

**Applicability of Statute 292 and NR 700 Administrative Rule Series to Contaminated
Sediment
Sediment EAC Issue Papers
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Issue: Does Wis. Stats. § 292 apply to response actions taken to investigate and remediate contaminated sediment? If so, does chs. NR 700 to NR 754, Wisconsin Administrative Code (Wis. Adm. Code), series apply to actions taken to investigate and remediate contaminated sediment?

Background:

In 1994, Wis. Admin. Code § NR 700.03 was promulgated which defines the following:

(18) “environment” to mean 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.

(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.

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

(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.

The RR program has for many years investigated and cleaned up a number of contaminated sediment sites (e.g., manufactured gas plant facilities) in accordance with Wis. Stats. §292 and the NR 700 rule series.

In 2013, the legislature added a reference to “sediment” in the off-site exemption provisions of Wis. Stats. §292.13. In 2016 the legislature added a definition of “sediment” to Wis. Stats. §292.01; it also modified Wis. Stats. §§ 292.12 to reference “sediment” with respect to listing sites with residual contamination on the DNR’s database. Finally, the explicit exemption provided in s. 292.15, Wis. Stats., regarding contaminated sediment in a Voluntary Party Liability Exemption situation seems to solidify the fact that ch. 292, Wis. Stats., and chs. 700 to 754, Wis. Adm. Code, apply to sediment, as an environmental media.

Decision:

DNR's legal services has determined that Wis. Stats. §292 and the NR 700 administrative rule series applies to response actions taken by responsible parties and/or the DNR to address hazardous substance discharges or environmental pollution that have contaminated the waters of the state, including contaminated sediments.

Based on components of each of the above definitions and other provisions in state law, ch. 292, Wis. Stats., and chs. NR 700 to 754, Wis. Adm. Code apply to contaminated sediment.

Additionally, unless exempted by rule or statute, all or portions of chs. NR 700 to 754, Wis. Adm. Code, apply to the following parties, acting pursuant to chs. 289 or 292, Wis. Stats., to address discharges of hazardous substances or environmental pollution: (a) a Responsible Party taking the actions, (b) a Voluntary Party taking the action(s) under Wis. Stats. §292.15, (c) DNR taking the action as a Responsible Party, and/or (d) DNR using state funds to pay for all or a portion of taking the action because a Responsible Party is unable or unwilling to take the action. When actions are taken by any of these parties, pursuant to chs. 289 or 292, Wis. Stats., DNR has legal authority to apply these NR 700-related actions to different types of environmental media, including contaminated sediment, except where there are explicit exemptions.