment" means an assessment of a site to identify potential or known areas of environmental contamination. This assessment may include reviewing records, interviewing persons, and conducting physical inspections of the site.

(43r) "Phase II environmental site assessment" means an assessment of a site to physically confirm that contamination exists in potential or known areas of environmental contamination identified in the Phase I environmental assessment, but not to determine the nature, degree and extent of contamination. This assessment may include field sampling of media, laboratory analysis of samples and visual confirmation of environmental contamination at the site.

Note: The department recommends that at a minimum, the current ASTM standards be followed when conducting Phase I and Phase II environmental assessments. When a person is seeking liability protections under CERCLA the person should follow EPA's requirements. See EPA's web page at: www.epa.gov for more information.

(44) "Point of standards application" has the meaning specified in s. NR 140.05 (15).

Note: Section NR 140.05 (15) defines "point of standards application" to mean "the specific location, depth or distance from a facility, activity or practice at which the concentration of a substance in groundwater is measured for purposes of determining whether a preventive action limit or an enforcement standard has been attained or exceeded."

(45) "Practicable" means capable of being implemented, taking into account:

(a) The technical feasibility of a remedial action option, considering its long-term effectiveness, short-term effectiveness, implementability and the time it will take until restoration is achieved; and

(b) The economic feasibility of a remedial action option, considering the cost of the remedial action option compared to its technical feasibility.

(45e) "Property" means a contiguous area of land the entire legal description of which is found in one deed.

(45m) "Property boundary" means the boundary of the property owned or leased by a common owner or lessor, regardless of whether public or private roads run through the property.

(46) "Preventive action limit" has the meaning specified in s. NR 140.05 (17).

Note: Section NR 140.05 (17) defines "preventive action limit" to mean "a numerical value expressing the concentration of a substance in groundwater which is adopted under s. 160.15, Stats., and s. NR 140.10, 140.12 or 140.20."

(46m) "RCRA" means the resource conservation and recovery act, 42 USC 6901 to 6991i, as amended on November 8, 1984.

(47) "Receptor" means environmental resources, including but not limited to, plant and animal species and humans, sensitive environments and habitats, water supply wells, and buildings or locations that have the potential to be, or have actually been, exposed to contamination.

(48) "Remedial action" or "remedy" means those response actions, other than immediate or interim actions, taken to

control, minimize, restore, or eliminate the discharge of hazardous substances or environmental pollution so that the hazardous substances or environmental pollution do not present an actual or potential threat to public health, safety, or welfare or the environment. The term includes actions designed to prevent, minimize, stabilize, or eliminate the threat of discharged hazardous substances, and actions to restore the environment to the extent practicable and meet all applicable environmental standards. Examples include storage, disposal, containment, treatment, recycling, or reuse, and any monitoring required to assure that such actions protect public health, safety, and welfare and the environment.

(49) "Remedial action options report" means a report which identifies and evaluates various remedial action options with the goal of selecting an option in compliance with the requirements of s. NR 722.11.

(49g) "Residential setting" means any dwelling designed or used for human habitation, and includes educational, childcare, and elder care settings.

(49r) "Residual contamination" means that some contamination remains after a cleanup is completed and approved. Residual contamination includes all phases of remaining contamination including vapor, dissolved, adsorbed, and free-phase.

Note: The term "residual contamination" does not have the same meaning as the terms "residual phase", "residual concentration" or "residual contaminant level." The terms "residual phase" and "residual (phase) concentration" are used in some publications and are used when referring to the free-phase or separate non-aqueous phase liquid in soil or groundwater. The term "residual contaminant level" is used in ch. NR 720 to refer to soil standards developed under that chapter.

(50) "Response" or "response action" means any action taken to respond to a hazardous substance discharge or to environmental pollution, including emergency and non-emergency immediate actions, investigations, interim actions and remedial actions.

(51) "Responsible party" or "responsible parties" means any of the following:

(a) Any person who is required to conduct a response action under ch. 292, Stats.

(b) Persons liable to reimburse the department for the costs incurred by the department to take response action under chs. 289 and 292, Stats.

(c) Owners and operators of solid waste facilities that are subject to regulation under ch. NR 508.

(52) "Restore" or "restoration" means those actions necessary to return the environment to its original condition before the hazardous substance discharge or environmental pollution occurred. Such actions may include, but are not limited to, the replacement or removal of injured plant and animal life and treatment of contaminated soils.

Note: This definition was formerly found in s. NR 158.04 (5).

(52m) "Right-of-way" means the strip of land over which railroad tracks run, or within which a public street or highway has been constructed, regardless of whether the strip of land is owned by the railroad or the entity that maintains the public street or highway; and corridors created by dedication, by the granting of an easement and by the acquisition of fee title.

(53) "Risk assessment" means a site-specific characterization of the current or potential threats that may be posed to public health, safety, or welfare or the environment by contamination migrating to or in groundwater or surface water, discharging to the air, leaching through or remaining in soil, bioaccumulating in the food chain, or other exposure pathways.

(54) "Sediment" means particles in surface waters or wetlands that are derived from the erosion of rock, minerals, soils and biological materials, as well as chemical precipitation from the water column. Sediment particles are transported by, suspended in or deposited by water.

(55) "Sensitive environment" means an area of exceptional environmental value, where a discharge could pose a greater threat than a discharge to other areas, including but not limited to: wetlands; habitat used by state or federally designated endangered or threatened species; national or state fish and wildlife refuges and fish and wildlife management areas; state and federal designated wild and scenic rivers, designated state riverways and state designated scenic urban waterways; riparian areas; rookeries; cold water communities as defined in s. NR 102.04 (3) (b), Lakes Superior and Michigan and the Mississippi river, environmentally sensitive areas and environmental corridors identified in area-wide water quality management plans, special area management plans, special wetland inventory studies, advanced delineation and identification studies and areas designated by the U.S. EPA under section 404 (c) 33 USC 1344 (c); calcareous fens; state forests, parks, trails and recreational areas; state and federal designated wilderness areas; designated or dedicated state natural areas established under ss. 23.27 to 23.29, Stats.; wild rice waters as listed in s. NR 19.09; and any other waters identified as outstanding or exceptional resource waters in ch. NR 102.

(55m) "Sensitive receptor" means a receptor that is affected by slight differences or changes in environmental conditions.

(56) "Site" means:

(a) Any waste site as defined in s. 292.01 (21), Stats.; or

(b) Any area where a hazardous substance has been discharged.

Note: Section 292.01 (21), Stats., defines "waste site" to mean "any site, other than an approved facility, an approved mining facility or a nonapproved facility, where waste is disposed of regardless of when disposal occurred or where a hazardous substance is discharged before May 21, 1978."

(57) "Site investigation" means an investigation undertaken in conformance with ch. NR 716.

(58) "Soil" means unsaturated organic material, derived from vegetation and unsaturated, loose, incoherent rock material, of any origin, that rests on bedrock other than foundry sand, debris and any industrial waste.

(59) "Solid waste" has the meaning specified in s. 289.01 (33), Stats.

(59m) "Source property" means the property on which the hazardous substance discharge which is under investigation or cleanup, originally occurred.

(60) "Submittal" means any document, report, plan, set of specifications, engineering design, or scientific evaluation of site data that is prepared to satisfy the requirements of chs. NR 700 to 754.

(60m) "Sub-slab" means beneath the lowermost building foundation slab.

(61) "Surface water" has the meaning specified in s. NR 103.02 (3).

Note: "Surface water" means "all natural and artificial, named and unnamed lakes and all naturally flowing streams within the boundaries of the state, but not including cooling lakes, farm ponds and facilities constructed for the treatment of wastewaters."

(62) "Superfund" means the federal environmental cleanup fund and program created by CERCLA.

(62m) "Sustainable remedial action" means achieving protection of human health, safety, and the environment, while

incorporating and balancing certain practices, processes, and technologies throughout all phases of the remedial action to deliberately generate a net positive impact on the environment, economy, and society.

(63) "Treatment" means any method, technique or process, including thermal destruction, which changes the physical, chemical or biological character or composition of a hazardous substance or environmental pollution so as to render the contamination less hazardous.

(64) "Treatability study" means the testing and documentation activities to evaluate the effectiveness of an interim or remedial action prior to full scale design and implementation. Treatability study includes, but is not limited to, bench scale studies and pilot scale studies.

Note: Treatability studies provide additional data for the detailed analysis of treatment alternatives and the engineering design of remedial alternatives under ch. NR 724.

(64g) "TSCA" means the toxic substance control act, 15 USC 2601 to 2692.

(64r) "Unconsolidated material" means soil, sediment or other granular material, such as fill, not including debris.

Note: Section NR 700.03 (58) defines "soil" as "unsaturated organic material, derived from vegetation and unsaturated, loose, incoherent rock material, of any origin, that rests on bedrock other than foundry sand, debris and any industrial waste." Section NR 700.03 (54) defines "sediment" as "particles in surface waters or wetlands that are derived from the erosion of rock, minerals, soils and biological materials, as well as chemical precipitation from the water column. Sediment particles are transported by, suspended in or deposited by water." Section NR 700.03 (10) defines "debris" as "material resulting from the construction, demolition or razing of buildings, roads and other structures and materials that have been discarded at a site or facility."

(65) "U.S. EPA" or "EPA" means the United States environmental protection agency.

(66) "Underground storage tank" or "UST" means any one or a combination of tanks, including connected pipes, that is used to contain an accumulation of hazardous substances, and the volume of which, including the volume of connected underground pipes, is 10 percent or more beneath the surface of the ground. The term does not include any of the following or pipes connected to any of the following:

(a) Septic tanks.

(b) Pipeline facilities, including gathering lines, regulated under:

1. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671, et seq.).

2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001, et seq.).

3. State laws comparable to the provisions of the law referred to in subd. 1. or 2. for intrastate pipeline facilities.

(c) Surface impoundments, pits, ponds or lagoons.

(d) Storm water or waste water collection systems.

(e) Flow-through process tanks.

(f) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.

(g) Storage tanks situated in an underground area, such as, but not limited to, a basement, cellar, mineworking, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.

Note: This definition of "underground storage tank" is based on the definition found in s. ATCP 93.050 (122).

(66m) "Utility corridor" means any utility line that runs underground and any backfilled trench that was constructed to install a water main or lateral, a sewer main or lateral or other utility line.

(66p) "Vapor action level" means 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.

Note: Generic tables of risk based concentrations for air in residential and industrial land use scenarios can be found at: http://www.epa.gov/reg3hwmd/risk/human/rb-concentration_table/Generic_Tables/index.htm.

(66s) "Vapor mitigation system" means a system that prevents or reduces the migration of contaminant vapors into a building and does not have the primary purpose of remediating vapor contaminant sources.

(66w) "Vapor risk screening level" means the concentration of vapors in samples collected outside a building to estimate indoor vapor concentrations. The vapor risk screening level is equal to the vapor action level multiplied [divided] divided by an appropriate attenuation factor.

Note: ~~The correct word is shown in brackets. The scientific process for determining a vapor risk screening level is to divide, not multiply, the vapor action level by an appropriate attenuation factor. This error will be corrected in future rulemaking.~~

Note: Vapor risk screening levels are applied to sub-slab, soil gas, and groundwater samples.

(66y) "Vapors" mean chemicals that are sufficiently volatile and toxic to pose an inhalation risk to human health via vapor intrusion from a soil or groundwater source.

(67) "Waters of the state" has the meaning specified in s. 281.01 (18), Stats.

Note: Section 281.01 (18), Stats., defines "waters of the state" to include "those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within the state or its jurisdiction."

(68) "Wetlands" has the meaning specified in s. 23.32, Stats.

Note: Section 23.32, Stats., defines "wetland" to mean "those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation, and which have soils indicative of wet conditions."

(69) "Work plan" means a plan which outlines the intended scope of a response action, or any phase of a response action, including but not limited to intended methods, procedures and techniques to be used during the response action.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; cr. (42m), Register, March, 1995, No. 471, eff. 4-1-95; am. (49), Register, April, 1995, No. 472, eff. 5-1-95; am. (intro.), Register, October, 1995, No. 478, eff. 11-1-95; am. (intro.), (60), Register, February, 1996, No. 482, eff. 3-1-96; cr. (38m) and (45m), Register, October, 1996, No. 490, eff. 11-1-96; emerg. cr. (66m), eff. 5-18-00; cr. (66m), Register, January, 2001, No. 541, eff. 2-1-01; CR 01-129: cr. (28m), Register July 2002 No. 559, eff. 8-1-02; CR 12-023: am. (intro.), renum. (1) to (1m), cr. (1e), (1s), am. (2) (a), cr. (3m), (4m), am. (6), cr. (6m), (11m), am. (17), (27), cr. (30g), (30r), (33m), (34m), am. (36), cr. (39m), am. (43), cr. (43g), (43r), (45e), am. (45m), cr. (46m), am. (48), cr. (49g), (49r), renum. (51) to (intro.) and am., cr. (51) (a) to (c), (52m), (55m), (59m), am. (60), cr. (60m), (62m), (64g), (64r), (66p), (66s), (66w), (66y) Register October 2013 No. 694, eff. 11-1-13; CR 13-057: am. (21) Register July 2015 No. 715, eff. 8-1-15; correction in (17) made under s. 13.92 (4) (b) 7., Stats., Register February 2017 No. 734.

NR 700.05 Confidentiality of information. (1) Except as provided under sub. (2), any record, report or other information furnished to, or obtained by, the department in the administration of chs. NR 700 to 754 is a public record subject to the provisions of ss. 19.21, 19.31 to 19.39, Stats., and s. NR 2.195.

(2) If confidential status is sought for any record, report or other information furnished to or obtained by the department under chs. NR 700 to 754, the standards and procedures in s. NR 2.19 are applicable to all sites and facilities, and the

standards and procedures in s. 289.09 (2), Stats., are applicable to the owners and operators of solid waste facilities.

Note: Under s. NR 2.19, the department may grant confidential status if: (1) the standards for granting confidential status found in s. 289.09 or 291.15, Stats., are met; (2) confidential treatment is in the public interest using the balancing test in *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672 (1965); or (3) a specific statutory or common law right to confidential treatment is applicable.

(3) Records, reports and other information for which the department has granted confidential status may be:

(a) Used by the department in compiling or publishing analyses or summaries relating to the general condition of the environment if the analyses or summaries do not identify a specific person or responsible party and the analyses or summaries do not reveal records or other information granted confidential status;

(b) Released by the department to the U.S. EPA or its authorized representative, if the U.S. EPA or its authorized representative agrees to protect the confidentiality of the records, reports or other information;

(c) Released for general distribution if the person who provided the information to the department expressly agrees to the release; and

(d) Released on a limited basis if the department is directed to take this action by a judge or administrative law judge under an order which protects the confidentiality of the record, report or other information.

Note: Sections 292.11 (8), 292.31 (1) (d) and (3) (e), and 292.41 (5), Stats., provide the department with authority to gain access to property for the purpose of conducting response actions, and access to records relating to abandoned containers, discharged hazardous substances and solid waste disposed of at a site or facility.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. (1), (2), Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023: am. (1), (2) Register October 2013 No. 694, eff. 11-1-13.

NR 700.07 Incorporation by reference. The material listed in this section is incorporated by reference at the paragraph noted: "SW-846, Test Methods for Evaluating Solid Waste", by the U.S. Environmental Protection Agency, Office of Solid Waste, loose-leaf manual, "The Third Edition of SW 846, as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB and IV", referenced in s. NR 716.13 (12).

Note: These materials are available for inspection in the offices of the department of natural resources, 101 S. Webster Street, Madison, Wisconsin, or may be accessed at the following web site: <http://www.epa.gov/epaoswer/hazwaste/test/main.htm> or may be purchased for personal use from:

National Technical Information Service
U.S. Department of Commerce
Springfield, VA 22161

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; CR 12-023: am. Register October 2013 No. 694, eff. 11-1-13.

NR 700.08 Superfund site assessment. A site or facility may be evaluated by the department to determine eligibility for the federal superfund program, under CERCLA and the NCP. The department also may conduct federal site assessment activities, in cooperation with the U.S. EPA. Assessment activities may include, but are not limited to:

(1) Identifying sites for addition to CERCLIS;

(2) Reviewing files by department staff in the form of preliminary assessments;

(3) Collecting data both on-and-off-site by conducting field sampling;

(4) Preparing or reviewing federally prepared hazard ranking system scores, using the federal hazard ranking system; and

(5) Nominating sites or facilities to the national priorities list.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 700.10 Identification of responsible parties.

The department may attempt to identify potentially responsible parties during any phase of response action by any of the following methods:

(1) Interviewing local officials, neighboring residents, persons involved with the operations of the site or facility, and past and present site or facility owners or operators.

(2) Reviewing operational records of the site or facility.

(3) Reviewing department records.

(4) Determining current and past ownership of the site or facility.

(5) Collecting and analyzing samples.

(6) Other appropriate means.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 700.11 Submittals. (1) GENERAL. Unless otherwise directed by the department, responsible parties shall comply with the following:

(a) Responsible parties shall submit site progress reports that summarize the completed work and additional work planned to adequately complete the response action at the site or facility to the department at 6 month intervals until case closure is granted by the department. The first site progress report shall be submitted to the department no later than 6 months after the responsible party notifies the department of the discharge in accordance with s. NR 706.05. Progress reports shall be provided on a reporting form supplied by the department. The department may require progress reports be submitted at a different frequency than semi-annually.

Note: Copies of site progress report forms may be obtained at: <http://dnr.wi.gov/topic/Brownfields/Pubs.html>.

(bm) Unless otherwise directed by the department, responsible parties shall submit a site investigation work plan meeting the requirements of s. NR 716.09 to the department within 60 days of receiving notification that a site investigation is required.

(cm) Responsible parties shall submit a site investigation report meeting the requirements of s. NR 716.15 to the department within 60 days after completion of the field investigation and receipt of the laboratory data.

(dm) Responsible parties shall submit a remedial action options report meeting the requirements of s. NR 722.13 to the department within 60 days after submittal of the site investigation report.

(em) The department shall provide written acknowledgement of receipt of the reports listed in par. (bm) to (dm) within 30 days.

(3) MORE EXTENSIVE REVIEW. The department may perform more extensive review where an application is submitted to the department by a person seeking a liability exemption under s. 292.15, Stats., or where a person is participating in the dry cleaner environmental response program under s. 292.65, Stats.

Note: Section 292.15, Stats., applies to persons who conduct remediation of contaminated property to obtain an exemption from liability.

(3g) NUMBER OF SUBMITTALS. One paper copy and one electronic copy of each plan or report shall be submitted to the department, unless otherwise directed by the department. The electronic copy shall be submitted on optical disk media and may not be submitted as electronic mail attachments unless specifically approved in advance by the department. Electronic

copy files shall have a minimum resolution of 300 dots per inch, and may not be locked or password protected. The department may request that the electronic copy of sampling results be submitted in a format that can be managed in software. An electronic copy of certain types of voluminous attachments or appendices may be substituted for the paper copy, if specifically approved in advance by the department. All documents shall be digital format versions rather than scanned versions except documents that are only available as scanned versions. Deeds and legal descriptions may be scanned versions. All information submitted shall be legible.

Note: Guidance for GIS Registry submittals outlines how electronic copies should be submitted in the Adobe Portable Document Format (PDF) on optical disk media. This guidance can be accessed at <http://dnr.wi.gov/files/PDF/pubs/tr/RR690.pdf>.

Note: The department strongly recommends the use of 2-sided copies for the paper copy of the report, and the use of accordion folders for larger reports instead of 3-ring binders, to help address file space issues.

Note: An example of a voluminous attachment is a laboratory quality assurance and control report.

Note: Examples of formats that can be managed in software are spreadsheets, plain text tabular files, hypertext markup language files (HTML) and extensible markup language files (XML).

Note: The department intends to implement an electronic document management system in the future that may require the submittal of all plans or reports in electronic format that can be managed in software.

(3r) TECHNICAL ASSISTANCE. When requesting technical assistance or liability clarification from the department, the request shall be submitted on a form supplied by the department.

Note: The Technical Assistance and Environmental Liability Clarification Request form may be accessed at <http://dnr.wi.gov/topic/Brownfields/Pubs.html>. Other forms are used for the following requests: off-site liability exemption or liability clarification requests, lender liability exemption requests, exemption to develop on a historic fill site, closure requests, or operation and maintenance requests. These forms may be accessed at <http://dnr.wi.gov/topic/Brownfields/Pubs.html>.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; am. (3) (b), Register, February, 1996, No. 482, eff. 3-1-96; emerg. am. (1) (b) and (2) (b), cr. (2) (e), eff. 5-18-00; am. (1) (b) and (2) (b), cr. (2) (e) and (f), Register, January, 2001, No. 541, eff. 2-1-01; correction in (2) (e) was made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559; CR 12-023: r. and recr. (1) (title), (intro.), am. (1) (a), r. (1) (b) to (f), cr. (1) (bm) to (em), r. (2), am. (3) (title), renum. (3) (intro.) to (3), r. (3) (a) to (d), cr. (3g), (3r), r. (4) Register October 2013 No. 694, eff. 11-1-13.

NR 700.13 Sample preservation and analysis. (1) GENERAL REQUIREMENTS. All sampling, preservation, extraction, and analytical methods used for compliance with chs. NR 700 to 754 shall be according to the requirements in s. NR 716.13.

(1m) USE OF GASOLINE RANGE ORGANICS/DIESEL RANGE ORGANICS ANALYSIS. Soil or groundwater analyses for gasoline range organics or diesel range organics conducted for screening purposes shall be completed in accordance with the "Modified GRO, Method for Determining Gasoline Range Organics" and the "Modified DRO, Method for Determining Diesel Range Organics." For purposes of this section, the term "screening purposes" means sampling conducted during site investigations, environmental assessments or other activities in compliance with chs. NR 700 to NR 754 for purposes of determining whether a discharge has occurred or to estimate the degree and extent of contamination.

Note: The "Modified GRO, Method for Determining Gasoline Range Organics: (WI-PUBL-SW-140) and "Modified Diesel Range Organics" (WI-PUBL-SW-141) are available online at the Wisconsin department of natural resources laboratory accreditation program website.

Note: The "Modified GRO, Method for Determining Gasoline Range Organics" (WI-PUBL-SW-141) and "Modified DRO, Method for Determining Diesel Range Organics" (WI-PUBL-SW-140) are available from the Department of Natural Resources, Emergency and Remedial Response Section, 101 S. Webster St., Madison, WI 53707.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register February 2012 No. 674; CR 12-023: am. (1), cr. (1m), r. (2), (3) Register October 2013 No. 694, eff. 11-1-13; correction in (1m) made under s. 13.92 (4) (b) 7., Stats., Register November 2013 No. 695.

NR 700.15 Notifications. (1) Written notifications to property owners and occupants under chs. NR 700 to 799 shall be provided in a clear and conspicuous manner that is likely to be read, observed, or heard, and understood, by the intended recipients.

(2) For occupants, required notifications shall be provided regardless of the length and nature of the occupant's tenancy.

(3) Electronic communication methods such as email may be used for notifications except as otherwise provided within chs. NR 700 to 799.

Chapter NR 708

IMMEDIATE AND INTERIM ACTIONS

NR 708.01	Purpose.	NR 708.11	Interim actions.
NR 708.02	Applicability.	NR 708.13	Free product removal.
NR 708.03	Definitions.	NR 708.15	Interim action reports.
NR 708.05	Immediate actions.	NR 708.17	Local Governmental Unit or Economic Development Corporation Exemptions.
NR 708.07	Additional response actions.		
NR 708.09	No further response action.		

Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494.

NR 708.01 Purpose. This chapter establishes criteria for emergency and non-emergency immediate actions and interim actions to be taken by responsible parties, or interim actions taken by local governmental units or economic development corporations when directed by the department, to protect public health, safety, or welfare or the environment; and establishes the documentation requirements associated with these response actions. This chapter is adopted pursuant to ss. 227.11 (2), 287.03 (1) (a), 289.06, Stats., and ch. 292, Stats.

Note: The following portions of 40 CFR part 280 have been included in the text of this chapter: portions of s. 280.34 (a) (3); s. 280.61 (b) and (c); s. 280.62 (a) (1) to (3) and (6); s. 280.62 (b); portions of s. 280.63 (a) and (b); s. 280.64 (a) to (d); s. 280.65 (a); and portions of s. 280.66 (a), (b) and (d). Additional portions of s. 280.34 (a) (3) are included in chs. NR 706, 716, 722 and 724. Additional portions of s. 280.63 (a) and (b) are included in chs. NR 706 and 716. Additional portions of 280.66 (a) to (d) are included in ch. NR 724.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am., Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023: am. Register October 2013 No. 694, eff. 11-1-13.

NR 708.02 Applicability. (1) This chapter applies to emergency and non-emergency immediate actions and interim actions taken by the department under the authority of ch. 292, Stats. In this chapter, where the term "responsible parties" appears, it should be read to include the department in situations where a department-funded response action is being taken.

Note: The department has the authority under s. 292.11 (10), Stats., to waive the requirements of s. 292.11, Stats., to prevent an emergency condition threatening public health, safety, or welfare.

(2) This chapter applies to immediate actions and interim actions taken by responsible parties at sites, facilities or portions of a site or facility that are subject to regulation under s. 292.11 or 292.31, Stats., regardless of whether there is direct involvement or oversight by the department.

Note: Persons who wish to conduct response actions that will be consistent with the requirements of CERCLA and the NCP may request that the department enter into a contract with them pursuant to s. 292.31, Stats., or a negotiated agreement under s. 292.11 (9) (e) 4., Stats. However, a CERCLA-quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to 754 in order to be consistent with CERCLA and the NCP.

(2m) This chapter applies to response actions taken by persons seeking the liability exemption under s. 292.15, Stats.

(2r) Section NR 708.17 applies to response actions taken by a local governmental unit or economic development corporation when directed by the department under s. 292.11 (9) (e) 4., Stats.

(3) The department may exercise enforcement discretion on a case-by-case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or requirements are applicable, the more restrictive control. The department shall, after receipt of a request from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable to the site or facility.

Note: Sites, facilities or portions of a site or facility that are subject to regulation under s. 292.11 or 292.31, Stats., may also be subject to regulation under the solid waste statutes in ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to those statutes. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; cr. (2m), Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023: am. (1), cr. (2r) Register October 2013 No. 694, eff. 11-1-13.

NR 708.03 Definitions. In this chapter:

(1) "Economic development corporation" has the meaning described in s. 501 (c) of the Internal Revenue Code, as defined in s. 71.22 (4), Stats., that is exempt from federal taxation under section 501 (a) of the Internal Revenue Code, or an entity wholly owned and operated by such a corporation, with respect to property acquired to further the economic development purposes that exempt the corporation from federal taxation.

(2) "Local governmental unit" has the meaning specified in s. 292.11 (9) (e) 1., Stats.

Note: Section 292.11 (9) (e) 1., Stats., defines "local governmental unit" to mean "a municipality, a redevelopment authority created under s. 66.1333, a public body designated by a municipality under s. 66.1337 (4), a community development authority or a housing authority."

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; CR 12-023: am. (intro.), cr. (1), (2) Register October 2013 No. 694, eff. 11-1-13.

NR 708.05 Immediate actions. (1) GENERAL. Unless otherwise directed by the department, responsible parties shall immediately take action to halt a hazardous substance discharge or environmental pollution and to minimize the harmful effects of the discharge or environmental pollution to the air, lands or waters of the state.

Note: Section 292.11 (2) (a), Stats., and ch. NR 706 require that the department be notified immediately of hazardous substance discharges.

(2) EMERGENCIES. For hazardous substance discharges that pose an imminent threat to public health, safety or welfare or the environment, responsible parties shall conduct all necessary emergency immediate actions. Once the emergency situation is responded to, responsible parties shall conduct any further response actions needed to restore the environment to the extent practicable, unless the department determines that no further response is necessary in accordance with s. NR 708.09.

Note: Responsible parties are also required by s. 323.71 (1), Stats., to immediately conduct emergency action to protect public health and safety and to prevent damage to property in cooperation with local police and fire departments, county sheriffs, and county offices of emergency government.

(3) NON-EMERGENCIES. (a) Responsible parties shall take all necessary, non-emergency immediate actions to halt the discharge of a hazardous substance and to contain, treat or remove discharged hazardous substances, environmental media or both, in order to minimize the harmful effects of the discharge to the air, lands and waters of the state and to restore the environment to the extent practicable.

(b) A response to a hazardous substance discharge and any related contaminated media shall be considered by the department as a non-emergency immediate action when all of the following criteria are met:

1. The discharge does not pose an imminent threat to public health, safety, or welfare or the environment.

2. The response does not result in the excavation and disposal, treatment, or storage of more than 100 cubic yards of contaminated soil, debris, sediment, or a combination of these media from a single site or facility, unless an alternative volume is approved by the department.

3. The discharge is responded to immediately after the hazardous substance discharge occurs or is responded to immediately after discovery.

Note: Responsible parties are required to notify the department immediately of a hazardous substance discharge, in accordance with the requirements of ch. NR 706.

4. At the completion of the response action, no further action is required by the department under s. NR 708.09.

Note: If further action is required after a non-emergency response action is taken, that action meets the definition of "interim action" in s. NR 700.03 (29). The principal distinction between a non-emergency immediate action and an interim action is that a site investigation will generally be required in conjunction with an interim action but not with a non-emergency immediate action. In addition, interim actions will be closed out using the criteria in ch. NR 726, not the "no further action" criteria in s. NR 708.09.

(c) Responsible parties shall conduct sampling at the completion of an immediate action, in accordance with the requirements of ss. NR 712.05 and 716.13, when any of the following conditions are met:

1. The hazardous substance discharge or environmental pollution is in contact with groundwater.

2. The amount, identity or duration of the hazardous substance discharge or environmental pollution is unknown.

3. Where other site or facility conditions indicate that sampling is necessary to confirm the adequacy of the immediate action.

4. To confirm that contamination has been adequately removed by a non-emergency immediate action such that additional response action is not needed.

Note: The sampling data enables the department to make a determination regarding additional response actions under s. NR 708.07.

Note: The appropriate time to provide sampling results to the department is following data review, verification, and validation.

(4) SPECIFIC ACTIONS. Immediate actions may include any of the following:

(a) Limiting public access to the site or facility.

(b) Identifying, monitoring and mitigating fire, explosion and vapor hazards, which may include free product removal. Free product removal shall be conducted in accordance with the requirements of s. NR 708.13 and documented in accordance with s. NR 708.15.

(c) Visually inspecting the site or facility and installing physical containment barriers such as berms, booms, dikes or trenches.

(d) Preventing the flushing of hazardous substances to sewer systems, state waters or environmental media or habitats.

(e) Plugging or overpacking leaking containers which contain or are suspected to contain hazardous substances.

(f) Providing alternate water supplies to persons whose water supply has been or is likely to be affected by the migration of contamination.

(g) Removing hazardous substances from leaking underground storage tank systems.

(h) Removing the contaminated soil, debris or the hazardous substance that was discharged, in compliance with s. NR 708.11 (3) (e).

(i) Measuring for the presence of free product, visually or through field samples or other appropriate methods.

(5) EXEMPTIONS. (a) The provisions of chs. NR 712, 716 and 724 do not apply to immediate actions conducted by responsible parties, unless compliance with a portion of these chapters is specifically required in this chapter.

(b) Contaminated soils, as defined in s. NR 718.03 (5), that are excavated as part of an immediate action are exempt from the storage requirements of s. NR 718.05 and the solid waste regulatory requirements of ch. 289, Stats., and chs. NR 500 to 538, for a period of 72 hours after the initial excavation of the contaminated soils.

(6) DOCUMENTATION. (a) Unless par. (b) is applicable or unless otherwise directed by the department, responsible parties shall prepare and submit written documentation to the department describing the immediate actions taken at their site or facility and the outcome of those actions, within 45 days after the initial hazardous substance discharge notification is given to the department in accordance with the requirements of ch. NR 706.

(b) Where a discharge from a UST has occurred, responsible parties shall prepare and submit written documentation to the department within 20 days after notifying the department of a hazardous substance discharge in accordance with the requirements of ch. NR 706.

(c) The written documentation required of the responsible parties pursuant to par. (a) or (b) shall include all of the following:

1. A statement expressing the purpose of the submittal and the desired department action or response.

2. Name, address and telephone number of the responsible parties.

3. Location of the site or facility, or discharge incident, including street address; quarter-quarter section, township, range, and county; and the location information specified in s. NR 716.15 (5) (d); latitude and longitude, and legal description of lot, if located in platted area.

4. Any information required under ch. NR 706 that has not been provided to the department previously.

5. The type of engineering controls, treatment or both and the effluent quality of any permitted or licensed discharge.

6. The type, total volume and final disposition of the discharged hazardous substance and contaminated materials generated as part of the immediate action, including legible copies of manifests, receipts and other relevant documents.

7. Test results of any samples that were collected as part of the immediate action.

(d) Responsible parties may include the information required in par. (c) with a final report and letter of compliance required in s. NR 708.09 which documents that the immediate response action is complete and no further action is necessary to respond to a hazardous substance discharge or environmental pollution, provided that the information required in par. (c) is submitted within 45 days after the initial hazardous substance discharge notification is given to the department.

Note: It is the intent of the department to encourage submittal of the notification information required in s. NR 708.05 (6) with the no further action information required in s. NR 708.09, provided that the notification information is submitted within 45 days. If the 45 day limit cannot be met, then 2 separate submittals will be needed, if no further action is being documented for the immediate response action.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; r. and recr. (6) (d), Register, March, 1995, No. 471, eff. 4-1-95; am (6) (a), (b) and (c) 4., Register, February, 1997, No. 494, eff. 3-1-97; correction in (5) (b) made under s. 13.92 (4)

(b) 7., Stats., Register February 2010 No. 650; CR 12-023: am. (3) (b) 2., (5) (b), (6) (c) 3. Register October 2013 No. 694, eff. 11-1-13.

NR 708.07 Additional response actions. Unless s. NR 708.09 is applicable, responsible parties shall conduct all necessary additional response actions at the completion of an immediate action including, but not limited to, the actions listed in subs. (1) to (4), either at the direction of the department or where the responsible party has determined that site or facility conditions warrant an additional response action:

(1) Additional immediate action in accordance with this chapter.

(2) Interim action, in accordance with this chapter and, as applicable, ch. NR 724.

(3) A site investigation, in accordance with the requirements of ch. NR 716.

(4) Implementation of a preventive measures plan to minimize or prevent any further hazardous substance discharges.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; r. and recr. (intro.), Register, March, 1995, No. 471, eff. 4-1-95.

NR 708.09 No further response action. (1) GENERAL. Unless sub. (2) is applicable, responsible parties shall submit a final report for completed immediate action at the site or facility which addresses the following criteria, where applicable, and a letter of compliance documenting that the immediate response action is complete and no further action is necessary to respond to a hazardous substance discharge or environmental pollution:

(a) The type of hazardous substance discharged or the type of environmental pollution, including the toxicity, mobility and volume of the contamination.

(b) The duration of the discharge.

(c) Time until the discharge or environmental pollution was responded to and properly contained or eliminated.

(d) Any mitigation efforts that may have accelerated the migration of the environmental pollution or hazardous substances, such as any fire mitigation methods.

(e) Weather conditions at the site or facility, such as any precipitation that may have accelerated the migration of the contamination, from the time of the discharge until the response was completed.

(f) Migration potential of the contamination, including soil conditions, proximity to surface water bodies, location of drains or storm sewers, depth to groundwater and the integrity of any containment area.

(g) The nature and scope of any immediate action conducted.

(h) The results of any sampling conducted to confirm the adequacy of the response, taken in accordance with s. NR 708.05 (3) (c).

(i) Visual and olfactory evidence of contamination.

(j) Actual or potential environmental impacts.

(k) Proximity of contamination to receptors.

(L) Present and anticipated future land use.

(m) Whether or not routes of exposure are protective and the environment has been restored to the extent practicable.

(n) Any other information that the department considers relevant.

(2) SITE INVESTIGATION. The department shall require responsible parties to conduct a site investigation in accordance

with the requirements of ch. NR 716 if a hazardous substance discharge meets any of the following conditions:

(a) There is evidence that groundwater wells have been affected by a discharge of a hazardous substance.

(b) Free product is found and removal is required under s. NR 708.13.

(c) There is evidence that contaminated soils may be in contact with groundwater.

(3) REOPENING A CASE. The department may require that additional response actions be conducted by responsible parties in compliance with the requirements of chs. NR 700 to 754 if additional information indicates that residual contamination at a site or facility poses a threat to public health, safety, or welfare or the environment.

Note: Although the department may determine at this time that no further response action is necessary pursuant to chs. NR 700 to 754, the site, facility or portion of the site or facility may be subject to the regulations and requirements of other department programs.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; r. and recr. (1) (intro.), Register, March, 1995, No. 471, eff. 4-1-95; am. (2) (a), Register, February, 1997, No. 494, eff. 3-1-97; CR 12-023: am. (2) (intro.), (a), (3) Register October 2013 No. 694, eff. 11-1-13.

NR 708.11 Interim actions. (1) GENERAL. (a) Responsible parties shall evaluate the need for interim action prior to initiating a site investigation and during a site investigation. Interim action shall be taken where it is necessary to contain or stabilize a discharge of a hazardous substance or environmental pollution, in order to minimize any threat to public health, safety, or welfare or the environment. When an interim action is warranted, responsible parties shall implement an interim action as soon as facility or ~~site-related~~ site-related information makes it possible to do so, in compliance with the requirements of this chapter. The responsible party shall submit written documentation of the responsible party's evaluation of the need for interim actions either on or off-site for any site or facility that has not received case closure.

Note: The principal distinction between a non-emergency immediate action and an interim action is that a site investigation will generally be required in conjunction with an interim action, but not with a non-emergency immediate action. In addition, interim actions will be closed out using the criteria in ch. NR 726, not the "no further action" criteria in s. NR 708.09.

Note: The department will review the responsible party's evaluation of interim actions with the submittal of a fee under ch. NR 749.

(b) The department may require the use of a vapor mitigation system, or other engineering control, when vapor concentrations beneath a slab, foundation, or building exceed a vapor risk screening level.

(2) SPECIFIC ACTIONS. Interim actions may include any of the following:

(a) Restricting public access to the site or facility.

(b) Conducting source removal, such as excavation and treatment of highly contaminated soils, to prevent or limit further movement of the contamination.

(c) Extracting free product, leachate or groundwater to restrict migration of a contaminant plume.

(d) ~~Constructing a temporary engineering control, such as a low permeability cover, or installing and operating a vapor mitigation system.~~

(dm) Installation or operation of a vapor mitigation system or a point of entry treatment system. The installation or operation of a system under this paragraph is not a remedial action.

(e) Actions listed in s. NR 708.05 (4) (c), (g) or (i).

(2m) SPECIFIC ACTIONS; VAPOR MITIGATION SYSTEMS AND POINT OF ENTRY TREATMENT SYSTEMS. A response action that includes installation or operation of a vapor mitigation system or a point of entry treatment system is an interim action.

(3) SELECTION OF INTERIM ACTIONS. Unless otherwise directed by the department, responsible parties shall select and implement necessary interim action without prior department approval. The interim action selected by responsible parties shall comply with all of the following requirements:

(a) Be protective of public health, safety, and welfare and the environment for the exposure pathways being addressed and any solid or hazardous waste or the hazardous substances and contaminated environmental media being generated.

(b) Comply with all state and federal public health and environmental laws, whichever are more stringent, that apply to the type of interim action being taken and any solid or hazardous waste and contaminated environmental media that is being generated, treated, stored or disposed as part of the interim action.

(c) Use recycling or treatment to the extent practicable.

(d) Be consistent with the final remedial action that is likely to be selected for that pathway of exposure or contaminated environmental media that is being addressed by the interim action.

(e) Comply with one of the following requirements when disposal of contaminated soil, sediment or other granular material such as fill, not including debris, is proposed:

1. The volume of untreated contaminated soil, sediment or other granular material such as fill, not including debris, from a single site or facility that is proposed for off-site disposal does not exceed 100 cubic yards and is accepted by a landfill for daily cover that does not exceed on an annual basis the landfill's net daily cover needs or 12.5% of the annual volume of waste received by the landfill.

2. Volumes of contaminated soil, sediment or other granular material, not including debris, that exceed 100 cubic yards may be disposed of in a licensed landfill with a department-approved composite liner, or a liner that is equivalent to a composite liner in terms of environmental protection, as determined by the department, in compliance with the landfill's approved plan of operation.

(4) DESIGN AND IMPLEMENTATION REQUIREMENTS. For the types of interim actions listed in pars. (a) through (c), responsible parties shall prepare and submit to the department all reports and plans required by ch. NR 724 for department review and approval, along with any fee required under ch. NR 749, prior to proceeding to the next step in design, implementation or operation of an interim action under ch. NR 724, unless otherwise directed.

(a) ~~On-site~~ Any treatment system, including a groundwater extraction and treatment system.

(b) ~~On-site~~ Any engineering control or barrier, including a landfill cover or groundwater barrier system, or a vapor mitigation system other than ~~a~~ an active radon-type sub-slab depressurization system with a radon-type fan and uniform foundation that may also include a sump and drain tile, unless otherwise directed by the department.

(c) Any other type of interim action option when the department notifies responsible parties, on a case-by-case basis, that a design report is required prior to implementation of the interim action.

(4m) CONSTRUCTION DOCUMENTATION REQUIREMENTS. (a) Responsible parties shall submit a construction documentation report under s. NR 724.15 to the department for review and approval, with any ch. NR 749 fees, for each vapor mitigation system, including any active radon-type sub-slab depressurization system with a radon-type fan and uniform foundation that may also include a sump and drain tile, and each point of entry treatment system.

(b) Unless otherwise authorized by the department, a responsible party shall submit a construction documentation report under s. NR 724.15 to the department for review and approval, with any ch. NR 749 fees, for any interim action for which the department will impose a continuing obligation.

Note: The department may require a construction documentation report regardless of whether the interim action report is submitted as a stand-alone document or as part of another report, such as a site investigation or remedial action documentation report.

(5) ADDITIONAL RESPONSE ACTION. Unless otherwise directed by the department, responsible parties shall initiate and complete a site investigation in accordance with ch. NR 716 during the implementation of the interim action or as soon as it is feasible to do so after the completion of the interim action.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; cr. (3) (e), Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023: renum. (1) to (1) (a), cr. (1) (b), am. (2) (d), (4) (b) Register October 2013 No. 694, eff. 11-1-13.

NR 708.13 Free product removal. Responsible parties shall conduct free product removal whenever it is necessary to halt or contain the discharge of a hazardous substance or to minimize the harmful effects of the discharge to the air, lands or waters of the state. When required, free product removal shall be conducted, to the maximum extent practicable, in compliance with all of the following requirements:

(1) Free product removal shall be conducted in a manner that minimizes the spread of contamination into previously uncontaminated zones using recovery and disposal techniques appropriate to the hydrologic conditions at the site or facility, and that properly reuses or treats discharges of recovery byproducts in compliance with applicable state and federal laws.

(2) Free product removal systems shall be designed to abate free product migration.

(3) Any flammable products shall be handled in a safe and competent manner to prevent fires or explosions.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 708.15 Interim action reports. ~~(4) GENERAL. Responsible parties shall prepare and submit to the department an interim action report, in accordance with this section, describing each interim action taken. The interim action report shall be submitted as part of the remedial action report or the site investigation report, unless otherwise directed by the department or unless sub. (2) is applicable.~~

(1) GENERAL. (a) Responsible parties shall prepare and submit an interim action report to the department for department review and approval, along with any fee required under ch. NR 749, within 60 days of completion of the interim action, except if any of the following circumstances apply:

1. The interim action was pre-approved by the department under s. NR 708.11 (4);

2. The interim action was conducted to remove free product discharged from a UST as described under sub. (2); or

3. The department directs in writing that an interim action report is not required for the interim action.

Note: An interim action involving a vapor mitigation system is not complete until the vapor mitigation system commissioning process is completed.

(b) Except as provided in (d), responsible parties may submit an interim action report as either an independent interim action report under this section, part of a site investigation report under s. NR 716.15, or part of a remedial action documentation report under s. NR 724.15.

(c) Except as provided in (d), responsible parties may submit a single interim action report for multiple interim actions.

(d) For interim actions involving vapor mitigation systems and point of entry treatment systems, the department may require a responsible party to submit an interim action report separately from other reports, and may require a responsible party to submit a separate interim action report for each vapor mitigation system and each point of entry treatment system.

(e) Interim action reports for interim actions listed under s. NR 708.11 (4) (b), shall meet the requirements under s. NR 724.15 for documentation of construction and completion.

(2) FREE PRODUCT REMOVAL. For interim actions conducted to remove free product that was discharged from a UST, responsible parties shall prepare and submit an interim action report to the department within 45 days after confirming a discharge in accordance with the requirements of ch. NR 706, unless otherwise directed by the department.

(3) REPORT CONTENTS. The report required in sub. (1) or (2) shall include all of the following:

(a) Name, address and telephone number of the responsible party.

(b) Location of the site or facility, or discharge incident, including street address; quarter-quarter section, township, range, and county; the location information specified in s. NR 716.15 (5) (d); latitude and longitude, and legal description of lot, if located in platted area.

(c) The department-issued site or facility identification number.

(d) The name of the consultant or person who has implemented the measures.

(e) A description of the interim action implemented.

(f) The estimated quantity and type of contamination, including the thickness of free product observed or measured in wells, bore holes and excavations when applicable.

(g) The location and effluent quality of any permitted discharge, such as a wastewater discharge.

(h) The steps that have been or are being taken to obtain necessary permits for any discharge.

(i) The type, total volume and final disposition of any recovered hazardous substance discharged and contaminated environmental media generated, treated, stored or disposed of, including legible copies of manifests, receipts and other relevant documents.

(j) Commissioning completion documentation for each vapor mitigation system and each point of entry treatment system, as applicable.

(k) An operation and monitoring and maintenance plan for any engineering control or barrier employed, including a cover, a groundwater barrier system, and for each point of entry treatment system, or a and each vapor mitigation system, as applicable.

(l) Any sampling results that have been collected as part of an interim action.

(4) CONTINUING OBLIGATIONS. If the interim action includes any actions that necessitate the need for a continuing obligation, the responsible party shall do all of the following:

(a) Provide the documentation required under s. NR 708.16 with the interim action report.

(b) Provide any technical assistance fee and any database recording fee required under ch. NR 749.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. (2), Register, February, 1997, No. 494, eff. 3-1-97; CR 12-023: am. (1), (2), (3) (b), cr. (3) (k) Register October 2013 No. 694, eff. 11-1-13; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register June 2015 No. 714.**

NR 708.16 Interim action continuing obligations.

(1) For sites or facilities where the department has approved an interim action that includes a continuing obligation, the department may require that the site or facility, including all properties and rights-of-way within the contaminated site boundaries, be included on the department database. At a minimum, the department shall include on the database any requirements, limitations, or conditions imposed under s. 292.12 (2) (a) to (c), Stats., for the approval of an interim action, any information required under s. 292.12 (2) (d), Stats., for the approval of an interim action, and any agreements submitted to the department under s. 292.12 (5) and (5m), Stats.

(2) For sites or facilities where the department has approved an interim action that includes use of an engineering control, the department shall require that the site or facility, including all properties and rights-of-way within the contaminated site boundaries, be included on the department database.

(3) The responsible party shall submit the fees required under ch. NR 749 to the department.

(4) A responsible party shall comply with requirements for continuing obligations, including:

1. Notifications and documentation required under ch. NR 725.

2. Requirements for continuing obligations under ss. NR 727.05, NR 727.065, and NR 727.06.

3. Requirements for any modification or removal of continuing obligations under s. NR 727.10.

4. Database documentation requirements for continuing obligations under s. NR 727.12.

(5) The department may impose a continuing obligation under s. NR 727.065 (4).

(6) Any approval letter issued by the department imposing continuing obligations for an interim action shall meet requirements under s. NR 727.15.

NR 708.17 Local Governmental Unit or Economic Development Corporation Exemptions.

(1) GENERAL. (a) If, after considering the intended development and use of a property, the department determines under s. 292.11 (9) (e) 4., Stats., that action is necessary to reduce to acceptable levels any substantial threat to public health or safety when the property is developed or put to that intended use, the department may direct the local governmental unit or economic development corporation to take that necessary action.

(b) Actions directed by the department may include removal of soil contamination, investigations beneath demolished buildings, replacement of infiltration barriers, or installation of vapor migration barriers.

(c) The local governmental unit or economic development corporation directed to take action by the department shall prepare and submit a plan to the department for review and

approval for the design, construction, operation, and maintenance of the necessary actions.

(d) Plan review fees for the plans submitted under par. (c) shall be paid by the local governmental unit or economic development corporation in accordance with chs. NR 749 and NR 750.

(2) AGENCY AUTHORITY. The department may direct that any of the following actions be taken by a local governmental unit or economic development corporation if contamination remains on a site after the conclusion of actions directed by the department under s. 292.11 (9) (e) 4., Stats.

(a) Require maintenance of an engineering control on the site.

(b) Require the performance of any necessary actions to reduce to acceptable levels any substantial threat to public health or safety, if a building or other structural impediment is removed that had prevented previous access to the area.

(c) Require actions to ensure that conditions at the site remain protective of public health and safety when the property is developed or put to its intended use.

(d) If a previously approved response action included a condition regarding a structural impediment, the property owner shall notify the department prior to removal of the building, or other structural impediment, to determine what further action may be necessary.

(e) Any additional response actions that the department determines shall be taken at sites where a remedial action has not been maintained as required.

(3) DEPARTMENT DATABASE AND FEES. (a) *Department Database.* If the department has directed that a local governmental unit or economic development corporation take a response action under s. 292.11 (9) (e) 4., Stats., for a site, the department shall list the site on the department database. The letter directing the local governmental unit or economic development corporation to take a response action, and the information required under sub. (1) (c) shall be associated with the site or facility record in the department database.

(b) *Fees.* 1. For sites meeting par. (a), the fee or fees listed in ch. NR 749 for adding a site to the department database shall be submitted to the department at the completion of the required response action.

2. For sites that have been included on the department database, a local governmental unit, economic development corporation or other party may request that the department modify a site or property or information on the department database. For these cases, modification to the department database may not be considered by the department until proof of payment of the required fees has been received by the department's bureau for remediation and redevelopment.

(4) DOCUMENTATION. (a) *Format Requirements.* For sites required to be included on the department database following a response action, the local governmental unit or economic development corporation shall submit the information in par. (b) to the department, in accordance with s. NR 700.11 (3g). Maps and cross-sections shall be to scale, and include a graphic scale and a north arrow.

Note: Under s. NR 700.11 (3g), one paper copy and one electronic copy shall be submitted to the department, unless otherwise directed by the department. Electronic copies files may not be locked or password protected. All documents shall have a minimum resolution of 300 dots per inch. All documents except deeds and legal descriptions shall be digital format versions rather than scanned versions. Deeds and legal descriptions may be scanned versions. All information submitted shall be legible.

(b) *Database Information.* The information for the department database shall be submitted in the following order and format.

1. The geographic position of the property on which a response action was taken, as well as for any other properties affected by the release, in accordance with the requirements of s. NR 716.15 (5) (d).

Note: The geographic position, provided in WTM coordinates, can be obtained by using RR Sites Map, at <http://dnrmaps.wi.gov/imf/imf.jsp?site=brts2>, using the XY button.

2. A description of the response actions taken at the site or facility.

3. A copy of any required maintenance plan if a continuing obligation is required as part of the response action.

4. For sites or facilities with a cover or other performance standard, a structural impediment, a vapor mitigation system or a fence, or as otherwise required by the department on a case-by-case basis; one or more photographs documenting the condition and extent of the feature at the conclusion of the response action required. Pertinent features shall be visible and discernible. Photographs shall be submitted with a title related to the site name and location, and the date on which it was taken.

5. A copy of the most recent deed which includes the legal description of each property, except that, in situations where a buyer has purchased property under a land contract and has not yet received a deed, a copy of the land contract which includes the legal description shall be submitted.

Note: Copies of deeds, or other documents with legal descriptions, are not required to be submitted for contaminated public-street or highway rights-of-way or railroad rights-of-way. It is only in the situation where the source of the contamination is in the right-of-way, that a right-of-way will be listed on the department database as a separate property.

6. A copy of the certified survey map or the relevant portion of the recorded plat map for those properties where the legal description in the most recent deed or land contract refers to a certified survey map or a recorded plat map. In cases where the certified survey map or recorded plat map are not legible or are unavailable, a copy of a parcel map from a county land information office may be substituted. A copy of a parcel map from a county land information office shall be legible, and the parcels identified in the legal description shall be clearly identified and labeled with the applicable parcel identification number.

7. The parcel identification number or numbers for each property.

8. A statement that the deeds with legal descriptions of all affected properties have been submitted.

9. A site location map that outlines each property within or partially within the contaminated site boundaries on a United States geographic 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 subd. 10.

10. If available, a map of each property within or partially 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.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 708.19 Department response. (1) GENERAL. In cases where department approval is required for the reports or plans submitted under this chapter, the department may request additional information, require revisions, approve, conditionally approve or disapprove of the reports or plans.

(2) METHOD OF RESPONSE. If the department determines that there is not sufficient information to allow the department to determine whether the applicable public health and environmental laws have been complied with, the department shall provide written notice to the responsible parties or other interested persons who have requested the approval, indicating the additional information the department needs in order to determine whether the approval may be issued. The department shall provide to the responsible parties, in writing, the reasons for any disapproval. The department may establish a deadline for providing revisions.

Chapter NR 714

PUBLIC PARTICIPATION AND NOTIFICATION

NR 714.01 Purpose.
NR 714.02 Applicability.
NR 714.03 Definitions.

NR 714.05 Responsibilities of the department.
NR 714.07 Public participation and notification requirements for responsible parties.

Note: Chapter NR 714 was repealed and recreated, Register October 2013 No. 694, eff. 11-1-13.

NR 714.01 Purpose. The purpose of this chapter is to identify the required public participation and notification activities for response actions undertaken pursuant to chs. NR 700 to 754. Nothing in this chapter shall be construed to prevent the department or responsible parties from providing additional means for public participation and notification consistent with the provisions of this chapter. This chapter is adopted pursuant to ss. 227.11 (2) and 289.06 (1), Stats., and ch. 292, Stats.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 714.02 Applicability. This chapter applies to response actions taken under the authority of ch. 292, Stats.

Note: Persons who wish to conduct response actions that will meet the requirements of CERCLA and the National Contingency Plan (NCP) may request that the department enter into a contract with them pursuant to s. 292.31, Stats. However, a CERCLA-quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to 728 in order to satisfy CERCLA and the NCP.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 714.03 Definitions. In this chapter:

(1) "Public meeting" means a meeting held for general informational purposes and that is not required by statute.

~~(2) "Continuing obligations" are property specific responsibilities of a property owner that are established either before or after the state approves an environmental cleanup, and that apply to the property regardless of changes of ownership. Continuing obligations include but are not limited to environmental limitations or conditions established in the state's closure approval letter.~~

(3) "Property affected by an off-property discharge" means a property for which an owner may be eligible for an exemption under s. 292.13, Stats.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 714.05 Responsibilities of the department. The department shall conduct all of the following public participation and notification activities:

(1) **DEPARTMENT DATABASE.** The department shall maintain a public database of contaminated sites that are known to the department, in accordance with s. 292.31 (1) (a), Stats. This database may include sites or facilities that have residual contamination, and shall include information about any continuing obligations to maintain structural or institutional safeguards in regard to the residual contamination, in accordance with ss. 292.12 (3) and 292.57, Stats., and shall include any agreements submitted to the department under s. 292.12 (5) and (5m), Stats.

Note: The department database may be accessed at the following web site: <https://apps.dnr.wi.gov/botw/> and the mapping application for the department database may be accessed at <http://dnr.wi.gov/topic/Brownfields/rism.html>.

(2) **PROPOSED DEPARTMENT-FUNDED REMEDIAL ACTIONS.** (a) For sites or facilities where a department-funded remedial

action is proposed pursuant to s. 292.11 or 292.31, Stats., or both, the department shall publish a public notice as a class 1 notice under ch. 985, Stats., upon selection of a proposed remedial action in accordance with ch. NR 708 or 722. The availability of the department's proposed remedial action for public review shall be included in the public notice, including the identification of a department contact person, and his or her phone number and mailing address.

(b) The department shall be responsible for conducting or directing appropriate public participation and notification activities for sites or facilities where a response action is funded wholly or in part by the department and conducted pursuant to s. 292.11 or 292.31, Stats., and where the department is overseeing response actions conducted wholly or in part by responsible parties under a contract signed pursuant to s. 292.31, Stats.

(3) **PUBLIC RECORDS.** The department shall make available to the public for inspection upon request, in compliance with ss. NR 2.19 and 2.195, site or facility-specific information and decisions concerning response actions.

Note: The public may request a time to view department files regarding the investigation and remediation of contaminated property by contacting the regional environmental program associate. The list of environmental program associates may be accessed at <http://dnr.wi.gov/topic/Brownfields/Contact.html>.

(4) **PUBLIC MEETINGS.** The department may hold a public meeting to consider comments on any proposed investigation of contamination or any other proposed response action if there is sufficient public interest, or for any other reason.

(5) **REQUESTS FOR SITE OR FACILITY SPECIFIC RESPONSES.** Interested persons may request, in writing, that the department keep them informed of approvals or rejections of the response actions being taken at a site or facility. The department shall maintain a list of persons interested in a specific site or facility and provide them with copies of any department approvals or rejections for all of the following documents:

- (a) Site investigation workplans.
- (b) Site investigation reports.
- (c) Remedial action options reports.
- (d) Requests for case closure.

(6) **SUPERFUND.** The department shall conduct appropriate public participation activities consistent with 40 CFR part 300, at sites or facilities on the national priorities list, unless U.S. EPA is conducting the public participation activities. The public participation activities shall include the posting of signs at the site or facility in accordance with s. NR 714.07 (4), either by the U.S. EPA, department or the potentially responsible parties.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 714.07 Public participation and notification requirements for responsible parties. (1) **EVALUATION OF NEED FOR PUBLIC PARTICIPATION AND NOTIFICATION.** In order to promote effective and meaningful public participation and notification, responsible parties shall conduct all necessary

public participation and notification activities, unless otherwise directed by the department. Responsible parties shall evaluate the need for and the level of public participation and notification, based on the following criteria:

(a) *Threats.* Known or potential threats to public health, safety, or welfare or the environment, including any human sensitive receptors, that may be reduced by providing information to the public.

(b) *Public concern.* Level of public concern about a specific site, facility, or discharge or the number or status of sites, facilities, or discharges which require a response action within a particular geographic area.

(c) *Additional information needed.* The need to contact the public in order to gather information about the response action, including immediate or interim actions.

(d) *Other.* Any other factors which may be relevant to a specific site, facility, or discharge or to a group of sites, facilities, or discharges.

(2) CONTENT OF PUBLIC NOTIFICATION. If responsible parties or the department determine that public notification is necessary at a site or facility, responsible parties shall include, and the department may direct the responsible parties to include specific language regarding the following information as part of the public notification:

(a) *Description.* A description of the contamination, including the type, volume, and characteristics of the contamination.

(b) *Mitigation.* Response actions that are planned or underway to contain, reduce, or eliminate the threat of the contamination.

(c) *Contacts.* Phone number and address of persons to contact for more information.

(d) *Other.* Other information designated by the department.

(3) METHODS OF PUBLIC NOTIFICATION. Notice shall be provided to the public by means designed to reach those members of the public directly or indirectly affected by the discharge of a hazardous substance and the implementation and operation of any proposed or actual remedial action. The department may direct the responsible party to undertake any of the following public participation activities, and may require departmental approval of materials prepared by the responsible party in order to conduct for use in conducting these activities. The department may also undertake any of these activities, including personal contacts by department staff. The department may direct the responsible party to take additional methods following initial notification methods if additional methods are needed to verify that adequate notification occurs. Notice to the public may be provided by any of the following methods:

(a) Public notice in local newspapers.

(b) Block advertisements, including posters in areas frequented by the public.

(c) Distributing leaflets door-to-door in the vicinity of the site or facility.

(d) Letters to individual households or personal contacts by responsible parties or their representatives.

(e) Contacting appropriate government officials, including law enforcement, emergency response, and health officials to inform them of the circumstances and the response actions that are underway to contain, reduce, or eliminate the threat of the contamination.

(f) Contacting media by preparing radio, newspaper, or television announcements, including public service announcements.

(g) Contacting any interested individuals who have asked to be kept informed of site or facility activities at various points in the process, including any other site-specific information itemized by the requestor that is available from the responsible party, including sample results, emergency or interim actions, disposal of wastes removed from the site, requests for case closure, or enforcement actions.

(gm) If requested by the recipient receiving notification, providing paper copies of any information required under this chapter.

(h) Holding advertised public informational meetings designed to provide the public an opportunity to ask questions and receive answers from the responsible party, the department, or both.

(i) Establishing a clearinghouse, toll-free telephone number or internet location where the public may obtain more information about the site or facility and the proposed or actual remedial actions, as well as submit comments and receive responses regarding activities that may generate noise, dust, odors, traffic, or similar local concerns.

(im) For sites and facilities involving schools, daycares, and other land uses for which occupants and building users that are children may be affected, notification to parents and legal guardians in cooperation with the school, business, daycare, or other institution.

(j) Using any other appropriate mechanisms to contact and inform the public, including the opportunity to submit public comments on proposed remedial activities and to receive written responses.

(4) POSTING OF SIGNS. (a) Unless otherwise directed by the department, responsible parties shall post one or more department-issued signs in the following manner, when any of the following conditions are found at a site or facility:

1. At the edge of the excavated contaminated soil being stored on the site or facility.

2. The specific locations within the facility or site where contaminated media present a direct contact threat to humans.

3. At the entry locations of buildings or structures contaminated with hazardous substances or environmental pollution that pose or may pose a threat to public health, safety, or welfare.

4. At the entry locations of a building or structure which will be the subject of one of the response actions for the site or facility.

Note: This provision describes situations where the response action involves demolition of the building or structure to access the subsurface contamination, but where the building materials themselves are not necessarily contaminated.

5. At another location within a site or facility where the department believes unacceptable human exposure to contaminants exists.

(b) The responsible parties shall add to the department-issued sign required in par. (a) all necessary information, including:

1. Name, address, and phone number of the owner or operator of the site or facility or responsible parties.

2. Types of hazardous substances or environmental pollution on the property.

3. Department-issued identification number for the site or facility.

4. For signs posted at contaminated soil piles, the anticipated month, day, and year of removal of the soil pile.

5. Any other information the department may request.

(c) Responsible parties shall place the signs at locations on the site or facility in accordance with par. (a), so that they shall be visible to the general public, unless the department specifies the location of the sign or signs. At least one sign shall be placed at the edge of contaminated soil storage piles.

(d) Unless otherwise directed by the department, signs required under this subsection shall be maintained and legible for the duration of the response action until final case closure is received in accordance with ch. NR 726, or until no further action is required by the department in accordance with s. NR 708.09.

Note: In addition to the requirements of this chapter, responsible parties are also required to satisfy the public notification requirements in other chapters, including chs. NR 716, 722, and 725. These requirements include providing information to owners and occupants of property affected by contamination for which the responsible party is conducting environmental response actions. This includes (1) notification of sampling results, and (2) notification that the responsible party will request approval of a remedial action where residual contamination will remain on the property. The department is required to provide notification of the conditions of the final case closure approval to all affected parties.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 714.09 Documentation of notification. Responsible parties providing notification under this chapter shall provide documentation to the department of any notification delivered or posted within 30 days of the notification delivery or posting unless otherwise directed by the department.

NR 714.11 Other participation and notification requirements for responsible parties.

(1) LANDOWNERS OF CONTAMINATED PROPERTIES. In addition to other requirements under chs. NR 700-799 regarding notification and participation, at contaminated properties for which the responsible party conducting a response to contamination is not the property owner, the responsible party shall conduct all of the following participation and notification activities:

(a) Provide technical reports, including work plans, commissioned by the responsible party for the site or facility to the landowner within 30 days of the date that the respective reports and plans are submitted to the department.

(b) Provide a plain language summary of response actions and activities at the site or facility within 30 days of the date that the respective actions and activities are proposed to the department.

(c) Provide the landowner a reasonable opportunity to provide input on response activities at the site or facility prior to undertaking such activities and document whether input from the landowner was incorporated into response activities.

(2) OFF-SITE LANDOWNERS. Unless otherwise directed by the department, when site investigation information indicates the existence of a property affected by an off-property discharge, the responsible party shall provide notifications and participation opportunities under s. NR 714.07 to owners and occupants of any properties affected by an off-property discharge and owners and occupants of any adjacent properties. The responsible party shall notify owners and occupants of properties affected by an off-property discharge and owners and occupants of any adjacent properties within 30 days of receiving any site investigation information under ch. NR 716 that indicates that any off-site impact is occurring.

Chapter NR 722

STANDARDS FOR SELECTING REMEDIAL ACTIONS

NR 722.01	Purpose.	NR 722.11	Risk assessments.
NR 722.02	Applicability.	NR 722.13	Remedial action options report.
NR 722.03	Definitions.	NR 722.15	Department response.
NR 722.05	General.	NR 722.17	Department database requirements for remedial actions approved with a continuing obligation.
NR 722.07	Identification and evaluation of remedial action options.		
NR 722.09	Selection of a remedial action.		

Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494.

NR 722.01 Purpose. The purpose of this chapter is to establish minimum standards for identifying and evaluating remedial action options and selecting remedial actions. This chapter is adopted pursuant to ss. 227.11 (2), 287.03 (1) (a), 287.05, and 289.06 (1) and (2), Stats., and ch. 292, Stats.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; am. Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023: am. Register October 2013 No. 694, eff. 11-1-13.

NR 722.02 Applicability. (1) This chapter applies to all remedial actions taken by the department under the authority of ch. 292, Stats. This chapter does not apply to immediate actions or interim actions, unless specifically noted in ch. NR 708. In this chapter, where the term “responsible parties” appears, it shall be read to include the department, where a department-funded remedial action is being taken.

(2) Unless otherwise specified elsewhere in chs. NR 700 to NR 754, this chapter applies to all remedial actions taken by responsible parties at sites, facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department, except for those sites or facilities being addressed under the dry cleaner response program.

Note: Sites being addressed under the dry cleaner response program are exempt because the comparison of remedies is accomplished through the remedial action bidding process, which requires 3 to 6 alternative bids to be compared before a remedy is selected.

(2m) This chapter applies to all remedial actions taken by persons seeking the liability exemption under s. 292.15, Stats. In this chapter, where the term “responsible party” appears, it shall be read to include the “voluntary party” where an action is being undertaken to comply with s. 292.15, Stats.

(3) In addition to being applicable to sites or facilities that are subject to regulation under ch. 292, Stats., ch. NR 722 applies to the evaluation of proposed remedial action options for solid waste facilities where remedial action is required by the department pursuant to ch. NR 508.

Note: Persons who wish to conduct response actions that will be consistent with the requirements of CERCLA and the National Contingency Plan (NCP) may request that the department enter into a contract with them pursuant to s. 292.31 or a negotiated agreement under s. 292.11 (7) (d), Stats. However, a CERCLA-quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to 754 in order to be consistent with CERCLA and the NCP.

(4) The department may exercise enforcement discretion on a case-by-case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or requirements apply, the more restrictive requirements shall control. The department shall, after receipt of a written request and appropriate ch. NR 749 fee from a responsible party, provide a letter that indicates which

regulatory program or programs the department considers to be applicable to a site or facility.

Note: Sites, facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., may also be subject to regulation under other statutes, including the solid waste statutes in ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to those statutes. In addition, federal authorities such as CERCLA, RCRA, or TSCA may also apply to a site or facility or portions of a site or facility. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; cr. (2m), Register, February, 1996, No. 482, eff. 3-1-96; emerg. am. (1) to (3), cr. (3m), eff. 5-18-00; am. (1) to (3), cr. (3m), Register, January, 2001, No. 541, eff. 2-1-01; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541; CR 12-023: am. (1), (2), (2m), (3), r. (3m), am. (4) Register October 2013 No. 694, eff. 11-1-13.

NR 722.03 Definitions. The definitions in s. NR 700.03 apply to this chapter.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023: renum. (intro.) to 722.03, r. (1), (2) Register October 2013 No. 694, eff. 11-1-13.

NR 722.05 General. (1) Responsible parties shall select an appropriate remedial action or combination of remedial actions for implementation under this chapter, unless the department makes the selection under sub. (2).

(2) The department shall select the remedial action for the following types of sites or facilities:

(a) State-lead national priority list sites.

(b) Sites or facilities being addressed under a contract with the department under s. 292.31, Stats.

(c) Department-funded response actions. For those sites or facilities where the department is responsible for selecting the appropriate remedy, significant consideration shall be given to options that provide for long-term sustainability.

(d) Sites or facilities being addressed under an administrative order issued under s. 292.11 (7) (c), Stats.

(3) The department shall document the remedial action selected for those sites or facilities listed in sub. (2) following the requirements of s. NR 722.07, at a minimum, and conduct the applicable public participation and notification activities as required in ch. NR 714.

(4) To select a remedy or combination of remedies, responsible parties shall identify, evaluate and document an appropriate range of remedial action options to address each contaminated medium in accordance with the requirements of this chapter, when one of the following happens:

(a) A site investigation report is completed in accordance with ch. NR 716.

(b) An evaluation of remedial action options is required in accordance with ch. NR 508.

(5) The identification, evaluation and documentation of an appropriate set of remedial action options, to address each medium and migration or exposure pathway shall be based on

the complexity of the site or facility and the legal requirements applicable to the response action and the site or facility.

Note: Each remedial action option identified may be used to address more than one contaminated medium or migration or exposure pathway if that remedial action option would be protective of public health, safety and welfare and the environment for each media and migration or exposure pathway that it is proposed to address.

(6) The evaluation and documentation of an appropriate set of remedial action options shall be conducted by a qualified person or persons pursuant to s. NR 712.07 and shall be signed and sealed by the qualified person or persons in accordance with s. NR 712.09.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023: am. (2) (b), (c), (4) Register October 2013 No. 694, eff. 11-1-13.

NR 722.07 Identification and evaluation of remedial action options. (1) GENERAL. Unless otherwise directed by the department, responsible parties shall identify and evaluate an appropriate range of remedial action options in accordance with the requirements of this section.

(2) IDENTIFICATION OF LIKELY REMEDIAL ACTION OPTIONS. An initial screening of remedial technologies shall be conducted to identify remedial action options for further evaluation which are reasonably likely to be feasible for a site or facility, based on the hazardous substances present, media contaminated and site characteristics, and to comply with the requirements of s. NR 722.09.

(3) EVALUATION OF REMEDIAL ACTION OPTIONS. (a) Except as provided in par. (b), responsible parties shall use all of the criteria in sub. (4) to further evaluate appropriate remedial action options that have been identified for further evaluation under sub. (2), for each contaminated medium or migration or exposure pathway. This evaluation process shall be used to determine which remedial action option constitutes the most appropriate technology or combination of technologies to restore the environment, to the extent practicable, within a reasonable period of time and to minimize the harmful effects of the contamination to the air, land, or waters of the state, to address the exposure pathways of concern, and effectively and efficiently address the source of the contamination.

Note: The purpose of the technical and economic feasibility evaluation is to evaluate a range of remedial action options suitable for a particular site or facility to determine the practicability of implementing those options. If a particular option is not suitable for a particular site or facility, such as in situ air sparging in dense clay soils, it should not be evaluated. Emphasis should be placed on remedial action options suitable for a particular site or facility. Any remedy selected should attempt to limit secondary impacts including air and water discharges, destruction of ecosystems, and excessive use of energy.

Note: For cases involving a discharge and migration of organic contaminants that do not readily degrade in soil or groundwater, an active remedial action that will reduce the contaminant mass and concentration will typically be necessary. Natural attenuation, covers, and barriers do not actively reduce contaminant mass and concentrations. Chlorinated compounds are the most common contaminants that fall under this provision. Some organic contaminants, such as PCBs and PAHs may not readily migrate, depending on site characteristics.

(am) Responsible parties shall document their evaluation of a remedial option or combination of options which would use recycling or treatment technologies that destroy or detoxify contaminants, rather than transfer the contaminants to other media.

(b) A detailed evaluation based on the criteria in sub. (4) is not required in those cases where a remedial action option identified during the initial screening results in the reuse, recycling, destruction, detoxification, treatment, or any combination thereof of the hazardous substances present at the site and this proposed option meets all of the following requirements:

1m. Is proven to be effective in remediating the types of hazardous substances present at the site, based on experience gained at other sites with similar site characteristics and conditions;

2m. Can be implemented in a manner that will not pose a significant risk of harm to human health, safety, or welfare or the environment; and

3. Is likely to result in the reduction or control, or both, of the hazardous substances present at the site to a degree and in a manner that is in compliance with the requirements of s. NR 722.09 (2) to (4).

Note: Section NR 722.07 (3) (b) is intended to provide a streamlined evaluation process for certain remedial actions that are presumed to meet the evaluation and selection criteria in ss. NR 722.07 and 722.09.

(4) EVALUATION CRITERIA. Except as provided in s. NR 722.07 (3) (b), the remedial action options identified by the initial screening shall be evaluated based on the following requirements and in compliance with the requirements of s. NR 722.09.

(a) *Technical feasibility.* The technical feasibility of each appropriate remedial action option that effectively and efficiently addresses the sources of contamination shall be evaluated using the following criteria:

1. 'Long-term effectiveness.' The long-term effectiveness of appropriate remedial action options, taking into account all of the following:

a. The degree to which the toxicity, mobility and volume of the contamination is expected to be reduced.

b. The degree to which a remedial action option, if implemented, will protect public health, safety, and welfare and the environment over time.

2. 'Short-term effectiveness.' The short-term effectiveness of appropriate remedial action options, taking into account any adverse impacts on public health, safety, or welfare or the environment that may be posed during the construction and implementation period until case closure under ch. NR 726.

3. 'Implementability.' The implementability of appropriate remedial action options, taking into account all of the following:

a. The technical feasibility of constructing and implementing the remedial action option at the site or facility given the type of contaminants and hydrogeologic conditions present.

b. The availability of materials, equipment, technologies, and services needed to conduct the remedial action option taking into account the location and environmental impact of the selected materials and equipment.

c. The potential difficulties and constraints associated with on-site construction or off-site disposal and treatment.

Note: For example, evaluate the use of heavy equipment and cost of fuel to transport wastewater and leachate from a site compared to on-site treatment.

d. The difficulties associated with monitoring the effectiveness of the remedial action option.

e. The administrative feasibility of the remedial action option, including activities and time needed to obtain any necessary licenses, permits or approvals.

f. The presence of any federal or state, threatened or endangered species.

g. The technical feasibility of recycling, treatment, engineering controls or disposal.

h. The technical feasibility of naturally occurring biodegradation at the site or facility, if responsible parties evaluate this option.

i. The redevelopment potential of the site once the remedy has been implemented.

j. Reduction of greenhouse gases consistent with federal or state climate action policies.

4. 'Restoration time frame.' The expected time frame needed to achieve the necessary restoration, taking into account all of the following qualitative criteria:

- a. Proximity of contamination to receptors.
- b. Presence of sensitive receptors.
- c. Presence of threatened or endangered species or habitats, as defined by state and federal law.
- d. Current and potential use of the aquifer, including proximity to private and public water supplies and surface water bodies.
- e. Magnitude, mobility and toxicity of the contamination.
- f. Geologic and hydrogeologic conditions.
- g. Effectiveness, reliability, and enforceability of continuing obligations.
- h. Naturally occurring biodegradation processes at the site or facility which are expected to reduce the total mass of contamination in an effective and timely manner and which have been demonstrated to be occurring at the site or facility, to the satisfaction of the department in the site investigation report.
- i. The degradation potential of the compounds.

Note: The biogeochemical environment and the contaminant of concern are critical factors in determining degradation potential. Not all compounds readily degrade in soil or groundwater, while others, such as certain petroleum compounds have a greater degradation potential.

Note: The purpose of s. NR 722.07 (4) (a) 4. is to provide criteria to determine how quickly environmental laws and standards must be achieved, due to the site-specific hazards that the contamination poses. It is not intended to authorize risk assessments, nor is it the intent of this provision to establish a generic time period that would be applied at all sites or facilities.

(b) *Economic feasibility.* The economic feasibility of each appropriate remedial action option that effectively and efficiently addresses the source of the contamination shall be evaluated, using the following criteria:

- 1m. Capital costs, including both direct and indirect costs;
- 2m. Initial costs, including design and testing costs;
3. Annual operation and maintenance costs;
4. Total present worth of the costs for all national priority list sites or facilities; sites or facilities where the department has entered into a contract pursuant to s. 292.31 (1) (b), Stats.; and sites or facilities where state environmental fund monies are being expended; and
5. Costs associated with potential future liability.

(5) ADDITIONAL REQUIREMENTS. (a) *Engineering controls.* If engineering controls are considered, responsible parties shall, at a minimum, evaluate an on-site engineering control to address all hazardous substances, contaminated media and migration or exposure pathways.

Note: Engineering controls include on-site or off-site containment methods, such as covers, soil covers, engineered structures, liners, gas collection systems, armoring of sediments, erosion controls, vapor mitigation systems, and groundwater slurry walls. Restricting access to a site or facility, such as constructing a fence, is not an engineering control.

(b) *Continuing Obligations.* Responsible parties shall consider the appropriateness of using continuing obligations to ensure that adequate protection of public health, safety, and welfare and the environment is maintained over time.

(c) *Additional requirements.* Responsible parties shall comply with additional site-specific remedial action evaluation or documentation requirements that may be specified by the department due to the complexity of the site or facility, the

persistence of certain compounds, or the severity of the potential or actual public health or environmental impacts.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023: am. (3) (a), cr. (3) (am), am. (b) (intro.), r. (3) (b) 1., 2., renum. (3) (b) 2. a. to c. to (3) (b) 1m, 2., 3. and am. (3) (b) 3., am. (4) (a) (intro.), 3. a., b., cr. (4) (a) 3. i., j., am. (4) (a) 4. d., g., cr. (4) (a) 4. i., am. (4) (b) (intro.), r. (4) (b) 1., renum. (4) (b) 1. a. to e. to (4) (b) 1m., 2m., 3., 4., 5. and am. (4) (b) 4., r. (4) (b) 2., am. (5) (b), (c) Register October 2013 No. 694, eff. 11-1-13.

NR 722.09 Selection of a remedial action. (1)

GENERAL. An option from the range of technically feasible options shall be selected based on the results of the evaluation conducted pursuant to s. NR 722.07, in compliance with this section. If an option's cost, including all the costs listed in s. NR 722.07 (4) (b), is excessive with respect to what is being technically achieved by the option relative to other available options, responsible parties may choose not to select it.

(2) ENVIRONMENTAL LAWS AND STANDARDS. Responsible parties shall select a remedial action or combination of remedial actions that achieve restoration of the environment to the extent practicable, minimize the harmful effects from the contamination on the air, lands and waters of the state and comply with all applicable state and federal public health and environmental laws and environmental standards. Environmental laws and standards include:

(a) *Soils.* Contaminated soil shall be restored in compliance with the requirements of ch. NR 720.

Note: Chapter NR 720 provides for residual contaminant levels or performance standards. If residual contaminant levels are used instead of performance standards they must be determined in accordance with the requirements set forth in ch. NR 720. A performance standard maintains a condition that is protective of human health, safety and welfare and the environment. Use of a performance standard will involve land use restrictions, maintenance agreements, long-term monitoring or a combination of these.

(b) *Groundwater.* Contaminated groundwater shall be restored in accordance with all of the following requirements:

1. For substances that are listed in ch. NR 140, the groundwater restoration goal is the preventive action limit. The preventive action limits shall be achieved to the extent technically and economically feasible, pursuant to ss. NR 140.24 and 140.26, unless a PAL exemption is granted pursuant to s. NR 140.28.

2. For substances which do not have an established standard in ch. NR 140, the department may take or require the responsible parties to conduct any necessary actions, such as developing site-specific environmental standards in cooperation with the department of health services, to protect public health, safety, or welfare or to prevent a significant damaging effect on groundwater or surface water quality for present or future consumptive or non-consumptive uses.

(c) *Surface water and wetlands.* 1. Discharges to surface waters or wetlands may not result in a surface water quality standard contained in chs. NR 102 to 106 being exceeded and may not exceed effluent limitations established by the department based on "best available control technology currently available" or, where appropriate, "best available control technology economically achievable," in accordance with ch. NR 220.

2. For substances that do not have established criteria in ss. NR 102.14 and 105.05 to 105.09, discharges to surface waters or wetlands may not exceed site-specific water quality criteria established by the department pursuant to the general standards of ss. NR 102.04 (1) (d) and 103.03 (2) (d).

Note: The water quality standards contained in chs. NR 102 to 106 are comprised of water quality criteria for the prevention of adverse tastes and odors in fish and drinking water (s. NR 102.14), acute and chronic toxicity to aquatic life (ss. NR 105.05 and 105.06, respectively), adverse effects to wild and domestic

animals (s. NR 105.07), human threshold and cancer effects (ss. NR 105.08 and 105.09, respectively) and designated uses of the surface waters based on their classification and water quality standards and criteria for wetlands. Chapter NR 220 provides that for those point sources identified in s. NR 220.21 (1), the department shall establish effluent limitations that are achievable by the application of the "best practicable control technology currently available" or, where appropriate, the "best available control technology economically achievable", as required in s. NR 220.21 (2).

3. At sites or facilities in, or in close proximity to, surface water bodies or wetlands, active remedial actions shall be taken to prevent or minimize, to the extent practicable, potential and actual hazardous substance discharges and environmental pollution that may attain or exceed surface water or wetland criteria established in accordance with chs. NR 102 to 106.

(d) *Discharges to the air.* All emissions to the air shall comply with applicable requirements in ch. 285, Stats., chs. NR 400 to 499, and any other applicable federal or state environmental laws. In addition, for those sites or facilities where a discharge of volatile hazardous substances has occurred, the vapor intrusion pathway shall be evaluated to determine the likelihood of those substances entering the breathing space of a structure. Air contaminated from vapor intrusion shall be restored in accordance with the following requirements:

1. At sites or facilities where vapors have migrated from the source of contamination, active remedial actions shall be taken to limit or prevent, to the extent practicable, potential and actual hazardous substance discharges and environmental pollution that may attain or exceed vapor action levels.

2. The department may take or require the responsible parties to conduct any necessary actions, such as developing site-specific environmental standards in cooperation with the department of health services, to protect public health, safety, or welfare or to prevent a significant damaging effect on indoor air quality for present or future use.

(e) *Hazardous and solid waste.* 1. Any waste, debris or waste stream generated by the remedial action shall be managed in compliance with all applicable state and federal laws and regulations. Contaminated debris, at a minimum, shall be addressed to minimize the harmful effects to protect health, safety, and welfare and the environment.

2. Management of materials contaminated with polychlorinated biphenyls (PCBs) shall comply with the requirements of ch. NR 157 and TSCA, if applicable.

(2m) SUSTAINABLE REMEDIAL ACTION. Once the remedial action has been selected, the responsible party shall evaluate all of the following criteria, as appropriate for the selected remedial action:

(a) Total energy use and the potential to use renewable energy.

(b) The generation of air pollutants, including particulate matter and greenhouse gas emissions.

(c) Water use and the impacts to water resources.

(d) The future land use and enhancement of ecosystems, including minimizing unnecessary soil and habitat disturbance and destruction.

(e) Reducing, reusing, and recycling materials and wastes, including investigative or sampling wastes.

(f) Optimizing sustainable management practices during long-term care and stewardship.

Note: Tradeoffs will exist when evaluating these criteria and responsible parties need to balance both the benefits and risks to human health and the environment when selecting and implementing the best overall approach. Additional information can be obtained from U.S. EPA at: <http://www.clu-in.org/greenremediation/>.

(3) ADDITIONAL STANDARDS OF PERFORMANCE. Each remedial action or combinations of actions shall protect public health, safety and welfare and the environment from all contaminated media, routes of exposure and contamination at the site or facility. Responsible parties shall presume that a remedial action option or combination of options is protective if it meets the criteria in sub. (2), unless the responsible party or the department determines that compliance with applicable public health and environmental laws, including environmental standards, is not protective of public health, safety, or welfare or the environment due to multiple pathways of exposure or synergistic effects of contamination. At sites or facilities where there may be synergistic effects of contamination, multiple pathways of exposure or both that pose an unacceptable threat to public health, safety or welfare or the environment, responsible parties shall attain more stringent, facility or site-specific numeric standards to ensure that public health, safety and welfare and the environment are protected. In such a situation, the department may require that the responsible parties develop a site-specific numeric or performance standard, or both, that is protective of public health, safety and welfare and the environment for the specific media, migration or exposure pathways and contamination.

(4) LANDFILL DISPOSAL OF UNTREATED CONTAMINATED UNCONSOLIDATED MATERIAL. Responsible parties may only select landfill disposal for untreated contaminated unconsolidated material if such disposal is in compliance with chs. NR 500 to 538, the landfill's approved plan of operation and both of the following requirements:

(a) *Use of untreated contaminated unconsolidated material.*

1. Except as provided in subd. 2., untreated contaminated unconsolidated material may only be accepted by the landfill operator for use as daily cover in accordance with s. NR 514.04 (6), if the volume of untreated contaminated unconsolidated material that is proposed to be used as daily cover does not exceed the landfill's net daily cover needs nor 12.5% of the annual volume of waste received by the landfill, or for use in the construction of soil structures within the fill area when approved for that specific use by the department, unless otherwise specifically provided in the landfill's individual license and approved plan of operation.

2. Untreated contaminated unconsolidated material that is not usable as daily cover or for soil structures and for which there is no technically and economically feasible treatment alternative may be disposed of in a landfill only with prior written approval from the department, unless otherwise specifically provided in the landfill's individual license and approved plan of operation.

(b) *Volume limitations.* 1. Except as provided in subd. 2. or 3., the volume of untreated contaminated unconsolidated material from a single site or facility that is proposed for landfill disposal may not exceed 250 cubic yards as measured *in situ*.

2. Except as provided in subd. 3., volumes of untreated contaminated unconsolidated material that exceed 250 cubic yards may be disposed of in a licensed landfill with a department-approved composite liner, or a liner that is equivalent to a composite liner in terms of environmental protection as determined by the department.

3. Volumes of untreated contaminated unconsolidated material that exceed 2000 cubic yards may be disposed of in a landfill only if prior written approval is obtained from the department after the department has reviewed a remedial action options report.

Note: Material contaminated with polychlorinated biphenyls (PCBs) must be managed in accordance with the requirements of chs. NR 700 to 754. EPA has independent authority to regulate material contaminated with PCBs under TSCA. The department and EPA have entered into a memorandum of understanding that specifies how responsibility for government oversight at sites with PCB contamination will be determined. The memorandum of agreement can be found at: <http://dnr.wi.gov/files/pdfs/pubs/rr/rr786.pdf>.

(5) CONTINUING OBLIGATIONS. All legal and administrative mechanisms that establish property-specific responsibilities shall be selected consistent with the provisions of ch. 292, Stats., ch. NR 726, and this chapter, and are protective of public health, safety, and welfare and the environment.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; CR 01-129: am. (2) (a), Register July 2002 No. 559, eff. 8-1-02; correction in (4) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register February 2010 No. 650; CR 12-023: am. (2) (b) 1., 2., renum. (2) (d) to (2) (d) (intro.) and am., cr. (2) (d) 1., 2., am. (2) (e) 2., cr. (2m), am. (4) (a) 1, (b) 3., r. and recr. (5) Register October 2013 No. 694, eff. 11-1-13.

NR 722.11 **Risk assessments.** (1) The responsible party may request, and the department may consider granting, approval to prepare and submit a risk assessment for the purpose of developing environmental standards only if the responsible parties demonstrate to the satisfaction of the department that:

(a) Compliance with the applicable environmental standards listed in s. NR 722.09 (2) will not be protective of public health, safety and welfare and the environment; or

(b) Attaining compliance with the applicable residual contaminant levels in ch. NR 720 is not practicable.

(2) If the department authorizes the use of a risk assessment to develop environmental standards, the responsible parties shall utilize standard exposure assumptions approved by the department. The department may approve, modify or disapprove of the risk assessment prepared by the responsible parties and shall provide a written explanation of the department's action to the responsible parties.

(3) When the department enters into a contract pursuant to s. 292.31, Stats., the department shall determine whether or not a risk assessment should be prepared and by whom.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023: am. (3) Register October 2013 No. 694, eff. 11-1-13.

NR 722.13 **Remedial action options report.** (1) **GENERAL.** Based on the evaluation and selection of remedial action options required in ss. NR 722.07 and 722.09, responsible parties shall document the evaluation and selection in a remedial action options report in compliance with the requirements of this section. Responsible parties shall submit the remedial action options report to the department within 60 days after submitting the site investigation report, unless otherwise specified by the department.

(2) CONTENTS OF REPORT. The remedial action options report shall include the following:

(a) *Cover letter.* 1. The department's identification number for the site or facility.

2. The purpose of the submittal and the desired department action or response.

3. Month, day and year of the submittal.

(b) *Executive summary.* A brief narrative summarizing the contents of the report.

(c) *Background information.* 1. Project title, name of the site or facility, its location, the mailing address and telephone number of the responsible parties, and the name, address and telephone number of the person who prepared the report.

2. The regulatory status of the site or facility.

3. A summary of the nature and extent of contamination at the site or facility, based on the data gathered during the site investigation.

4. A summary of the geologic and hydrogeologic characteristics at the site or facility, based on data gathered during the site investigation.

Note: If a site investigation report required under ch. NR 716 and a remedial action options report required under this chapter are prepared as a single submittal, the site investigation information does not need to be restated in the remedial action options portion of the combined submittal.

(d) *Remedial action options.* A brief description of each remedial action option that has been evaluated under s. NR 722.07, including all of the following information:

1. A physical and operational description of each remedial action option.

2. The degree to which each evaluated remedial action option is expected to comply with the environmental laws and standards under s. NR 722.09 (2).

3. The physical location at the site or facility where the environmental standards applicable to the site or facility and the remedial action option are to be complied with.

4. Any local, state or federal licenses, permits or approvals that are required for each remedial action option.

5. A comparison of the expected performance of each remedial action option in relation to the technical and economic feasibility criteria in s. NR 722.07 (4).

6. A statement on whether or not treatment was considered and why a treatment option or combination of treatment options were rejected, if rejected.

(e) *Selected remedial action.* Responsible parties shall document the selected remedial action in compliance with this section, except where the department is selecting the remedial action option under s. NR 722.05 (2). The remedial action options report shall identify the selected remedial action and shall include:

1. A brief summary of the rationale for choosing the remedial action, based on the evaluation required under s. NR 722.07.

2. A proposed schedule for implementing the selected remedial action option.

3. An estimate of the approximate total cost of implementing the selected remedial action option, including the costs listed in s. NR 722.07 (4) (b).

4. An estimate of the time frame needed for the selected remedial action option to comply with the applicable federal or state environmental laws and standards, whichever are more stringent.

4m. The anticipated continuing obligations for the selected remedial action option.

5. A description of how the performance of the selected remedial action option will be measured.

6. A description of how treatment residuals generated in connection with the selected remedial action option will be managed on-site and, if applicable, off-site.

7. A description of how the criteria in s. NR 722.09 (2m) regarding sustainable remedial action were addressed.

8. For sites where a vapor mitigation system is used, an evaluation of source reduction alternatives that were considered.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; am. (1), Register, January, 2001, No. 541, eff. 2-1-01; CR 12-023: am. (1), (2) (e) 1., 3., cr. (2) (e) 7. Register October 2013 No. 694, eff. 11-1-13.

NR 722.15 **Department response.** (1) GENERAL. The department may respond to the submission of a remedial action options report required by this chapter using one of the following methods:

(a) The department may, in writing, direct responsible parties to submit all of the reports required under this chapter and to proceed to implement the selected remedial action without department approval, review or acknowledgement.

(b) The department may, in writing, direct responsible parties that review and approval of a remedial action options report is necessary prior to proceeding to implement the selected remedial action pursuant to ch. NR 724. The department shall provide written acknowledgement of receipt of each report submitted pursuant to this chapter within 30 days. Department acknowledgement shall include an estimated date for completion of department review.

(2) DEPARTMENT REVIEW. In cases where the department is reviewing a remedial action options report under this chapter prior to the implementation of the selected remedial action, the department:

(a) May exercise discretion on a case-by-case basis and request additional information, require revisions, approve, conditionally approve or disapprove of the report.

(b) Shall provide a written explanation of the reasons for any disapproval to the responsible parties.

(c) May establish a schedule for the responsible parties to provide additional information and revisions to the department.

(d) May approve the remedial action options report only after ensuring that implementation of the selected remedial action will adequately protect human health, safety, and the environment. In making this determination, the department shall consider the following factors as appropriate:

1. The physical and chemical characteristics of each contaminant including its toxicity, persistence, and potential for migration.

2. The hydrogeologic characteristics of the site or facility and the surrounding area.

3. The proximity, quality, and current and future uses of nearby surface water and groundwater.

4. The potential effects of residual contamination on nearby surface water and groundwater.

5. All other relevant assessments prepared and submitted in compliance with the requirements of s. NR 722.11.

6. All other relevant information contained in the remedial options report.

(e) May, as a condition of approving the remedial action, do any of the following:

1. Require operation and maintenance of an engineering control on the site.

2. Require an investigation of the extent of residual contamination and the performance of any necessary remedial action if a building or other structural impediment is removed that had prevented a complete investigation or remedial action at the site.

3. Require that the department be notified prior to a change in land use, if the proposed land use change would be such that any of the exposure assumptions on which a continuing obligation are based would no longer be protective of human health, safety, or welfare or the environment.

4. Require vapor control technologies be used for any new construction on the site, or require interim actions to limit or prevent vapor intrusion be installed, operated and maintained.

5. Require site-specific actions or continuing obligations to adequately protect human health, safety, or welfare or the environment.

6. Require the submittal of the information necessary for listing the site on the department database.

Note: In accordance with ch. NR 749, the appropriate review must accompany any request for the department to review a specific document.

(3) NOTICE TO PROCEED. Unless otherwise directed, at sites or facilities where the department approves or conditionally approves of a remedial action report, the responsible parties shall initiate the design and construction of the selected remedial action within 90 days after department approval or conditional approval.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023: am. (2) (d) 1. to 5., cr. (2) (e), renum. (3) (intro.) to (3) and am., r. (3) (a), (b) Register October 2013 No. 694, eff. 11-1-13.

NR 722.17 **Department database requirements for remedial actions approved with a continuing obligation.** (1) For sites or facilities where the department has approved a remedial action that includes a continuing obligation which meets any of the criteria ~~in~~ under ss. NR 722.15 (2) (e) and 725.05 (2), the department may require that the site or facility, including all properties and rights-of-way within the contaminated site boundaries, be included on the department database. At a minimum, the department shall include on the database any requirements, limitations, or conditions imposed under s. 292.12 (2) (a) to (c), Stats. for the approval of a remedial action, any information required under s. 292.12 (2) (d), Stats., for the approval of a remedial action, and any agreements submitted to the department under s. 292.12 (5) and (5m), Stats.

(2) The site or facility remedial action plan approval letter shall be associated with the site or facility record in the department database, for those sites required to be included on the department database.

(3) The fees required ~~by~~ under ch. NR 749 shall be submitted to the department, in accordance with ch. NR 749.

Note: Under s. 292.12 (3) (b), Stats., the department has authority to charge a fee for placement on a department database.

(4) Documentation requirements shall meet s. NR 726.11, to the extent practicable.

(5) If another person has entered into a legally enforceable agreement for complying with continuing obligations under s. 292.12 (5) or (5m), Stats., the responsible party or other party to the agreement may provide to the department a copy of the agreement for inclusion in the department's database.

(6) A responsible party that is subject to a remedial action continuing obligation under this chapter shall comply with requirements for continuing obligations, including:

1. Notifications and documentation required under ch. NR 725.

2. Requirements for continuing obligations under ss. NR 727.05, NR 727.065, and s. NR 727.06.

4. Requirements for any modification or removal of continuing obligations under s. NR 727.10.

5. Database documentation requirements for continuing obligations under s. NR 727.12.

(7) The department may impose a continuing obligation under s. NR 727.065 (4).

(8) Any approval letter issued by the department imposing continuing obligations for a remedial action shall meet requirements under s. NR 727.15.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

Chapter NR 724

REMEDIAL AND INTERIM ACTION DESIGN, IMPLEMENTATION, OPERATION, MAINTENANCE AND MONITORING REQUIREMENTS

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Note: Chapter NR 724 as it existed on April 30, 1995 was repealed and a new chapter NR 724 was created effective May 1, 1995.

Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494.

NR 724.01 Purpose. The purpose of this chapter is to specify the requirements for the design, implementation, operation, maintenance and monitoring of remedial actions and certain types of interim actions. This chapter is adopted pursuant to ss. 227.11 (2), 287.03, and 289.06 (1) and (2), Stats., and ch. 292, Stats.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; am. Register, February, 1996, No. 482, eff. 3-1-96; **CR 12-023: am. Register October 2013 No. 694, eff. 11-1-13.**

NR 724.02 Applicability. ~~(4) This chapter applies to all remedial actions and to the following types of interim actions taken by responsible parties, at sites, facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department:~~

~~(a) On site treatment systems, including groundwater extraction and other remedial treatment systems.~~

~~(b) On site engineering controls or barriers, including engineered landfill covers or groundwater barrier systems.~~

~~(bm) Vapor mitigation systems.~~

~~**Note:** Remedial actions to actively remediate vapor-contaminant sources fall under pars. (a) or (b).~~

~~(c) Any other type of interim action when the department determines, on a case-by-case basis, that a design report required under s. NR 724.09 is necessary prior to implementation.~~

(1) This chapter applies to all remedial actions and to the following types of interim actions taken by responsible parties, at sites, facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department:

(a) Interim actions under ss. NR 708.11 (4) and (4m).

(b) Any other type of interim action when the department determines, on a case-by-case basis, that a design report required under s. NR 724.09 is necessary prior to implementation.

Note: This chapter does not apply to emergency or non-emergency immediate actions or to those types of interim actions that are not listed in s. NR 724.02 (1).

(2) The department may exercise enforcement discretion on a case-by-case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or requirements apply, the more restrictive requirements shall control. The department shall, after receipt of a written request and appropriate ch. NR 749 fee

from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable to a site or facility.

Note: Sites or facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., may also be subject to regulation under other statutes, including the solid waste statutes in ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to those statutes. In addition, federal authorities such as CERCLA, RCRA, or TSCA may also apply to a site or facility or portions of a site or facility. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

Note: Persons who wish to conduct response actions that will be consistent with the requirements of CERCLA and the National Contingency Plan (NCP) may request that the department enter into a contract with them pursuant to s. 292.31 or a negotiated agreement under s. 292.11 (7) (d), Stats. However, a CERCLA-quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to 754 in order to be consistent with CERCLA and the NCP.

(3) This chapter applies to all remedial actions and to those types of interim actions that are specified in sub. (1) taken by the department under the authority of ch. 292, Stats. In this chapter, where the term "responsible parties" appears, it is to be read to include the department in situations where a department-funded response action is being taken.

(4) This chapter applies to all remedial action and to those types of interim actions that are specified in sub. (1) taken by persons seeking the liability exemption under s. 292.15, Stats. In this chapter, where the term "responsible parties" appears, it shall read to include the "voluntary parties" where an action is being taken to comply with s. 292.15.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; cr. (4), Register, February, 1996, No. 482, eff. 3-1-96; **CR 12-023: am. (1) (intro.), (a), cr. (1) (bm), am. (2) to (4) Register October 2013 No. 694, eff. 11-1-13.**

NR 724.03 Definitions. The definitions in s. NR 700.03 apply to this chapter. In this chapter, where the term "responsible parties" appears, it shall be read to include "voluntary parties" where an action is being taken to comply with s. 292.15, Stats.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; am., Register, February, 1996, No. 482, eff. 3-1-96; **CR 12-023: am. Register October 2013 No. 694, eff. 11-1-13.**

NR 724.05 General submittal requirements. (2) GENERAL REQUIREMENTS. Unless otherwise directed by the department, responsible parties shall submit the plans and reports required by this chapter in compliance with all of the following requirements:

(a) The plans, reports and specifications required by ss. NR 724.09, 724.11, 724.13 (2) and 724.17 (2) shall be submitted simultaneously and may be combined in a single report.

(b) ~~One paper copy and one electronic copy of each plan or report shall be submitted to the department, in accordance with s. NR 700.11 (3g) unless otherwise approved by the department.~~

Note: Paper copies are accepted with department approval; however, electronic copies are strongly preferred. Electronic copies should may 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/r/RR690.pdf> through the online submittal portal at <https://dnr.wisconsin.gov/topic/Brownfields/Submittal.html>.

(c) The department may require by the issuance of an administrative order or consent order that these plans and reports be prepared in accordance with a site-specific schedule.

(d) At sites or facilities where multiple remedial or interim actions are taken, all of the following requirements apply:

1. All submittals required by this chapter shall include a brief discussion of the interrelationship between the actions.

2. The design report required by s. NR 724.09 and the design plans and specifications required by s. NR 724.11 that are prepared for subsequent remedial or interim actions may include the design details for the subsequent action without repeating design work that was included in previous submittals to the department for other remedial or interim actions.

(e) Each submittal under this chapter shall include all of the following:

1. A brief cover letter that includes:

- The month, day and year of the submittal.
- The department-issued identification number for the site or facility.

c. The purpose of the submittal and the desired department action or response.

d. A brief narrative summarizing the contents of the submittal.

e. The regulatory status of the site or facility.

2. A report or plan that includes following general information:

a. Project title and purpose, including the department-issued identification number for the site or facility.

b. Name, address, and telephone number of the property owner, lessee, operator or any individual or company responsible for the discharge of hazardous substances or environmental pollution on the site or facility.

c. Name, address, and telephone number of any consultants or contractors involved with the response action at the site or facility.

d. Site name, address, and location by quarter-quarter section, township, range and county, geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the property.

e. A location map that meets the requirements of s. NR 716.15 (4) (a).

f. Month, day and year of the submittal.

g. A summary of the nature and extent of contamination at the site or facility.

(3) LEVEL OF DETAIL. (a) Nothing in this chapter shall be construed to require plans or reports that are more detailed or complex than is justified by the known scope of contamination or the complexity of the site or facility.

(b) The department may require additional information in the plans and report beyond what is specifically required under this chapter if necessary because of the complexity of the site or facility, or the degree and extent of the contamination.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; am. (2) (a), Register, October, 1996, No. 490, eff. 11-1-96; CR 12-023: r. (1), am. (2) (title), (intro.), (b), (c) 2. d., e. Register October 2013 No. 694, eff. 11-1-13.

NR 724.06 Department database requirements and fees for remedial actions with continuing obligations.

(1) For sites or facilities where the department has approved a remedial action that includes a continuing obligation, the department shall require that the site or facility, including all properties and rights-of-way within the contaminated site boundaries, be included on the department database. At a minimum, the department shall include on the database any requirements, limitations, or conditions imposed under s. 292.12 (2) (a) to (c), Stats., for the approval of a remedial interim action and any information required under s. 292.12 (2) (d), Stats., for the approval of a remedial action.

(2) For sites or facilities where the department has approved a remedial action at a site or facility with residual contamination the department shall require that the site or facility, including all properties and rights-of-way within the contaminated site boundaries, be included on the department database.

(3) The responsible party shall submit the fees required under ch. NR 749 to the department.

(4) A responsible party shall comply with requirements for continuing obligations, including:

1. Notifications and documentation required under ch. NR 725.

2. Requirements for continuing obligations under ss. NR 727.05, NR 727.065, and s. NR 727.06.

4. Requirements for any modification or removal of continuing obligations under s. NR 727.10.

5. Database documentation requirements for continuing obligations under s. NR 727.12.

(5) The department may impose a continuing obligation under s. NR 727.065 (4).

(6) Any approval letter issued by the department imposing continuing obligations for a remedial action shall meet requirements under s. NR 727.15.

NR 724.07 Department response. **(1)** The department may direct responsible parties in writing that department approval of a plan or report is necessary prior to proceeding to the next step in the design, implementation or operation of a remedial action or interim action under this chapter. In such cases, the department shall provide a written acknowledgement of receipt of any report or plan submitted pursuant to this chapter within 30 days. The department acknowledgement shall include an estimated date for completion of department review.

(2) In cases where department approval is required for the reports or plans submitted under this chapter, the department may request additional information, require revisions, approve, conditionally approve or disapprove of the plans or reports. The department shall provide to the responsible parties, in writing, the reasons for any disapproval and the department may establish a deadline for providing revisions.

Note: Persons who prepare the plans and reports required by this chapter should be aware that other department programs may also require the submittal, review and approval of plans and reports.

Note: In accordance with ch. NR 749, the appropriate review fee must accompany any request for the department to review a specific document.

(3) The department may, as a condition of approving the interim or remedial action, do any of the following:

(a) Require operation, monitoring, and maintenance of an engineering control on the site.

(b) Require an investigation of the extent of residual contamination and the performance of any necessary remedial action if a building or other structural impediment is removed

that had prevented a complete investigation or remedial action at the site.

(c) Require that the department be notified prior to a change in land use, if the proposed land use change would be such that any of the exposure assumptions on which a continuing obligation are based would no longer be protective of human health, safety, or welfare or the environment.

(d) Require that a vapor control system be used for any new construction on the site, or require interim actions to adequately limit or prevent vapor intrusion be installed, operated and maintained.

(e) Require site-specific actions or continuing obligations to adequately protect human health, safety, or welfare or the environment.

(f) Require the submittal of the information necessary for listing the site on the department database.

Note: Under ch. NR 749, the appropriate review fee must accompany any request for the department to review a specific document.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95.

NR 724.09 **Design report.** Unless otherwise directed by the department, responsible parties shall submit to the department a design report for all remedial actions and those interim actions specified in s. NR 724.02 (1), containing all of the following information:

(1) The information required in s. NR 724.05 (2) (e).

(2) A brief description of the site or facility.

(3) A complete and detailed description of the remedial or interim action being designed.

(4) All engineering criteria, concepts, assumptions and calculations used in preparing the design, including adequate justification for their use.

(5) Any treatability study information, pilot test results, aquifer pumping test results or other test results utilized in the design, unless this information was previously submitted to the department.

Note: Treatability studies should be conducted as early in the response process as possible.

(6) A listing of all local, state and federal permits, licenses and approvals required to construct and implement the remedial or interim action.

(7) A brief description of the public health and environmental laws and standards applicable to the contamination and the interim or remedial action being implemented, including the physical location where the environmental standards shall be complied with for each medium of concern.

(8) A preliminary discussion of the types of, frequency of and schedule for monitoring of the remedial or interim action. This discussion shall address any water, soil, soil gas, air, vapor, or other monitoring required for each component of the remedial or interim action.

(9) A preliminary discussion of planned operation and maintenance provisions.

Note: An operation and maintenance plan prepared in accordance with s. NR 724.13 (2) will satisfy the requirements of s. NR 724.09 (8) and (9), if submitted with the design report. In this case, the operation and maintenance plan should provide a complete, rather than a preliminary, discussion of the topics described in s. NR 724.09 (8) and (9).

(10) A proposed schedule for implementation of the remedial or interim action, which identifies timing for initiation and completion of all tasks. The proposed dates for completion of the remedial or interim action and major milestones shall be specified. The schedule shall include deadlines for all reports, plans and submittals required by the department.

(11) Discussion of any other relevant technical factors.

(12) Discussion of any continuing obligations and any plan and schedule to implement, monitor, inspect, and maintain the continuing obligations.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023: am. (8) Register October 2013 No. 694, eff. 11-1-13.

NR 724.11 **Design plans and specifications.** Unless otherwise directed by the department, responsible parties shall submit to the department design plans and specifications for each remedial action and any of the interim actions specified in s. NR 724.02 (1). Plans and specifications shall:

(1) Be consistent with the concepts presented in the design report prepared under s. NR 724.09.

(2) Provide a general correlation between drawings and technical specifications.

(3) Include technical specifications and requirements necessary for all the components of the remedial or interim action.

(4) Include detailed drawings of the proposed design, including general component arrangements, equipment layout, process flow diagram, piping and instrumentation diagrams, cross sections, sampling locations and instrumentation locations.

(5) Show sufficient detail for construction, according to customary industrial and professional standards.

(6) Unless otherwise directed by the department, include legible visual aids, including maps, plan sheets, drawings, isometrics, cross sections and aerial photographs, which:

(a) Are no larger than 24 inches by 36 inches and no smaller than 8¹/₂ inches by 11 inches.

(b) Are of appropriate scale to show all required details in sufficient clarity.

(c) Are numbered, titled, have a legend of all symbols used, contain horizontal and vertical scales where applicable, and specify drafting or origination dates and current drawing revision or issue status.

(d) Use uniform, graphic scales.

(e) Contain a north arrow, where appropriate.

(f) Use national geodetic survey data as the basis for all elevations.

(g) Show dimensions for location and placement of features or units and elevations that are based on permanent, retrievable surveying control monuments or stations.

(h) Additionally, for solid or hazardous waste disposal facilities or, when directed by the department, for other land-based features being constructed at the site or facility as part of the response action:

1. Display a survey grid based on monuments established in the field which are referenced to state plane coordinates.

2. Show the survey grid location and reference major plan sheets on all cross sections.

Note: Examples of land-based features include covers, waste or soil piles, soil treatment piles, liners, landfills and features created by earth moving and regrading.

3. Include a reduced plan-view map on all sheets with cross sections indicating the location of the cross section.

(7) Include descriptions, specifications and performance criteria necessary for procurement, construction and start-up of all features and units, including key components and all instrumentation. Performance curves or criteria published by equipment suppliers or manufacturers may be utilized if they provide sufficient information. For any vapor mitigation system

or point of entry treatment system, include the commissioning testing plan, performance criteria, and report.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023: am. (6) (d) Register October 2013 No. 694, eff. 11-1-13.

NR 724.13 Operation, monitoring, and maintenance. (1) **GENERAL.** (a) Unless otherwise directed by the department, responsible parties shall conduct all necessary operation, monitoring, and maintenance activities in accordance with this section and in compliance with all applicable state or federal public health and environmental laws, whichever are more stringent, until all applicable public health and environmental laws are complied with as required in chs. NR 700 to ~~754~~ 799.

(b) Responsible parties shall operate and maintain any cover systems, liners, physical hydraulic containment systems, leachate collection systems, and gas collection, extraction, and management systems at sites or facilities for which they are responsible until no longer required by the department.

(c) Responsible parties and property owners shall operate vapor mitigation systems for which they are responsible until no longer required by the department.

(d) Vapor mitigation systems and remedial actions designed to address vapor migration shall be monitored annually at minimum, at a frequency and schedule determined by the department, to measure whether the action taken has been effective in meeting the vapor action level. For active vapor mitigation systems, an active alarm and notification system with an audible, visual, or telemetry-based method for notification, or a combination thereof, shall be used to notify property owners and occupants of any condition or circumstance impacting the ability of the system to operate as designed. Notifications to the department shall be performed at a frequency and schedule established by the operation, monitoring and maintenance plan required under sub. (2). The department may require the use of a telemetry-based method if the department determines that a telemetry-based method is needed to protect human health.

Note: The telemetry-based notification may be used to directly notify persons responsible for operation, maintenance, and monitoring of the vapor mitigation system, and the persons responsible for operation, maintenance, and monitoring of the vapor mitigation system may then notify owners and occupants.

(2) **OPERATION AND MAINTENANCE PLAN.** Unless otherwise directed by the department, responsible parties shall submit to the department an operation and maintenance plan when on-site maintenance activities are necessary to implement, monitor or ensure the effectiveness of a remedial or interim action. The plan shall outline all operation, monitoring, and maintenance activities, from design through case closure under ch. NR 726 or through post-closure under ch. NR 727, as appropriate, including all of the following information:

(a) The information specified under s. NR 724.05 (2) (e).

(b) A description of normal operation and maintenance, including a schedule showing the frequency of each operation and maintenance task.

(c) A contingency plan for any anticipated or potential operation and maintenance problems, including a description of techniques or activities to be conducted by the responsible parties to resolve operation and maintenance problems.

(d) A description of routine monitoring and analysis, including:

1. Long-term monitoring required under s. NR 724.17;

2. Laboratory or field tests, test methods and sampling methods; and

3. A schedule of monitoring frequency and dates.

(e) A description of any site-specific or facility-specific record-keeping and reporting requirements to document operation and maintenance activities, including:

1. Mechanisms for reporting system failures, discharges of hazardous substances, environmental pollution and other emergencies; and

2. Reports to be submitted to the department, including the results of system and environmental monitoring and the results of the monitoring well inspections meeting the requirements of s. NR 716.13 (14).

(f) A location map that includes the locations and extent of features that need to be maintained, as well as the extent of contamination.

(g) Final construction specifications on any engineering control feature.

Note: Engineering controls may include a cap, soil cover, barrier, or vapor mitigation system. A sediment cover is not an engineering control under s. 292.01 (3m), Stats.

(h) A list of prohibited activities.

(i) A contact for questions on specific actions and the inspection log.

(j) A statement of where more site-specific information may be found.

Note: More site-specific information may be found in the department's files.

(k) For vapor mitigation systems; a diagram and photographs showing piping, venting, fans and manometer, and active alarm and notification system locations, vent height and location, a description of how to verify that the vapor mitigation system is operating properly, identification of prohibited activities to ensure the continued effectiveness of the vapor mitigation system, and direction to notify the department before any action is taken which would disturb operation of the vapor mitigation system.

Note: A vapor mitigation alarm system is considered to be part of the vapor mitigation system, such that operations, monitoring and maintenance requirements apply to the alarm system.

(L) Air emission reporting and permitting, as applicable.

~~(m) Monthly manometer checks.~~

(m) For active vapor mitigation systems, all of the following:

1. An active alarm with an audible, visual, or telemetry-based method for notification or a combination thereof, as applicable, for the monitoring frequency required for the system as approved by the department under sub. (1)(d).

2. A plan for notifying property owners, occupants, and the department of any condition or circumstance impacting the ability of the system to operate as designed, and a schedule that indicates the method and frequency by which notification to property owners, occupants, and the department will occur.

3. A contingency plan for system failures, including timeframes for identifying corrective measures and conducting additional testing to verify system effectiveness.

(o) Information on continuing obligations imposed at the site or facility, including any communication and notification requirements for operations, monitoring, and maintenance relating to any current and future owners and occupants of contaminated properties.

(p) At sites with vapor mitigation systems that have residential occupancy, and for which the department determines continuous monitoring is required for the system under sub. (1)(d), a plan for use of backup power for the vapor mitigation

system, including when and how backup power will be instituted following a lapse in the main power supply.

(g) At sites with point of entry treatment systems, all of the following:

1. A testing and maintenance schedule.

2. A schedule that indicates the method and frequency by which notification to owners, occupants, and the department will occur.

3. A contingency plan for system failures, including timeframes for identifying corrective measures and conducting additional testing to verify system effectiveness.

(r) At sites with point of entry treatment systems, a plan for use of backup power for the point of entry treatment system, including when and how backup power will be instituted following a lapse in the main power supply.

(n) Annual inspection of system parts.

(3) PROGRESS REPORTS. In addition to the general progress reporting requirements in s. NR 700.11, responsible parties shall submit semi-annual operation and maintenance progress reports to the department. Progress reports shall be sequentially numbered, starting with the first report which is due no later than 6 months after the remediation system begins operation. Information related to operation and maintenance shall be provided on a reporting form supplied by the department. The department may require progress reports be submitted at a different frequency than semi-annually.

Note: Operation and maintenance progress reports should be submitted for both active and passive remediation systems. Progress reports required under this subsection are not the same as post-closure maintenance inspection logs for remedies such as performance standard covers.

Note: Copies of remediation system operation and maintenance reporting forms 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, or at <http://dnr.wi.gov/files/PDF/forms/4400/4400-194.pdf>.

(4) OPERATION AND MAINTENANCE PLAN REVISIONS. When warranted by changes in the design, operation or maintenance of the interim or remedial action, or when requested by the department, responsible parties shall revise the appropriate section of the operation and maintenance plan. Plan revisions shall be submitted to the department and shall:

(a) Include the information required in s. NR 724.05 (2) (e).

(b) Be numbered with a revision number.

(c) Document any changes in the time of anticipated case closure.

(d) Document any changes in the design, operation, maintenance or monitoring of the interim or remedial action.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; am. (3) (a) 1., 2. and 3., renum. (3) (e) to be (3) (f) and cr. (3) (e), Register, October, 1996, No. 490, eff. 11-1-96; correction in (4) made under s. 13.93 (2m) (b) 1., Stats., Register, October, 1999, No. 526; **CR 12-023: am. (1) (a), (b), cr. (1) (c), (d), am. (2) (intro.), (a), (e) 2., cr. (2) (f) to (n), renum. (3) (intro.) to (3) and am., r. (3) (a) to (d), r. (e), (f), am. (4) (title), (c) Register October 2013 No. 694, eff. 11-1-13; correction in (2) (a) made under s. 13.92 (4) (b) 7., Stats., Register October 2013.**

NR 724.15 Documentation of construction and completion. **(1)** Unless otherwise directed by the department, responsible parties shall submit to the department a construction documentation or as-built report within 60 days after the date that construction of a remedial action or any interim action specified in s. NR 724.02 (1) is completed or determined to be essentially complete by the department.

(2) The report shall document that the completed final remedial or interim action meets or exceeds all design criteria

and the plans and specifications developed in accordance with all of the requirements of this chapter.

(3) Unless otherwise directed by the department, the construction documentation report shall include all of the following information:

(a) The information specified under s. NR 724.05 (2) (e).

(b) As-built maps, plan sheets, drawings, isometric drawings and cross sections.

(c) A synopsis of the remedial or interim action and a certification that the design and construction was carried out in accordance with the plans and specifications.

(d) An explanation of any minor changes to the plans and why these were necessary for the project.

(e) Results of all pilot and field tests or studies and site monitoring conducted during construction.

(f) A brief description of the public health and environmental laws applicable to the contamination and the interim or remedial action selected, including the physical location where the environmental laws shall be complied with for all media of concern.

(g) The information required in ch. NR 516 for documenting the construction at the site or facility of any final covers, liners, leachate collection systems and gas collection, extraction and management systems.

(h) A revised operations and maintenance plan in accordance with s. NR 724.13 (4), unless the cover letter indicates that there are no revisions to the operations and maintenance plan.

(i) The results of commissioning for any vapor mitigation system or point of entry treatment system.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95.

NR 724.16 Decommissioning; vapor mitigation systems. A responsible party that is decommissioning a vapor mitigation system such that a related continuing obligation will no longer apply at a property shall meet the requirements under this section.

(1) PLAN. Prior to decommissioning, a responsible party shall submit a decommissioning plan report that includes all of the following:

(a) A description of the basis for decommissioning.

(b) A verification sampling plan for any applicable media and system monitoring to demonstrate decommissioning will not result in harm to human health or the environment.

(c) The procedures for notifying any affected property owners and occupants of intent to decommission the vapor mitigation system and request release of any applicable continuing obligation.

(2) DECOMMISSIONING. During decommissioning, a responsible party shall do all of the following:

(a) Submit the results of media sampling and system monitoring to the department and affected property owners and occupants within 10 business days of sampling completion.

(b) Cease the decommissioning process if any exceedance of a vapor risk screening level or vapor action level occurs.

(c) Notify the department and any affected owners and occupants of any cessation in the decommissioning process.

(3) NOTIFICATION. The responsible party shall notify any affected property owners and occupants of the final removal or modification of any vapor mitigation system and intent to

request removal or modification of continuing obligations, as applicable.

Note: Section NR 727.10 sets forth the process for seeking modification or termination of an interim action or remedial action continuing obligation. Decommissioning documentation may be submitted to the department with the documentation required under s. NR 727.10.

(4) FINAL REPORT. Following decommissioning, a responsible party shall submit a decommissioning final report within 60 days of completion of decommissioning for department review and approval, including ch. NR 749 fee, that includes all of the following:

(a) All data collected during decommissioning.

(b) Documentation of removal or modification of vapor mitigation system components, active notifications and monitoring points, as applicable, including diagrams and photographs.

(c) Any modifications to any approved operation, monitoring and maintenance plan.

(d) Copies of notifications required to owners and occupants under sub. (3).

(5) FORMAT. Responsible parties shall submit plans and final reports under this section separately for each vapor mitigation system unless otherwise approved by the department.

NR 724.165 Decommissioning; point of entry treatment systems. A responsible party that is decommissioning a point of entry treatment system such that a related continuing obligation will no longer apply at a property shall meet the requirements of this section:

(1) PLAN. Prior to decommissioning, a responsible party shall submit to the department a decommissioning plan that includes all of the following:

(a) A description of the basis for decommissioning.

(b) A verification sampling plan for any applicable media and system monitoring to demonstrate decommissioning will not result in harm to human health or the environment.

(c) Testing plan and results.

(d) The procedures for notifying any affected property owners and occupants of intent to decommission the point of entry treatment system and request release of any applicable continuing obligation.

(2) NOTIFICATION. The responsible party shall notify any affected property owners and occupants of the final removal or modification of any point of entry treatment system and intent to request removal or modification of continuing obligations, as applicable.

(3) FINAL REPORT. Following decommissioning, a responsible party shall submit a decommissioning final report within 60 days of completion of decommissioning for department review and approval, including ch. NR 749 fee, that includes all of the following:

(a) All data collected during decommissioning.

(b) Documentation of removal or modification of point of entry system components, including diagrams and photographs.

(c) Any modifications to any approved operation, monitoring and maintenance plan.

(d) Copies of notifications required to owners and occupants under sub. (2).

(4) FORMAT. Responsible parties shall submit plans and final reports under this section separately for each point of entry treatment system unless otherwise approved by the department.

Note: Section NR 727.10 sets forth the process for seeking modification or termination of an interim action or remedial action continuing obligation. Decommissioning documentation may be submitted to the department with the documentation required under s. NR 727.10.

NR 724.17 Long-term monitoring. (1) GENERAL. Responsible parties shall conduct all necessary and appropriate long-term monitoring at a site or facility in accordance with all of the requirements of this section and any other applicable public health and environmental laws.

(2) LONG-TERM MONITORING PLAN. Unless otherwise directed by the department, the responsible parties shall submit a long-term monitoring plan to the department that specifies:

(a) The parameters to be monitored;

(b) The sampling and analytical methods to be used, consistent with the sampling and analysis requirements in s. NR 716.13;

(c) The interval at which monitoring is to be performed; and

(d) The public health and environmental laws, including standards, to be complied with.

(3m) LONG-TERM MONITORING RESULTS. Unless otherwise directed by the department, responsible parties shall submit a monitoring results report to the department after any sampling. Responsible parties shall submit the monitoring results report, including results from private and public wells, within 10 business days of receiving the sample results. Monitoring results shall be submitted in accordance with s. NR 716.14. The report shall include all of the following information:

(a) The information specified under s. NR 724.05 (2) (e).

(b) Sampling results.

(c) Monitoring results in tabular and graph form, including the current monitoring results and all previous results, so as to provide a concise summary of the monitoring program.

Note: Long term monitoring for groundwater includes groundwater table elevation data. This data is used for the system effectiveness reporting required by s. NR 724.13 as well as for the assessment used to determine what attenuation processes are occurring at the site.

Note: Section NR 716.14 requires the submittal of specific monitoring result information in a letter or on a form provided by the department.

(d) Laboratory analytical reports and sample chain-of-custody forms, unless otherwise directed by the department.

(e) Identification of any specific environmental standards that have been attained or exceeded and an indication on a site or facility map of the location where the standards have been attained or exceeded.

(f) A preliminary analysis of the cause and significance of any concentrations that attain or exceed specific environmental standards and any increases in concentrations of substances that previously attained or exceeded specific environmental standards, including the factors specified in s. NR 140.24 (1) (c) 1. to 10. for groundwater.

Note: Section 292.11, Stats., and ch. NR 706 require that the department be notified immediately of any hazardous substance discharge.

(4) DEPARTMENT REVIEW. (a) The department shall review and respond to the results [of monitoring] data, if requested to do so by the responsible parties, to evaluate the effectiveness of the remedial action in achieving the environmental and public health laws.

Note: The language in brackets was inadvertently omitted from CR 12-023.

Note: In accordance with ch. NR 749, the appropriate review fee must accompany any request for the department to evaluate environmental data.

(b) The department may review long-term monitoring results at other times at its discretion.

(c) The department may require additional remedial action, pursuant to ch. 292, Stats., based on the evaluation of monitoring results.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; cr. (3) (a) 3. (note), Register, October, 1996, No. 490, eff. 11-1-96; **CR 12-023: r. (3), cr. (3m), am. (4) (a), (c) Register October 2013 No. 694, eff. 11-1-13.**

NR 724.19 Application of new environmental standards. (1) If, after a remedial action selected in accordance with the requirements of ch. NR 722 is implemented, any applicable environmental standards are modified by the department to be more stringent, or if additional environmental standards are promulgated, the department shall require responsible parties to comply with the new or modified environmental standards if the department determines that, for a specific site or facility, compliance with the more stringent standards is necessary to ensure that the interim action or remedial action will be protective of public health, safety, or welfare or the environment.

(2) If, after a remedial action selected in accordance with ch. NR 722 is implemented, any applicable environmental standards are modified by the department to be less stringent, the department shall approve of case closure if requested by responsible parties once the new, less stringent standards are achieved, if the department determines that the new, less stringent standards will be protective of public health, safety, or welfare or the environment at a specific site or facility that is the subject of a case closure request under ch. NR 726.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; **CR 12-023: am. (title), (1), (2) Register October 2013 No. 694, eff. 11-1-13.**

Chapter NR 725

NOTIFICATION REQUIREMENTS FOR RESIDUAL CONTAMINATION AND CONTINUING OBLIGATIONS

NR 725.01 Purpose.
NR 725.02 Applicability.
NR 725.03 Definitions.

NR 725.05 Situations where notification is required.
NR 725.07 General notification requirements.

NR 725.01 Purpose. The purpose of this chapter is to specify the minimum notification requirements that shall be met before the agency with administrative authority may determine that a specific site or facility may be closed under ch. NR 726 with a continuing obligation or residual contamination, to approve an interim action that includes a continuing obligation, or to approve a remedial action plan which that includes a continuing obligation, and to identify which sites shall be included on a department database. This chapter is adopted pursuant to ss. 227.11 (2), 287.03, and 289.06, Stats., and ch. 292, Stats.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 725.02 Applicability. (1) This chapter applies to persons seeking case closure ~~for a case~~ that includes a property with residual contamination or where a continuing obligation may be applied on a property that is not owned by that person, regardless of whether there is direct involvement or oversight by the department. This chapter also applies to local governmental units or economic development corporations that are required to take action under ch. NR 708 or persons receiving approval of ~~a~~ an interim action under ch. NR 708 or remedial action plan under ch. NR 722, when the department determines that notification is necessary.

(2) In addition to being applicable to sites or facilities specified ~~in~~ under sub. (1), this chapter also applies to the proposed closure of solid waste facilities and hazardous waste facilities where remedial action is required by the department.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 725.03 Definitions. The definitions in s. NR 700.03 apply to this chapter.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 725.05 Situations where notification is required. (1) PERSONS REQUIRING NOTIFICATION. Written notification shall be provided by the responsible party, or other party required to provide notification by the department, to the following parties if the property meets any of the criteria in sub. (2):

(a) The owner of each property within or partially within the contamination site or facility boundaries, other than properties owned by the responsible party.

Note: Notification of property owners includes notification of the source property owner when the responsible party conducting the investigation and cleanup does not own the source property.

(b) Occupants of those properties listed in par. (a), as appropriate.

Note: Notification of occupants may be done by providing copies of the notification to occupants or to the property owner to distribute, by posting the notification at the property, or by other means, as long as written notification is included.

(c) The clerk of the county, and town, village, or city where a public street or highway right-of-way is located, and to the municipal department or state agency that is responsible for maintaining the public street or highway.

(d) The railroad that maintains the railroad right-of-way.

Note: In cases where an owner of record cannot be located, responsible parties are encouraged to work with the agency project manager regarding notification.

(e) The owner of each property where a monitoring well was constructed, but where the monitoring well was unable to be located for abandonment, or where continued monitoring will be required.

Note: Monitoring wells need to be located before a closure request is prepared, so that all necessary notifications are completed in a timely manner.

Note: In some cases, continued monitoring of a well may be required of another responsible party, in which case responsibility for the abandonment of the well will be a condition for closure for that responsible party.

(2) SITUATIONS REQUIRING NOTIFICATION. Written notification shall be provided in the following situations:

(a) Groundwater contamination which attains or exceeds ch. NR 140 enforcement standards remains after completion of the remedial action.

(b) Soil contamination which attains or exceeds ch. NR 720 residual contaminant levels remains after completion of the remedial action.

(bm) Continuing obligations apply to a property.

(c) A monitoring well will not be abandoned upon completion of the remedial action because of any of the following:

1. The well was unable to be located.

2. A property owner requested the responsible party not to abandon the well, to allow for continued monitoring by the property owner and the agency with administrative authority has approved the request.

3. Continued monitoring of the well is required by the agency with administrative authority.

(d) Where there is residual soil contamination beneath a building or a cover, such as concrete or asphalt pavement, a soil cover, or composite cap, or within an engineered containment structure, that exceeds residual contaminant levels based on protection of groundwater as determined under ch. NR 720, which would pose a threat to groundwater if the building, cover or containment structure were removed.

(e) A building, soil cover, cover or engineered containment structure must be maintained in order to prevent direct contact with contaminated soil within 4 feet of the ground surface that exceeds residual contaminant levels as determined under ch. NR 720.

(f) A building or other structural impediment at a site or facility has prevented either the completion of an investigation to determine the degree and extent of contamination, or the completion of the remedial action.

(g) A property has been classified as industrial under ch. NR 720 and soil contamination on the property has only been remediated to the industrial residual contaminant levels.

(h) Sub-slab vapor risk screening levels have been exceeded following source removal and remedial actions taken to address contamination.

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 owners when sub-slab vapor risk screening levels are exceeded, and the operation and maintenance of a vapor mitigation system is necessary in order to limit or prevent vapor intrusion.

(i) Compounds of concern will continue to be used at the site after closure.

Note: Notification is provided to the current owner of the source property when that person is not the responsible party conducting the cleanup, because the compound of concern is still in use, complete investigation of the vapor pathway may be impracticable, and cleanup may be limited in effectiveness as well.

(j) Site-specific hydrogeology controls the vapor exposure pathway into a building and a vapor mitigation system designed for the site must be operated and maintained in order to limit or prevent vapor intrusion.

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 a vapor mitigation system is necessary, and a dewatering system is necessary to enable the vapor mitigation system to operate effectively, due to the hydrogeology.

(k) Vapor inhalation exposure assumptions for a non-residential setting will be applied for 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 residential vapor action levels are exceeded, including at commercial or industrial use properties.

(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 case closure request, in accordance with s. NR 726.13 and prior to case closure, upon review of an interim action plan or report under ch. NR 708 or upon review of a remedial action plan in accordance with s. NR 722.15 (2) (e). Responsible parties are encouraged to contact the department project manager with questions about tailoring the notification for site-specific circumstances.

(2m) NOTIFICATION CONTENTS. Written notifications shall include any of the following contents that are applicable to a specific property:

(a) Responsible party and any selected representative's name, address, and phone number.

(b) Site name, source property address, and department database tracking number.

(c) Department contact person name and phone number.

(d) A list and map of residual contaminant types and locations.

(e) A list, description, and map of continuing obligations.

(f) A monitoring well location map.

(g) A site location map.

(h) Maps and tables that show the extent of the known contamination.

(i) An operation and maintenance plan for any engineering control or any engineered system.

(j) A plain language summary of the contamination, source, and any health and environmental impacts.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

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 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 applicable continuing obligations on the affected properties or rights-of-way. ~~The closure-related paragraphs language 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.

(1m) DEPARTMENT DIRECTION ON TIMING AND ADDITIONAL STEPS. The department may require notifications under this chapter to be completed within a specified timeframe with a copy provided to the department, and may require additional steps to ensure adequate notification occurs.

(2) NOTIFICATION METHOD. Unless otherwise directed by the department, notifications shall be sent via certified mail, return receipt requested, or priority mail with signature confirmation. If the notifications are sent via priority mail with signature confirmation, the responsible party may use the signature waiver option if the responsible party has reason to believe that the owner of the property or other applicable party may refuse to sign for the notification.

Note: The department will not conduct a closure review until at least 30 days after the date on which the notification was received, in accordance with s. NR 726.13. Parties receiving the notification may notify the department within the 30 days to request additional time to finalize an agreement on continuing obligations, if needed.

(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, 4802 Sheboygan Ave. Room 451, PO Box 7965, 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).

(4) FACTSHEETS. (a) *Groundwater.* A department fact sheet that describes the use of natural attenuation as a final remedy, shall be enclosed with all notifications that are sent to parties listed under s. NR 725.05 (1) with ch. NR 140 groundwater standard exceedances, where natural attenuation is to be used as a final remedy.

(b) *Liability and responsibilities of property owners.* A department fact sheet that describes the responsibilities and limits of liability of a property owner under ss. 292.12 and 292.13, Stats., shall be enclosed with all notifications that are sent to owners of properties, sites or facilities meeting one or more of the conditions of s. NR 725.05 (2), except for any property owned by the responsible party.

Note: Copies of department fact sheets may be obtained by accessing the following web site: <http://dnr.wi.gov/topic/Brownfields/Pubs.html> or 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. The referenced fact sheets are RR 671 — “What Landowners Should Know: Information About Using Natural Attenuation To Clean Up Contaminated Groundwater”, RR 589 — “When Contamination Crosses a Property Line — Rights and Responsibilities of Property Owners”, and RR 892 — “Vapor Intrusion; what to expect if vapor intrusion from soil and groundwater contamination exists on my property.”

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 725.09 Situations where additional information is required; requirements.

(1) For properties at which continuing obligations apply, responsible parties shall provide information to owners and occupants regarding the purpose of continuing obligations, how the continuing obligations work, and the need for any long term operation, monitoring, and maintenance.

(2) For properties at which vapor mitigation systems and point of entry treatment systems apply, responsible parties shall do all of the following:

(a) Provide immediate notification to owners, occupants, and the department when any condition or circumstance impacting the ability of the system to operate as designed has the potential to cause acute health impacts.

(b) Notify local health officials if any condition or circumstance impacting the ability of the system to operate as designed will cause or threatens to cause acute or chronic human health impacts.

(3) For sites and facilities involving schools, daycares, and other land uses for which occupants and building users that are children may be affected, responsible parties shall provide notification to parents and legal guardians in cooperation with the school, business, daycare, or other institution.

Chapter NR 726

CASE CLOSURE

NR 726.01	Purpose.	NR 726.09	Closure documentation requirements.
NR 726.02	Applicability.	NR 726.11	Department database documentation requirements.
NR 726.03	Definitions.	NR 726.13	Authority and approvals for case closure.
NR 726.05	General requirements for case closure.	NR 726.15	Closure letters and continuing obligations.
NR 726.07	Department database requirements.		

Note: Chapter NR 726 as it existed on April 30, 1995 was repealed and a new chapter NR 726 was created effective May 1, 1995. Chapter NR 726 was repealed and recreated, Register October 2013 No. 694, eff. 11-1-13.

NR 726.01 Purpose. The purpose of this chapter is to specify the minimum requirements and conditions that shall be met before the department may determine that a case related to a discharge of hazardous substances or environmental pollution at a specific site or facility may be closed. This chapter is adopted pursuant to ss. 227.11 (2), 287.03, and 289.06, Stats., and ch. 292, Stats.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 726.02 Applicability. (1) This chapter applies to the closure of all cases where a response action, other than an immediate action, is taken at a site, facility or portion of a site or facility that is subject to regulation under ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department, except that this chapter does not apply where the department determines under ch. NR 708 that no further action is necessary.

(2) In addition to being applicable to sites or facilities specified in sub. (1), this chapter applies to the proposed closure of all of the following:

(a) Solid waste facilities where remedial action is required by the department pursuant to ch. NR 508.

(b) Sites or facilities where remedial action has been taken by a person who is seeking a liability exemption under s. 292.15, Stats.

(3) The department may exercise enforcement discretion on a case-by-case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where there are overlapping restrictions or requirements, the more restrictive requirements shall control. The department shall, after receipt of a request and the appropriate fee under ch. NR 749 from the responsible parties, provide a letter that indicates which regulatory program or programs the department considers to be applicable to a site or facility.

Note: Sites, facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., may also be subject to regulation under other statutes, including the solid waste statutes in ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to those statutes. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 726.03 Definitions. The definitions in s. NR 700.03 apply to this chapter.

Note: "Agency with administrative authority" or "agency" is used in several sections of ch. NR 726 to distinguish between the actions for which the department is responsible, in contrast to those actions where the Department of Agriculture, Trade and Consumer Protection (DATCP) has authority to review and approve closure requests, ensure that comment periods prior to closure approvals are followed, and to review information on the department database regarding compliance with conditions of closure.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 726.05 General requirements for case closure.

(1) COMPLIANCE. The responsible party or other person requesting closure shall ensure compliance with all applicable federal, state, and local public health and environmental laws, including chs. NR 140, 141, and 700 to 754, as applicable, prior to requesting case closure.

(2) NOTIFICATION. Where written notification is required under ch. NR 725, the notification requirements shall be satisfied prior to submitting a request for case closure to the agency. When a site-specific condition of closure is required for a site or facility under s. NR 726.13 (1) (c), notification shall be in accordance with the requirements of s. NR 725.07.

(3) FEES. (a) For sites or facilities where the department has administrative authority to oversee the remediation of the site, the case closure fee and, if entry on the department database is required under s. NR 726.07, the fee or fees listed in ch. NR 749 for adding a site to the department database, shall be submitted to the department with each case closure request.

Note: Under s. 292.12 (3) (b), Stats., the department has authority to charge a fee for placement on a department database.

(b) ~~[For sites or facilities contaminated with petroleum products discharged from a petroleum storage tank for which the department of safety and professional services has administrative authority under s. 101.144, Stats., and]~~ Sites or facilities for which department of agriculture, trade and consumer protection has administrative authority under s. 94.73, Stats., that are required ~~by~~ under s. NR 726.07 to be entered onto the department database, the fee or fees listed ~~in~~ under ch. NR 749 for adding a site to the department database shall be submitted to the department before a case closure request is submitted to the appropriate agency. For these sites or facilities, a case closure request may not be considered complete until proof of payment of the required fees has been entered onto the department's bureau for remediation and redevelopment tracking system, which is available on the department's internet site.

Note: The department's bureau for remediation and redevelopment tracking system can be found on the internet at <http://dnr.wi.gov/topic/Brownfields/rasm.html>.

Note: ~~The language in brackets no longer applies as a result of the repeal of s. 101.144, Stats., by 2013 Wis. Act 20. This provision is subject to future rulemaking.~~

(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."

(5) COMPLETENESS. A case closure request shall be complete and meet the documentation requirements of ss. NR 726.09 and 726.11 if applicable.

Note: Incomplete closure requests may be denied. The review fee may be applied to review of the site investigation for grossly incomplete closure requests, on a case-by-case basis. A closure review fee would be required when a complete closure request is then submitted.

(6) CRITERIA FOR CLOSURE FOR SITES OR FACILITIES WITH GROUNDWATER CONTAMINATION. For sites or facilities with groundwater contamination that attains or exceeds ch. NR 140 enforcement standards at the time that case closure is requested, including sites or facilities contaminated with petroleum products discharged from a petroleum storage tank that are eligible for closure under ch. NR 726, the responsible party or other person requesting closure shall submit a case closure request to the agency for the site that documents that all of the following criteria are satisfied, if applicable:

(a) Adequate source control measures have been taken which include all of the following:

1. Whether regulated or registered under ch. ATP 93 or not, all existing underground storage tanks have been removed, permanently closed or upgraded to prevent new discharges of hazardous substances to the groundwater that would violate ch. NR 140. The same requirement applies to all new and replacement underground storage tanks not regulated under ch. ATP 93.

Note: The intent of this requirement is to ensure that source control measures are taken which prevent new or continuing releases, regardless of whether or not the tank is regulated under ch. ATP 93.

2. All new and replacement underground storage tanks regulated under ch. ATP 93 have been constructed and are being monitored in accordance with ch. ATP 93.

3. All other existing tanks, pipes, barrels or other containers which may discharge a hazardous substance have been removed, contained or controlled to prevent, to the maximum extent practicable, new discharges of hazardous substances to the groundwater that would violate ch. NR 140.

4. Where applicable, immediate and interim actions have been taken in accordance with ch. NR 708 to protect public health, safety, or welfare or the environment.

5. Free product has been removed in accordance with the criteria in s. NR 708.13.

6. The concentration and mass of a substance and its breakdown products in groundwater have been reduced due to naturally occurring physical, chemical and biological processes as necessary to adequately protect public health and the environment, and prevent groundwater contamination from migrating beyond the boundaries of the property or properties which are required to be entered onto the department database.

(b) Natural attenuation will bring the groundwater into compliance with ch. NR 140 groundwater quality standards within a reasonable period of time, considering the criteria in s. NR 722.07.

(c) The groundwater plume margin is stable or receding, and after case closure, groundwater contamination attaining or exceeding ch. NR 140 preventive action limits will not migrate beyond the boundaries of any property that falls into either one of the following categories:

1. Properties for which a preventive action limit exemption has been granted.

2. Properties that have been identified as having existing groundwater contamination that attains or exceeds ch. NR 140 enforcement standards and that will be included on the department database.

(d) There is no existing or anticipated threat to public health, safety, or welfare or the environment.

(e) Except for ch. NR 140, all applicable public health and environmental laws, including chs. NR 141 and 700 to 754, have been complied with.

(7) GENERAL CLOSURE CRITERIA. The following shall be required for case closure at all sites or facilities:

(a) All monitoring wells and boreholes installed during any response action taken for the site or facility shall be abandoned and documented as abandoned in accordance with s. NR 141.25, except for specific wells that the agency approves of retaining until sampling is no longer required.

(b) For sites or facilities where waste or contaminated media was generated during the response action and was stored or treated on-site, all the waste or contaminated media shall be handled and disposed of in accordance with applicable state and federal laws before a case closure request is submitted or approved.

(c) Groundwater samples used to determine compliance with ch. NR 140 shall be taken from monitoring wells constructed in accordance with ch. NR 141. The agency may approve an alternative monitoring program designed to show whether groundwater quality standards have been met.

(8) CRITERIA FOR CLOSURE FOR SITES OR FACILITIES WITH VAPOR CONTAMINATION. A site or facility is not eligible for closure until the following criteria have been met:

(a) The vapor exposure pathway has been investigated in accordance with s. NR 716.11 (5) (g); and

(b) Where vapors were present above the vapor risk screening level:

1. A remedial action has been conducted and reduced the mass and concentration of volatile compounds to the extent practicable; and

Note: Vapor mitigation systems are not considered remedial actions, as they do not reduce the mass or concentrations of the contaminants. Vapor mitigation systems are used to interrupt the vapor migration pathway.

2. The vapor exposure pathway has been interrupted or mitigated.

(9) OTHER. Any other condition for case closure that is necessary to protect public health, safety, or welfare or the environment may be required.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13; corrections in (6) (a) 1., 2. made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 726.07 Department database requirements. (1)

All sites or facilities meeting any of the criteria in s. NR 725.05 (2) or 726.13 (1) (c), upon approval of the closure request under ch. NR 726, shall be entered onto the department database. All properties within or partially within the contaminated site or facility boundaries, including all public street and highway rights-of-way and railroad rights-of-way, shall be included.

(2) The site or facility closure approval letter, and the information required under s. NR 726.11 shall be associated with the site or facility record in the department database.

Note: A continuing obligation can be imposed within a general liability clarification letter for a local governmental unit directed to take an action under s. NR 708.17, in an interim action approval under chs. NR 708 or ch. NR 724, a remedial action plan approval under s. NR 722.15 chs. NR 722 or NR 724, or in a case closure approval under ch. NR 726.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

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 requirements and criteria in under s. NR 726.05 (1) to (8) are satisfied. One paper copy and one 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 The 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 and submitted electronically through the submittal portal. Guidance on electronic submittals may be found by visiting dnr.wi.gov and searching "RR program submittal portal" in the search bar.~~

~~**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>.~~

(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 the case closure request, in the format that is specified in this subsection, and in the order that is specified in the form.

(a) 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) 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.

(c) 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) For sites or facilities where soil excavation or active soil remediation occurred:

1. A table of soil analytical results with collection dates identified. Soil analytical data tables shall clearly indicate depth of sample, soil type and whether the sample represents pre-remedial or post-remedial conditions. At sites or facilities where soil excavation 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. 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) 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) 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.

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

Note: This requirement is meant to cover well abandonment and any other minor condition identified in a conditional 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>.

(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.

(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.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 726.11 Department database documentation requirements. (1) GENERAL REQUIREMENTS.

Responsible parties or other persons requesting closure for any site or facility meeting the criteria in s. NR 725.05 (2) or as required under s. NR 726.13 (1) (c), shall submit the applicable information in the case closure request. The information shall be in the order specified in the closure request form.

(a) For sites or facilities meeting the criteria of s. NR 726.07 (1), the information required in subs. (2) to (7) shall be submitted, as applicable.

(b) Information shall be submitted in accordance with s. NR 700.11 (3g), unless otherwise directed by the department. Providing illegible information may result in a submittal being considered incomplete until corrected unless otherwise directed by the department.

Note: Under s. NR 700.11 (3g), "one paper copy and one electronic copy of each plan or report shall be submitted to the department, unless otherwise directed

by the department. The electronic copy shall be submitted on optical disk media and may not be submitted as electronic mail attachments unless specifically approved in advance by the department. Electronic copy files shall have a minimum resolution of 300 dots per inch, and may not be locked or password protected. The department may request that the electronic copy of sampling results be submitted in a format that can be managed in software. An electronic copy of certain types of voluminous attachments or appendices may be substituted for the paper copy, if specifically approved in advance by the department. All documents shall be digital format versions rather than scanned versions except documents that are only available as scanned versions. Deeds and legal descriptions may be scanned versions. All information submitted shall be legible."

(2) MAINTENANCE PLANS. Responsible parties or other persons requesting closure shall submit a copy of a maintenance plan for any condition listed in s. NR 725.05 (2) (d) to (L) or 726.13 (1) (c), as applicable, or as otherwise required by the department. The maintenance plan shall include the following information:

(a) A location map which shows the location and extent of the structure or feature to be maintained, in relation to other structures or features on the site. The map shall also include the extent and type of residual contamination, and include property boundaries.

(b) A brief description of the type, depth and location of residual contamination.

(c) A description of the maintenance actions required for maximizing effectiveness of the engineered control, feature, or other action for which maintenance is required.

(d) An inspection log, to be maintained on site, or at a location specified in the maintenance plan or approval letter.

(e) A contact name, address, and phone number of the individual or facility who will be conducting the maintenance.

Note: The closure approval letter will specify whether the inspection log is to be submitted to the department and the frequency of submittal, or simply maintained on site or at the location identified in the maintenance plan. The inspection log is reviewed by the department during audits conducted of sites with continuing obligations.

(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, and the date on which it was taken.

(3m) LEGALLY ENFORCEABLE AGREEMENT FOR CONTINUING OBLIGATIONS AT SITES OR FACILITIES. The responsible party may provide to the department a copy of any legally enforceable agreements entered into under s. 292.12 (5) or (5m), Stats., for inclusion on the department's database.

Note: Under s. 292.12 (5) (c) and (5m) (am), Stats., if another person has entered into and is complying with a legally enforceable agreement to comply with continuing obligations that are applicable to the property and the agreement is included in the department database, the person initially responsible under s. 292.12, Stats., for continuing obligations is not required to comply with the requirements, limitations, or conditions included in that agreement.

(4) DEED AND PARCEL INFORMATION. Responsible parties or other persons requesting closure shall submit all of the following items, for each property within or partially within the contaminated site boundaries other than public street or highway rights-of-way or railroad rights-of-way:

(a) A copy of the most recent deed which includes the legal description of each property, except that, in situations where a buyer has purchased property under a land contract and has not yet received a deed, a copy of the land contract which includes the legal description shall be submitted.

Note: Copies of deeds, or other documents with legal descriptions, are not required to be submitted for contaminated public street or highway rights-of-way or railroad rights-of-way. Information on residual groundwater or soil contamination that has migrated onto a right-of-way will be found in the documents that are submitted as part of the case closure request for the source property. It is only in the situation where the source of the contamination is in the right-of-way, that a right-of-way will be listed on the department database as a separate property. In those situations, the maps that are required to be submitted, as an attachment to the case closure request for the site, will show where contaminated groundwater or soil samples were collected and will provide points of reference for locating residual contamination in the right-of-way.

(b) A copy of the certified survey map or the relevant portion of the recorded plat map for those properties where the legal description in the most recent deed or land contract refers to a certified survey map or a recorded plat map. In cases where the certified survey map or recorded plat map are not legible or are unavailable, a copy of a parcel map from a county land information office may be substituted. A copy of a parcel map from a county land information office shall be legible, and the parcels identified in the legal description shall be clearly identified and labeled with the applicable parcel identification number.

(c) A statement signed by the responsible party or other person requesting closure affirming that he or she believes that legal descriptions for all of the properties within or partially within the contaminated site's or facility's boundaries where inclusion on a department database is required under s. NR 726.07, at the time that case closure is requested, other than public street or highway rights-of-way or railroad rights-of-way, have been submitted to the agency as part of a department database attachment to the case closure request.

(d) A list of addresses of all properties affected by residual contamination or a continuing obligation.

Note: There is a section in the closure request form on which this information is to be entered.

(e) The parcel identification number for each property.

(f) Geographic position data for each property in compliance with the requirements of s. NR 716.15 (5) (d), unless the agency has directed that the responsible party or other person requesting closure does not need to provide geographic position data for a specific site.

Note: Geographic position data for properties can be found by using the department database that is available on the internet at <http://dnr.wi.gov/topic/Brownfields/rms.html>.

(5) MAPS AND CROSS SECTIONS. All the following information shall be included in a department database 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.

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. 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, isoconcentrations for all groundwater contamination attaining or exceeding ch. NR 140 preventive action limits that remains when case closure is requested, 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.

(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.

(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.

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.

(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, 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 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.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 726.13 Authority and approvals for case closure. (1) CLOSURE APPROVAL. (a) The agency may grant case closure under this section, if all the following conditions are met:

1. The fees required by ch. NR 749 have been paid to the department.

2. It has been documented, in the case closure request that is submitted to the agency in compliance with the requirements of s. NR 726.09, that all applicable public health and environmental laws, including chs. NR 700 to 754, have been complied with, or where ch. NR 140 enforcement standards are the only standards that are attained or exceeded, that the criteria in s. NR 726.05 (6) are satisfied.

3. A complete case closure request is submitted to the agency in accordance with ch. NR 726.

(b) The agency may not close a case under this chapter if, at any time in the future, the remaining level of contamination is likely to do any of the following:

1. Pose a threat to public health, safety, or welfare or the environment.

2. Cause a violation of a ch. NR 140 groundwater quality enforcement standard 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.

3. Cause a violation of surface water quality standards in chs. NR 102 to 106.

4. Cause a violation of air quality standards contained in chs. NR 400 to 499.

5. 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."

(c) The agency may require any other condition for case closure that is necessary to protect public health, safety, or welfare or the environment. The agency may require a site-specific condition of closure, and notification of any parties affected by that condition, including situations where contamination remains in media other than soil, groundwater, or vapors, or exposure or migration pathways are not otherwise addressed, that make a continuing obligation necessary to adequately protect human health, safety, or welfare or the environment.

(d) The agency may not conduct a final closure review until all the following criteria are met:

1. Documentation has been received that all required notifications under ch. NR 725 have been provided.

2. At least 30 days has elapsed since the date of receipt of the notification required under s. NR 725.05 or 726.13 (1) (c), unless all of the affected property owners waive their right to comment within 30 days on the proposed case closure and copies of the waivers are submitted to the agency.

(e) The agency may extend the 30 day period upon request by any party receiving a notification.

Note: In this chapter, the "agency" refers to the "agency with administrative authority," which is either DNR or DATCP. "Agency" is specified in subsection (1) for actions involving granting closure approval, with or without conditions, and for ensuring comment time periods between notification and closure approval. Subsections (2) and (3) describe DNR responsibilities.

(2) DEPARTMENT REVIEW RESPONSES. (a) Within 60 days after receipt of a complete request for case closure under s. NR 726.09, the department shall either determine whether the case qualifies for closure in accordance with par. (b) or acknowledge in writing the request for case closure has been received, and provide an estimated date by which the department intends to determine whether the case can be closed.

(b) Following receipt of a request for case closure under this section, the department shall review the information provided under s. NR 726.09 to determine whether the applicable public health and environmental laws, including chs. NR 700 to 754 where applicable, have been complied with and whether any further threat to public health, safety, or welfare or the environment exists at the site or facility. Based on this review, the department shall approve the case closure, or conclude that additional response actions, such as additional remedial action or long-term monitoring, are needed at the site or facility, or conclude that there is not sufficient information to allow the department to determine whether the applicable public health and environmental laws have been complied with.

(c) If the department approves the request for case closure, the department shall mail written notice of the closure approval to the responsible parties, other interested persons who have requested closure of the case, and any person who has requested that information under s. NR 714.05 (5).

(d) If the department determines that the applicable public health and environmental laws have not been complied with, the

department shall notify the responsible parties, other interested persons who have requested closure of the case, and any person who has requested that information under s. NR 714.05 (5). The notification shall indicate what conditions must be met in order for the case to receive further consideration by the department for closure.

Note: In cases where minimal information or changes are needed, this notification is most often provided by phone or email.

(e) If the department determines that there is not sufficient information to allow the department to determine whether the applicable public health and environmental laws have been complied with, the department shall mail written notice to the responsible parties, other interested persons who have requested closure of the case, and any person who has requested that information under s. NR 714.05 (5). The notice shall indicate what additional information the department needs in order to determine whether the case can be closed.

(f) The department shall also mail written notice of the department's response to a request for case closure to the owners of any property required to receive notification under s. NR 725.05 or 726.13 (1) (c), in addition to those parties identified under par. (c), and (d) of this subsection.

(g) Closure letters shall be associated with the site or facility record in the department database.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13; correction in (1) (b) 2. made under s. 13.92 (4) (b) 7., Stats., Register November 2013 No. 695.

NR 726.15 Closure letters and continuing obligations. **(1)** For sites or facilities meeting the criteria of s. NR 725.05 (2) or 726.13 (1) (c), the closure letter shall include the following:

(a) A statement that the site will be included in the department database, and that if the property owner intends to construct or reconstruct a well, prior department approval is required, in accordance with s. NR 812.09 (4) (w).

(b) A requirement that the property owner shall inform any purchaser of the property about the continuing obligations identified in the case closure letter that apply to the property. ~~The case closure letter may also shall require the property owner to notify affected occupants of the need for specific continuing obligations that interference with the continuing obligations is prohibited.~~

(c) For conditions of closure that restrict site conditions, occupancy or property use from what is conditioned or identified in the final closure letter, a requirement that the property owner at the time that the condition changes shall notify the agency of the change in site condition, occupancy or land use, so that the agency can determine if further actions are necessary to maintain protection of public health, safety, or welfare or the environment.

(d) For conditions of closure that require maintenance, a requirement that the property owner operate and maintain the applicable system, cover or containment system in accordance with the operation and maintenance plan developed under ch. NR 724. The closure letter shall also include conditions regarding inspections, documentation, availability, and submittal of an inspection log, at a frequency determined by the agency.

(2) For specific continuing obligations, the closure letters shall contain the following language provided under s. NR 727.15 (2).

~~(a) Residual groundwater contamination. If there is residual groundwater contamination at the time of case closure, the final~~

closure letter shall include a description of the extent of groundwater contamination.

(b) ~~Residual soil contamination.~~ If there is residual soil contamination at the time of case closure, the final closure letter shall include a description of the extent of soil contamination, and shall state that any soil that is excavated in the future from an area that had residual soil contamination at the time of case closure shall be sampled, analyzed, handled, and disposed of as a solid waste in compliance with applicable state and federal laws.

(c) ~~Monitoring well abandonment.~~ 1. Where there is a monitoring well that has not been abandoned as required under ch. NR 141 at the time of case closure, the closure letter shall include a description of which wells still need to be abandoned, the surveyed location, and state that the property owner at the time the well is located shall properly abandon the well in accordance with the requirements of ch. NR 141.

2. Where either a request for retaining a monitoring well for continued monitoring has been approved, or continued monitoring is required by an agency with administrative authority, the closure letter shall also require the property owner to verify the integrity of the well at least annually until use of the well is discontinued and the well is properly abandoned. The closure letter shall require that an inspection log be maintained on-site, unless otherwise directed by the agency, and require that the responsible party or property owner make the inspection log available for review by agency staff upon request.

3. Where responsibility for continued monitoring of a well is being transferred to another responsible party, the closure letter shall also require that the responsible party or property owner not abandon the specified well at that time.

Note: Typically, when responsibility for a monitoring well is shifted to another responsible party, that party also becomes responsible for well abandonment in the future.

(d) ~~Building, cover or containment structure for protection of groundwater.~~ For sites or facilities where there is residual soil contamination beneath a building or a cover, such as concrete or asphalt pavement, a soil cover, or composite cover, or within an engineered containment structure, that exceeds residual contaminant levels based on protection of groundwater as determined under ch. NR 720, which would pose a threat to groundwater if the building, cover, or containment structure were removed, the closure letter shall include a description of the residual contamination and the location of the building, cover or containment structure, and shall require the property owner to take any steps necessary to ensure that the building, cover, or containment structure will function as intended, to protect the groundwater, as required by the applicable performance standard. The closure letter shall also require the property owner to maintain and repair or shall require the property owner to notify the agency prior to replacing the building, cover, or containment structure with a structure of similar permeability or with a cover that is protective of the new use until such time as further investigation demonstrates that the concentration of contaminants no longer exceeds residual contaminant levels that protect the groundwater, as determined under ch. NR 720.

(e) ~~Building, soil cover, cover or containment structure for prevention of direct contact with soils.~~ For sites or facilities where a building, or an engineering control, such as a soil cover, cover, or engineered containment structure is required to be maintained in order to prevent direct contact with

contaminated soil within 4 feet of the ground surface that exceeds residual contaminant levels as determined under ch. NR 720, the closure letter shall include conditions which require the property owner to ensure that the building, soil cover, or cover such as concrete or asphalt pavement, or a composite cover, or engineered containment structure will be repaired and maintained until it is no longer needed. The closure letter shall include a description of the residual contamination and the location of the building, soil cover, cover, or engineered containment structure, and shall restrict the use of the land where the building, soil cover, cover, or engineered containment structure is located to ensure that the building, soil cover, or cover, will function as intended, to prevent direct contact, as required by the applicable performance standard. The closure letter shall also require the property owner to maintain and repair or shall require the property owner to notify the agency prior to replacing the building, soil cover, cover, or engineered containment structure with a structure of similar permeability or with a cover that is protective of the new use until such time as further investigation demonstrates that the concentration of contaminants no longer exceeds residual contaminant levels that protect human health from direct contact, as determined under ch. NR 720.

(f) ~~Structural impediment.~~ For sites or facilities where a building or other structural impediment at a site or facility has prevented the completion of an investigation to determine the degree and extent of residual contamination, or the completion of a remedial action, the closure letter shall include a description of the general location of the residual contamination and shall require the property owner to notify the agency and then conduct an investigation of the degree and extent of contamination at such time that the removal of structural impediments makes the formerly inaccessible contamination accessible.

(g) ~~Industrial residual contaminant levels.~~ For sites or facilities where industrial residual contaminant levels under ch. NR 720 have been applied for closure, the closure letter shall include a condition that restricts the use of that property to an industrial land use until non industrial soil cleanup standards are achieved in the future through natural attenuation or additional remediation.

(h) ~~Vapor mitigation system for sites where sub-slab levels attain or exceed the vapor risk screening level.~~ The agency may require installation and operation of a vapor mitigation system for sites or facilities where sub-slab levels attain or exceed the vapor risk screening level. The closure letter shall include conditions which require the property owner to maintain the system until it is no longer needed. The closure letter may include conditions which require maintenance of certain structural features of existing buildings. The closure letter shall include conditions which require the immediate repair and replacement of system components that fail.

(i) ~~Vapor mitigation system where compounds of concern are in use.~~ The agency may require installation and operation of a vapor mitigation system for sites or facilities where the site is using the compounds of concern in their daily operations, in accordance with par. (h). The agency may require restrictions on the use or occupancy of the property to ensure that closure will be protective. The closure letter shall require notification of the agency and evaluation of the vapor intrusion pathway prior to changing use to a residential setting. The closure letter shall include a description of the type and location of the residual contamination.

~~Note: This would include sites or facilities where closure was based on worker exposure conditions, which then change to a different use, with different exposure assumptions.~~

~~(j) *Vapor mitigation system for sites where vapor intrusion is of concern due to hydrogeologic conditions.* The agency may require installation and operation of a vapor mitigation system and any other systems necessary for the proper operation of the vapor mitigation system, for sites or facilities which present a vapor risk, based on site specific hydrogeologic circumstances. The closure letter shall identify the specific hydrogeologic conditions and a description of any other system necessary for the proper operation of the vapor mitigation system.~~

~~Note: This may include sites where contaminated groundwater enters the structure, or sites where the moisture content of soils below the slab is high or sub-slab samples are difficult to obtain, but where other conditions indicate the potential for vapor intrusion.~~

~~(k) *Site specific exposure conditions.* The agency may restrict the use or occupancy of the property for sites or facilities based on specific exposure assumptions for vapor intrusion, to ensure that closure will be protective. The closure letter shall include the specific exposure assumptions on which the closure decision was based.~~

~~Note: This may include non-residential settings; sites or facilities where certain commercial or industrial exposures were applied at the time of closure, which later change to a residential setting, such as single or multiple family residences, or educational, child, or senior care facilities, where a residential exposure would apply.~~

~~(l) *Potential for future exposure to vapors.* For sites or facilities where residual soil or groundwater contamination from volatile compounds exists, but where no building is present, the agency may require protective measures to eliminate or control vapor intrusion into a future building. The closure letter may include conditions requiring that the agency be notified prior to any building construction, and a requirement that appropriate vapor control technologies be used in the construction of any building, unless an assessment is conducted which shows that the residual contaminant levels are protective of the new use.~~

~~Note: The potential for vapor migration into a future building is dependant on the type of building and the planned use of the building. Building control technologies may include but are not limited to passive barriers, passive venting, sub-slab depressurization, sub-membrane depressurization, sub-slab pressurization, building pressurization, and indoor air treatment.~~

~~(m) *Site specific conditions.* For sites or facilities where closure is requested, and where the agency determines that there are site specific circumstances that warrant site specific closure conditions, the closure letter shall specify the exposure assumptions, use or occupancy restrictions, and necessary maintenance and notification of the agency if conditions change such that the exposure assumptions used no longer apply to the site, facility or property. Site specific circumstances may include but are not limited to situations where contamination remains in media other than soil, groundwater, or vapors; or exposure and migration pathways not otherwise addressed make a continuing obligation necessary to adequately protect human health, safety, or welfare or the environment. If there is contamination remaining in media other than soil, groundwater, or vapor, the final closure letter shall also state that any sediments or other solids excavated in the future from an area that had residual contamination at the time of closure shall be sampled, analyzed, handled, and disposed of in compliance with applicable state and federal laws.~~

~~History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.~~

Chapter NR 727

CONTINUING OBLIGATIONS REQUIREMENTS AND REOPENING CLOSED CASES

NR 727.01	Purpose.	NR 727.07	Notification of the agency with administrative authority regarding continuing obligations.
NR 727.02	Applicability.	NR 727.09	Updating the department database or continuing obligations.
NR 727.03	Definitions.	NR 727.11	Fees.
NR 727.05	Continuing obligation responsibilities.	NR 727.13	Reopening closed cases.

NR 727.01 Purpose. The purpose of this chapter is to specify the minimum responsibilities of responsible parties and owners and occupants of properties with residual contamination, where continuing obligations have been imposed in a closure approval letter ~~or in a~~ remedial action plan approval, ~~or an interim action approval~~, or for local government units where continuing obligations have been imposed by the department under ch. NR 708; to specify the process for updating closure conditions, continuing obligations and information included in the department database; and to specify the criteria for reopening a closed case. This chapter is adopted pursuant to ss. 227.11 (2), 287.03, and 289.06, Stats., and ch. 292, Stats.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 727.02 Applicability. This chapter applies to the responsibilities for continuing obligations and related actions at sites or facilities that are subject to regulation under ch. 292, Stats., ~~and at solid waste facilities where remedial action is required by the department and hazardous waste facilities at which corrective action is required by the department under chs. 289 and 291, Stats.~~ This chapter applies to the responsibilities for continuing obligations and related actions at sites or facilities that are subject to regulation under chs. 289, 291, and 292, Stats., regardless of whether there is direct involvement or oversight by the department.

Note: Section 292.12, Stats., sets forth requirements and responsibilities for sites with residual contamination and continuing obligations. This section uses the term "agency with administrative authority", which is defined to mean "the department of agriculture, trade and consumer protection with respect to a site over which it has jurisdiction under s. 94.73 (2) or the department of natural resources with respect to a site over which it has jurisdiction under ch. 289, 291, or 292."

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 727.03 Definitions. The definitions in s. NR 700.03 apply to this chapter.

Note: "Agency with administrative authority" or "agency" is used in several sections of ch. NR 727 to distinguish between the actions for which the department is responsible, in contrast to those actions where the Department of Agriculture, Trade and Consumer Protection (DATCP) has authority to review and approve closure requests, and to review information on the department database regarding compliance with conditions of closure.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 727.05 Continuing obligation responsibilities.

(1) ~~A party or person who owns or occupies a property where at which a continuing obligation has been imposed under either s. NR 708.17 or 722.15 chs. NR 708, NR 722, NR 724 or ch. NR 726, a person responsible for certain continuing obligations under 292.12 (5m), Stats., or a person who has entered into a legally enforceable agreement recorded on the database, to comply with continuing obligations under s. 292.12 (5) or (5m),~~

~~Stats., shall, for any applicable continuing obligations except as stated under sub. (5), do all of the following:~~

~~(a) Comply with the requirements imposed by the agency, without regard to when the person obtained or occupied the property. This may include any continuing obligation necessary to ensure that conditions at the property, site or facility remain protective of public health, safety, and welfare and the environment.~~

~~**Note:** Ch. 292, Stats., allows for legally enforceable agreements (private contracts) between parties to address the continuing obligations imposed by an agency. Since the agency is not a party to these agreements, the property owner remains responsible for compliance with a continuing obligation if an issue arises.~~

~~(b) Perform the following actions in compliance with the conditions specified by the agency, as applicable:~~

~~1. Operate and maintain the response required.~~

~~2. Maintain an inspection log, and keep it on the premises or at the location specified in the maintenance plan until the continuing obligation has been satisfied or removed.~~

~~3. Submit the inspection log electronically, on a form provided by the department, to the agency at the frequency required.~~

~~4. Conduct long-term monitoring.~~

~~(b) Perform the following actions in compliance with the conditions specified by the agency, as applicable:~~

~~1. Operate, monitor, and maintain the response required.~~

~~2. Maintain an inspection log and keep it on the premises or at the location specified in the maintenance plan until the continuing obligation has been satisfied or removed.~~

~~3. Submit the inspection log electronically, on a form provided by the department, to the agency at the frequency required.~~

~~4. Conduct long-term monitoring.~~

~~5. Allow a responsible party that is responsible for continuing obligations under this section to have reasonable access to property for the purpose of complying with any requirements or responsibilities relating to the continuation obligations.~~

~~(c) Allow reasonable access to the agency for inspection of any required continuing obligations.~~

~~(d) Manage any residual contamination in accordance with applicable state and federal laws.~~

(2) For cases where a continuing obligation is required under either ~~s. NR 708.17 or 722.15~~, chs. NR 708, NR 722, NR 724, or ~~ch. NR 726~~, the property owner shall notify anyone purchasing the property of the responsibility to comply with the continuing obligation.

(3) For cases where occupants are responsible for maintenance of a continuing obligation under either ~~s. NR 708.17 or 722.15~~ chs. NR 708, NR 722, NR 724, or ~~ch. NR 726~~,

the property owner shall include the continuing obligation in the lease agreement.

(4) In order to maintain the off-site exemption under s. 292.13, Stats., the property owner, or occupant if applicable, shall avoid all of the following:

(a) Interference with response actions taken.

(b) Actions that may make the contamination worse or that would cause or worsen the discharge of a hazardous substance to the environment.

(5) Owners and occupants of properties with continuing obligations are not responsible for compliance with a continuing obligation if any of the following apply:

(a) Another person assumes responsibility for the continuing obligation under a legally enforceable agreement under s. 292.12 (5) (c), Stats., and the person is complying with the agreement, provided that this agreement meets requirements under s. NR 727.06 and is recorded on the department database;

(b) A responsible party is responsible for the continuing obligation under s. 292.12 (5m) (a), Stats.; or

(c) The owner is exempt from compliance with the continuing obligation under s. 292.12 (5m) (b), Stats.

(6) A responsible party retains responsibility for compliance with continuing obligations at both source properties and off-site properties unless any of the following apply:

(a) Another person assumes responsibility for the continuing obligation under a legally enforceable agreement under s. 292.12 (5m) (am), Stats., and the person is complying with the agreement, provided that this agreement meets requirements under s. NR 727.06 and is recorded on the department database.

Note: Agreements under s. 292.12 (5m) (am), Stats., pertain only to sites or facilities where a person required to take action under s. 292.11 (3), (4), or (7) (b), Stats., with respect to contaminated sediment takes action that includes the use of an engineering control.

(b) Another person assumes responsibility as a result of noncompliance with requirements under s. 292.13, Stats.

Note: Section 292.13, Stats., provides the conditions under which persons that possess or control property with a hazardous substance in groundwater or soil, including sediments, or in vapor emitted from the soil or groundwater may be exempt from ss. s. 292.11 (3), (4) and (7) (b) and (c), Stats.

(c) The agency otherwise directs in writing.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 727.06 Continuing obligations agreements. (1) CONTINUING OBLIGATIONS AGREEMENTS. (a) A person may submit an agreement to comply with continuing obligations under ss. 292.12 (5) (c) or (5m) (am), Stats., to the department, and the department may record the agreement in the database.

(b) An agreement submitted under par. (a) shall at a minimum include all of the following:

1. A description of the site or facility, and its location, including the department database activity or site name and identification number, physical address, and parcel identification numbers.

2. A listing of all the parties to the agreement.

3. Identification of the person transferring responsibility for continuing obligations and their contact information, including mailing address and telephone number.

4. Identification of the person accepting responsibility for continuing obligations and their contact information, including mailing address and telephone number, and identify their relationship to the property if any.

5. Identification and description of the continuing obligations, including operation, monitoring, and maintenance requirements, that are subject to the agreement.

6. Identify the party responsible for complying with each continuing obligation, including timelines for the transfer of responsibility.

7. Provisions for property ownership changes.

8. Provisions for notification to the department in the event of changes in ownership, including corporate transfers.

9. Statement or representation that compensation or consideration was received.

10. Provisions stating the agreement is governed by Wisconsin law.

11. Certification that the person accepting responsibility for continuing obligations will comply with continuing obligations.

12. Timeframe for when the agreement is in effect.

13. Date and signature of all parties to the agreement.

14. Notarization by notary public under Wisconsin law.

(c) The department may require the use of a form for the submission of a legally enforceable agreement on the department database and the department may decline to record an agreement until the information under par. (b) is provided.

(2) CONTINUING OBLIGATIONS AGREEMENTS; OWNERS AND OCCUPANTS. In addition to the requirements under (1), if a person submits an agreement for recording in the department database and the agreement includes the transfer of responsibilities to an owner or occupant for maintenance of any engineering control, engineered system, cover, cap, or other system or item under a continuing obligation, the responsible party shall provide, as part of the agreement, a maintenance plan for the site, with a plain-language description of any risks to human health that may occur if the any engineering control, engineered system, cover, cap, or other system or item under a continuing obligation is not maintained, fails to operate, underperforms, or otherwise fails to meet performance objectives.

NR 727.065 Continuing obligations for interim and remedial actions.

(1) CONDITIONS OF APPROVAL. The agency may require any other condition for an approval of an interim action or remedial action that is necessary to protect public health, safety, or welfare or the environment. The agency may require a site-specific condition of approval, and notification of any parties affected by that condition, including situations where contamination remains in media other than soil, groundwater, or vapors, or exposure or migration pathways are not otherwise addressed, that make a continuing obligation necessary to adequately protect human health, safety, or welfare or the environment.

(2) CONTINUING OBLIGATION MAINTENANCE PLAN. (a) A maintenance plan for any engineering control, engineered system, cover, cap, or other system or item that is the subject of a continuing obligation shall be submitted to the department. The maintenance plan shall include the following information:

1. A location map which shows the location and extent of the structure or feature to be maintained, in relation to other

structures or features on the site. The map shall also include the extent and type of existing contamination, and include property boundaries.

2. A brief description of the type, depth and location of contamination.

3. A description of the maintenance actions required for maximizing effectiveness of the engineered control, feature, or other action for which maintenance is required.

4. An inspection log, to be maintained on site, or at a location specified in the maintenance plan or approval letter.

5. A contact name, address, and phone number of the individual or facility who will be conducting the maintenance.

6. A plan for disposal of any wastes generated.

7. A plan for any anticipated repairs.

(b) Unless otherwise directed by the department, the maintenance plan shall specify whether the inspection log will be submitted to the department and the frequency of submittal, or maintained on site or at the location identified in the maintenance plan.

Note: The inspection log is reviewed by the department during audits conducted of sites with continuing obligations.

(3) CONTINUING OBLIGATION NOTIFICATIONS.

(a) Where written notification is required under ch. NR 725, the notification requirements shall be satisfied prior to submitting a plan or report to the agency that identifies conditions that warrant continuing obligation imposition.

(b) Responsible parties or other persons requesting approval for an interim or remedial action that will include a continuing obligation shall submit a copy of all the notifications required under ch. NR 725 with written proof of the date on which the written notifications were received.

(c) The department shall provide written notice of the department's response to a request for approval for an interim or remedial action that will include a continuing obligation to the owners of any property required to receive notification relating to continuing obligations under s. NR 725.05.

(d) Approval letters shall be associated with the site or facility record in the department database.

(4) CONTINUING OBLIGATIONS FOR INTERIM OR REMEDIAL ACTION. The department may impose a continuing obligation at a property following an interim or remedial action if there is an existing or anticipated threat to public health, safety, or welfare or the environment.

NR 727.07 Notification of the agency with administrative authority regarding continuing obligations. For situations where a continuing obligation has been imposed under either s. NR 708.17, 722.15, or 726.13 chs. NR 708, NR 724, NR 724, or NR 726, the property owner shall notify the agency with administrative authority in writing within 45 days prior to taking any of the following actions and receive the approval of the agency with administrative authority prior to proceeding with any of the following actions, to determine whether further action may be necessary to protect human health, safety, or welfare or the environment:

(1) Removal of a building, cover, including a soil cover, barrier, or engineered containment structure or a portion thereof.

(2) Removal of a structural impediment, including any structural impediment that prevented completion of the investigation or remediation.

(3) Change from industrial to non-industrial land use, including where soil standards applied at closure were based on industrial land use exposure assumptions.

(4) Change in use of a vapor mitigation system, including a passive or active vapor mitigation system.

(5) Change in use from non-residential setting to residential setting, including where vapor risk screening levels were based on non-residential setting exposure assumptions at closure.

Note: This may include sites or facilities where exposures applicable to non-residential settings, (i.e., commercial or industrial uses, or continued use of the compound of concern), changes to a residential setting (i.e. single or multiple family dwellings, or educational, child care and senior care facilities).

(6) Construction of a building over residual soil or groundwater contamination by volatile compounds, including where a building did not exist at closure, but where construction of a building without adequate vapor control may result in a completed exposure pathway.

(7) Site-specific conditions, including any other situation where the agency required notification, on a case-by-case basis, including changes in use or occupancy of a property.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 727.09 Updating the department database or continuing obligations. In order to evaluate any of the following situations, the agency may require that the person requesting a change submit information, as necessary:

(1) COMPLIANCE WITH CONTINUING OBLIGATIONS. The agency may require additional response actions be taken at sites or facilities closed with deed restrictions or where continuing obligations have been imposed under either s. NR 708.17, 722.15, or 726.13 chs. NR 708, NR 722, NR 724, or NR 726, in cases where compliance with the restriction, condition, or continuing obligation has not been maintained.

Note: The department conducts audits of cases where continuing obligations have been imposed. In some cases, these audits identify a lack of compliance with the continuing obligation imposed, and measures are required to return the site to compliance.

(2) UPDATING A GROUNDWATER USE RESTRICTION. For cases that have been closed conditioned upon the recording of a groundwater use restriction, the responsible party or property owner may, at any time after groundwater contaminant concentrations fall below ch. NR 140 preventive action limits, apply for unconditional case closure and may request that the agency issue an affidavit that can be recorded at the county register of deeds office to give notice that the previously recorded groundwater use restriction is no longer required. The responsible party may also apply for a preventive action limit exemption under s. NR 140.28 if concentrations fall below ch. NR 140 enforcement standards and the appropriate criteria under s. NR 140.28 are met. Once an exemption is granted under s. NR 140.28, the responsible party may request that the agency issue an affidavit that can be recorded at the county register of deeds office to give notice that an exemption has been granted under s. NR 140.28 and that the previously recorded groundwater use restriction is no longer required.

Note: Prior to November, 2001, cases with groundwater enforcement standard exceedances were closed with a deed restriction, called a groundwater use restriction. The groundwater use restriction required department review and approval of a water supply well constructed or reconstructed on an affected property. Since November, 2001, these sites have been closed by adding them to a department database. Chapter NR 812 contains the requirement for department review and approval of any well constructed or reconstructed on a property listed on the GIS Registry (department database). Responsible parties or property owners of sites or facilities or properties subsequently meeting groundwater enforcement standards may request to have the deed restriction updated and the site or property removed from the department database, or that the information on the database be modified.

(3) UPDATING A DEED RESTRICTION. For cases that have been closed with a deed restriction that has since been satisfied, the responsible party or property owner may, at any time after the conditions necessitating a deed restriction have been either eliminated or satisfied and the restriction is no longer needed, request that the agency issue a written determination that can be referenced in an affidavit, confirming this situation. ~~An affidavit can be then recorded.~~ Agency may record an affidavit at the county register of deeds office to give notice that some or all of the conditions, as applicable, in the previously recorded deed restriction are no longer required.

Note: Prior to June 3, 2006, cases meeting certain conditions were closed with a deed restriction in accordance with ch. NR 726. Since that time, the use of deed restrictions for closure have been replaced with conditions in a closure letter under ch. NR 726 or in a remedial action approval under ch. NR 722 continuing obligations for approvals under chs. NR 708, NR 722, NR 724, or NR 726.

~~**(4) REMOVAL FROM THE DEPARTMENT DATABASE.** For cases that have been included on the department database under s. NR 708.17, 722.15, or 726.13, the responsible party, property owner or other party may apply to the agency for removal of the site or facility or property, as applicable, from the department database. A site may not be removed from the database until all applicable standards have been met and all requirements imposed have been satisfied or nullified. A request may be submitted to the agency at any time after any of the following have been achieved:~~

~~(a) Groundwater contaminant concentrations are below ch. NR 140 enforcement standards.~~

~~(b) Soil contaminant concentrations are below ch. NR 720 soil standards.~~

~~(c) Other requirements or continuing obligations imposed have been satisfied or nullified.~~

(5) MODIFICATION OF THE DEPARTMENT DATABASE. For cases that have been included on the department database under s. NR 708.17, 722.15, or 726.13 chs. NR 708, NR 722, NR 724, or NR 726, the responsible party, property owner or other party may request that the department modify information on the department database at any time after any of the following have been achieved:

(a) Groundwater contaminant concentrations are below ch. NR 140 enforcement standards.

(b) Soil contaminant concentrations are below ch. NR 720 soil standards.

(c) Other requirements or continuing obligations imposed have been satisfied or nullified.

Note: Cases may be included on the department database for more than one reason. If one or more of the conditions have been satisfied or nullified, but one or more remain, the information on the database can be changed to reflect current conditions.

Note: Fees are required under ch. NR 749 for the removal or modification of information on the department database.

~~**(6) DEED NOTICES.** (a) Deed notices that are required for modification or removal of a site or facility or property from the department database, or for another agency decision, shall be drafted in compliance with all of the following requirements:~~

~~1. The document shall be drafted as an affidavit in the format required by s. 59.43 (2m), Stats.~~

~~2. The property's legal description shall be typed onto the form or a copy of the legal description shall be attached and incorporated by reference.~~

~~3. The document shall be signed by the property owner or owners, and their signatures shall be notarized.~~

~~(b) If a deed notice is required under this section, responsible parties shall record the deed notice within 90 days after the agency specifies that a deed notice is required.~~

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 727.10 Updating continuing obligations imposed during an interim or remedial action. (1)

CONTINUING OBLIGATION SUMMARY. (a) For continuing obligations imposed at interim or remedial action approval, a responsible party seeking to modify or remove continuing obligations may submit a continuing obligation summary to the agency at any time prior to submitting a case closure request.

(b) As part of the continuing obligation summary, the responsible party shall list each continuing obligation that applies at the site or facility, reference the respective approval letter imposing each continuing obligation, and confirm whether the property parcel and boundary information previously submitted for the property remains current.

(c) For each continuing obligation, the responsible party shall indicate whether the responsible party intends to propose modification or removal, and shall provide justification for any proposed modification or removal, including any decommissioning information required under NR 724.16 and NR 724.165.

Note: Sections NR 724.16 and 724.165 set forth requirements for decommissioning vapor mitigation systems and point of entry treatment systems, respectively.

(d) The responsible party shall submit the continuing obligation summary with a request for agency review and the fee under ch. NR 749.

(e) The agency may require use of a form supplied by the agency to submit the continuing obligation summary.

(2) AGENCY REVIEW. If a continuing obligation summary is submitted with a request for review, the agency may request additional information, require revisions, approve, conditionally approve or disapprove. The department shall provide to the responsible parties, in writing, the reasons for any disapproval and the department may establish a deadline for providing revisions.

NR 727.11 Fees. (1) REQUEST FOR REVIEW. A request for a review, a determination, or processing a change to the department database under this chapter may not be considered by the agency until proof of payment of the required fees has been received by the department's remediation and redevelopment program, in accordance with ch. NR 749.

(2) REVIEW FEE. For sites or facilities where the department has administrative authority to oversee the remediation of the site or facility, the fee listed in ch. NR 749 for review of a request to update a deed restriction, or to modify or remove a site or facility or property from the department database shall be submitted to the department with each request.

(3) DEPARTMENT DATABASE PROCESSING FEE. (a) For sites or facilities where the department has administrative authority to oversee the remediation of the site or facility, the fee listed in ch. NR 749 for processing the change to the department database shall be submitted to the department with each request.

(b) For sites or facilities where the department of agriculture, trade and consumer protection has administrative authority to oversee the remediation of the site or facility, the fee for processing the change to the department database shall be submitted to the department of natural resources with each request.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13; correction in (3) (a) made under s. 13.92 (4) (b) 6., Stats., October 2013 No. 694.

NR 727.12 Department database requirements; continuing obligations.

(1) GENERAL. All sites or facilities subject to the imposition of a continuing obligation, including all public street and highway rights-of-way and railroad rights-of-way, shall be entered onto the department database. All properties within or partially within the contaminated site or facility boundaries, including all public street and highway rights-of-way and railroad rights-of-way, shall be included.

(2) APPROVAL LETTER. The site or facility plan or report approval letter, and the information required under this section, shall be associated with the site or facility record in the department database.

(3) SUBMISSION. One electronic copy of documentation required under this section shall be submitted to the department, unless otherwise authorized by the department.

Note: Paper copies may be accepted with department authorization; however, electronic copies are strongly preferred. Electronic copies may be submitted through the online submittal portal at <https://dnr.wisconsin.gov/topic/Brownfields/Submittal.html>.

(4) DOCUMENTATION FOR CONTINUING OBLIGATIONS. Unless otherwise directed by the department, in order to provide information on the location and nature of any residual contamination at the site or facility where a continuing obligation will be imposed, the person who is requesting an approval for which a continuing obligation will be imposed shall submit all of the following information, that is applicable, as attachments to the request for approval, in the format that is specified by the department.

(a) Documentation showing that a ch. NR 716 site investigation has confirmed contamination is present; or a description of the interim and remedial actions planned or taken at the site or facility. Include information on nature and extent of areas where contaminated media exceeds applicable standards.

(b) Applicable maps and cross sections to document the conditions at the site and the actions taken.

(c) For sites or facilities where soil excavation or active soil remediation is planned or has occurred:

1. A table of soil analytical results with collection dates identified. Soil analytical data tables shall clearly indicate depth of sample, soil type and whether the sample represents pre-remedial or post-remedial conditions. At sites or facilities where soil excavation 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. A map that shows the locations of all soil samples collected.

Note: At a site or facility where soil excavation or active soil remediation occurred and a soil performance standard cover was the only action taken, the department will not consider the soil performance standard cover to be active soil remediation.

(d) For sites or facilities with sediment contamination, soil vapor contamination, or sub-slab vapors that may migrate into indoor air, sampling data demonstrating that the site conditions are protective of public health, safety, and welfare and the environment.

(e) Any applicable maintenance plan information under ch. NR 724 and this chapter.

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

(5) PHOTOGRAPHS. For sites or facilities where a continuing obligation will be imposed 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 the continuing obligation is imposed. Pertinent features shall be visible and discernable. Photographs shall be submitted with a title related to the site name and location, and the date on which it was taken.

(6) DEED AND PARCEL INFORMATION. Responsible parties or other persons requesting approval at a site or facility where a continuing obligation will be imposed shall submit all of the following items, for each property within or partially within the contaminated site boundaries other than public street or highway rights-of-way or railroad rights-of-way:

(a) A copy of the most recent deed which includes the legal description of each property, except that, in situations where a buyer has purchased property under a land contract and has not yet received a deed, a copy of the land contract which includes the legal description shall be submitted.

Note: Copies of deeds, or other documents with legal descriptions, are not required to be submitted for contaminated public street or highway rights-of-way or railroad rights-of-way. Information on residual groundwater or soil contamination that has migrated onto a right-of-way will be found in the documents that are submitted as part of the case closure request for the source property. It is only in the situation where the source of the contamination is in the right-of-way, that a right-of-way will be listed on the department database as a separate property. In those situations, the maps that are required to be submitted, as an attachment to the case closure request for the site, will show where contaminated groundwater or soil samples were collected and will provide points of reference for locating residual contamination in the right-of-way.

(b) A copy of the certified survey map or the relevant portion of the recorded plat map for those properties where the legal description in the most recent deed or land contract refers to a certified survey map or a recorded plat map. In cases where the certified survey map or recorded plat map are not legible or are unavailable, a copy of a parcel map from a county land information office may be substituted. A copy of a parcel map from a county land information office shall be legible, and the parcels identified in the legal description shall be clearly identified and labeled with the applicable parcel identification number.

(c) A statement signed by the responsible party or other person requesting approval affirming that legal descriptions for all of the properties within or partially within the boundaries of the contaminated site or facility for which inclusion on a department database is required under this section, at the time that approval is requested, other than public street or highway rights-of-way or railroad rights-of-way, have been submitted to the agency as part of a department database attachment to the request.

(d) A list of addresses of all properties affected by residual contamination or a continuing obligation.

(e) The parcel identification number for each property.

(f) Geographic position data for each property in compliance with the requirements of s. NR 716.15 (5) (d), unless the agency has directed that the responsible party or other person requesting closure does not need to provide geographic position data for a specific site.

Note: Geographic position data for properties can be found by using the department database that is available on the internet at <http://dnr.wi.gov/topic/Brownfields/rasm.html>.

(7) MAPS AND CROSS SECTIONS. All the following information shall be included in a department database attachment to the request for approval at a site or facility at which continuing obligations will be imposed:

(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 an approval 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.

2. A minimum of two geologic cross sections intersecting the contaminated area and showing the vertical extent of residual soil contamination that exceeds residual contaminant levels as determined under ch. NR 720, if cross sections were required as a part of the site investigation report. If there is groundwater contamination on the site that attains or exceeds any ch. NR 140 enforcement standard in addition to residual soil contamination, a minimum of two geologic cross sections intersecting the contaminated area 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, isoconcentrations for all groundwater contamination attaining or exceeding ch. NR 140 preventive action limits that remains when case closure is requested, 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.

(8) DATA SUMMARY TABLES. For information submitted for the department database for sites or facilities at which a continuing obligation will be imposed, 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 approval request:

(a) Soil. For sites or facilities where soil contamination exceeds residual contaminant levels as determined under ch. NR 720 at the time that the approval 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.

(b) Groundwater. For sites or facilities where groundwater attains or exceeds any ch. NR 140 enforcement standard at the time that the approval 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.

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.

(9) DOCUMENTATION FOR MONITORING WELLS. For sites or facilities at which a continuing obligation will be imposed and a monitoring well has not been abandoned under ch. NR 141 at the time of an approval, the following information shall be included in a department database attachment to the approval 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.

(c) The 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.

NR 727.13 Reopening closed cases. (1) The department may require additional response actions, including monitoring, for any case which has previously been closed by the department if information regarding site or facility conditions indicates that contamination on or from the site or facility poses a threat to public health, safety, or welfare or the environment.

(2) The department may require additional response actions if a property owner fails to comply with a condition of closure, a deed restriction, or with the certificate of completion issued pursuant to s. 292.15, Stats., or fails to maintain or comply with a continuing obligation.

(3) If additional response action is required for a previously closed case, the department:

(a) Shall indicate in writing to the responsible parties that additional response action is needed at the site or facility and provide the responsible parties with information regarding the nature of the problem and category of response action that is needed.

(b) May require the responsible parties to achieve compliance with the applicable public health and environmental laws, including chs. NR 700 to 754 where applicable, within a time period established by the department.

(4) The party who conducted the cleanup, or a person who owns the source property, or a person who owns an affected property, may request reopening of a closed case, or may conduct additional remedial actions.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 727.15 Approval letters and continuing obligations

(1) For sites or facilities at which an interim action or remedial action continuing obligation will be imposed, the approval letter shall include the following:

(a) A statement that the site will be included in the department database, and that if the property owner intends to construct or reconstruct a well, prior department approval is required, in accordance with s. NR 812.09 (4) (w).

(b) A requirement that the property owner shall inform any purchaser of the property about the continuing obligations identified in the closure letter that apply to the property. The closure letter may also require the property owner to notify affected occupants of the need for specific continuing obligations.

(c) For conditions of approval that restrict site conditions, occupancy or property use from what is conditioned or identified in the final approval or closure letter, a requirement that the property owner at the time that the condition changes shall notify the agency of the change in site condition, occupancy or land use, so that the agency can determine if further actions are necessary to maintain protection of public health, safety, or welfare or the environment.

(d) For conditions of approval that require maintenance, a requirement that the property owner operate, monitor, and maintain the applicable system, cover or containment system in accordance with the operation, monitoring, and maintenance plan developed under ch. NR 724. The approval letter shall also include conditions regarding inspections, documentation, availability, and submittal of an inspection log, at a frequency determined by the agency.

(2) For specific continuing obligations imposed during an interim action, remedial action, or case closure, the approval

letters shall contain any of the following that are applicable to the site or facility:

(a) Residual groundwater contamination. If there is residual groundwater contamination at the time of an approval, the final approval letter shall include a description of the extent of groundwater contamination.

(b) Residual soil contamination. If there is residual soil contamination at the time of a request for approval, the final approval letter shall include a description of the extent of soil contamination, and shall state that any soil that is excavated in the future from an area that had residual soil contamination at the time of case closure shall be sampled, analyzed, handled, and disposed of as a solid waste in compliance with applicable state and federal laws.

(c) Monitoring well abandonment. 1. Where there is a monitoring well that has not been abandoned as required under ch. NR 141 at the time of an approval, the approval letter shall include a description of which wells still need to be abandoned, the surveyed location, and state that the property owner at the time the well is located shall properly abandon the well in accordance with the requirements of ch. NR 141.

2. Where either a request for retaining a monitoring well for continued monitoring has been approved, or continued monitoring is required by an agency with administrative authority, the approval letter shall also require the property owner to verify the integrity of the well at least annually until use of the well is discontinued and the well is properly abandoned. The approval letter shall require that an inspection log be maintained on-site, unless otherwise directed by the agency, and require that the responsible party or property owner make the inspection log available for review by agency staff upon request.

3. Where responsibility for continued monitoring of a well is being transferred to another responsible party, the approval letter shall also require that the responsible party or property owner not abandon the specified well at that time.

Note: Typically, when responsibility for a monitoring well is shifted to another responsible party, that party also becomes responsible for well abandonment in the future.

(d) Building, cover or containment structure for protection of groundwater. For sites or facilities where there is residual soil contamination beneath a building or a cover, such as concrete or asphalt pavement, a soil cover, or composite cover, or within an engineered containment structure, that exceeds residual contaminant levels based on protection of groundwater as determined under ch. NR 720, that would pose a threat to groundwater if the building, cover, or containment structure were removed, the approval letter shall include a description of the residual contamination and the location of the building, cover or containment structure, and shall require the property owner to take any steps necessary to ensure that the building, cover, or containment structure will function as intended, to protect the groundwater, as required by the applicable performance standard. The approval letter shall also require the property owner to maintain and repair or shall require the property owner to notify the agency prior to replacing the building, cover, or containment structure with a structure of similar permeability or with a cover that is protective of the new use until such time as further investigation demonstrates that the concentration of contaminants no longer exceeds residual contaminant levels that protect the groundwater, as determined under ch. NR 720.

(e) Building, soil cover, cover or containment structure for prevention of direct contact with soils. For sites or facilities where a building, or an engineering control, such as a soil cover, cover, or engineered containment structure is required to be maintained in order to prevent direct contact with contaminated soil within 4 feet of the ground surface that exceeds residual contaminant levels as determined under ch. NR 720, the approval letter shall include conditions which require the property owner to ensure that the building, soil cover, or cover such as concrete or asphalt pavement, or a composite cover, or engineered containment structure will be repaired and maintained until it is no longer needed. The approval letter shall include a description of the residual contamination and the location of the building, soil cover, cover, or engineered containment structure, and shall restrict the use of the land where the building, soil cover, cover, or engineered containment structure is located to ensure that the building, soil cover, or cover, will function as intended, to prevent direct contact, as required by the applicable performance standard. The approval letter shall also require the property owner to maintain and repair or shall require the property owner to notify the agency prior to replacing the building, soil cover, cover, or engineered containment structure with a structure of similar permeability or with a cover that is protective of the new use until such time as further investigation demonstrates that the concentration of contaminants no longer exceeds residual contaminant levels that protect human health from direct contact, as determined under ch. NR 720.

(f) Structural impediment. For sites or facilities where a building or other structural impediment at a site or facility has prevented the completion of an investigation to determine the degree and extent of residual contamination, or the completion of a remedial action, the approval letter shall include a description of the general location of the residual contamination and shall require the property owner to notify the agency and then conduct an investigation of the degree and extent of contamination at such time that the removal of structural impediments makes the formerly inaccessible contamination accessible.

(g) Industrial residual contaminant levels. For sites or facilities where industrial residual contaminant levels under ch. NR 720 have been applied for closure, the approval letter shall include a condition that restricts the use of that property to an industrial land use until non-industrial soil cleanup standards are achieved in the future through natural attenuation or additional remediation.

(h) Vapor mitigation system for sites where sub-slab vapor levels or other vapor related sample results attain or exceed the vapor risk screening level. The agency may require installation and operation of a vapor mitigation system for sites or facilities where sub-slab vapor levels or other vapor related sample results attain or exceed the vapor risk screening level. The approval letter shall include conditions which require the property owner to maintain the system until it is no longer needed. The approval letter may include conditions which require maintenance of certain structural features of existing buildings. The approval letter shall include conditions which require the immediate repair and replacement of system components that fail.

(i) Vapor mitigation system where compounds of concern are in use. The agency may require installation and operation of a vapor mitigation system for sites or facilities where the site is using the compounds of concern in their daily operations, in

accordance with par. (h). The agency may require restrictions on the use or occupancy of the property to ensure that closure will be protective. The approval letter shall require notification of the agency and evaluation of the vapor intrusion pathway prior to changing use to a residential setting. The approval letter shall include a description of the type and location of the residual contamination.

Note: This would include sites or facilities where closure was based on worker exposure conditions, which then change to a different use, with different exposure assumptions.

(j) Vapor mitigation system for sites where vapor intrusion is of concern due to hydrogeologic conditions. The agency may require installation and operation of a vapor mitigation system and any other systems necessary for the proper operation of the vapor mitigation system, for sites or facilities which present a vapor risk, based on site-specific hydrogeologic circumstances. The approval letter shall identify the specific hydrogeologic conditions and a description of any other system necessary for the proper operation of the vapor mitigation system.

Note: This may include sites where contaminated groundwater enters the structure, or sites where the moisture content of soils below the slab is high or sub-slab samples are difficult to obtain, but where other conditions indicate the potential for vapor intrusion.

(k) Site-specific exposure conditions. The agency may restrict the use or occupancy of the property for sites or facilities based on specific exposure assumptions for vapor intrusion, to ensure that human health is protected. The approval letter shall include the specific exposure assumptions on which the closure decision was based.

Note: This may include non-residential settings; sites or facilities where certain commercial or industrial exposures were applied at the time of closure, which later change to a residential setting, such as single or multiple family residences, or educational, child, or senior care facilities, where a residential exposure would apply.

(L) Potential for future exposure to vapors. For sites or facilities where residual soil or groundwater contamination from volatile compounds exists, but where no building is present, the agency may require protective measures to eliminate or control vapor intrusion into a future building. The approval letter may include conditions requiring that the agency be notified prior to any building construction, and a requirement that appropriate vapor control technologies be used in the construction of any building, unless an assessment is conducted which shows that the residual contaminant levels are protective of the new use.

Note: The potential for vapor migration into a future building is dependent on the type of building and the planned use of the building. Building control technologies may include but are not limited to passive barriers, passive venting, sub-slab depressurization, sub-membrane depressurization, sub-slab pressurization, building pressurization, and indoor air treatment.

(m) Site-specific conditions. For sites or facilities where an approval is requested, and where the agency determines that there are site-specific circumstances that warrant site-specific closure conditions, the approval letter shall specify the exposure assumptions, use or occupancy restrictions, and necessary maintenance and notification of the agency if conditions change such that the exposure assumptions used no longer apply to the site, facility or property. Site-specific circumstances may include but are not limited to situations where contamination remains in media other than soil, groundwater, or vapors; or

exposure and migration pathways not otherwise addressed make a continuing obligation necessary to adequately protect human health, safety, or welfare or the environment. If there is contamination remaining in media other than soil, groundwater, or vapor, the approval letter shall also state that any sediments or other solids excavated in the future from an area that had residual contamination at the time of closure shall be sampled, analyzed, handled, and disposed of in compliance with applicable state and federal laws.

NR 727.17 Continuing obligations; maintenance and audits.

(1) AUDITS. The department may conduct audits of continuing obligations at any time to review whether a person that is responsible for compliance with continuing obligations is meeting the requirements of any of the following:

(a) Chapters NR 700 to 799 and chs. 289, 291, and 292, Stats.; and

(b) Any reports, plans, and other submittals required under chs. NR 700-799 relating to the continuing obligations; and

(c) Any conditions of approval issued by the department under chs. NR 700-799 relating to the continuing obligations.

(2) INSPECTIONS. (a) The department may, in writing, direct persons responsible for compliance with continuing obligations to inspect continuing obligations if any of the following criteria apply:

1. An engineering control is present;

2. A vapor mitigation system is present;

3. A point of entry treatment system is present; or

4. Any response action requiring an operations, monitoring, and maintenance plan was taken.

(b) Persons performing inspections under par. (a) shall complete an inspection within 90 days of a department request, unless otherwise directed by the department.

(c) Persons performing inspections under par. (a) shall submit a continuing obligation inspection report to the department within 60 days of the inspection and shall include all of the following in the report:

1. Photos.

2. An inspection log.

3. Any activities required of the owner, occupant, or responsible party under the operations, monitoring, and maintenance plan.

4. A description of the inspection findings including deficiencies, and any repairs or remedies that were made or will be made.

(d) Persons making repairs or remedies following a finding of deficiencies shall submit written documentation describing repairs or remedies to the department within 60 days of completion.

(3) DATABASE. The department may record information submitted under this section on the department database.

Note: Persons found by the department to be noncompliant under this section may be subject to enforcement and compliance provisions under ch. NR 728 and any fees, enforcement, and penalties provisions under ch. 292, Stats.