Numeric Sediment Clean-up Guidelines
Sediment EAC Issue Papers
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Recommendation: Establishing Numeric Sediment Clean-up Guidelines for NR 700 Clean-up Actions

Background:

Wis. Stats. § 292 provides the DNR with authority to compel response actions at situations involving a discharge of a hazardous substance or the presence of environmental pollution impacting the air, lands or waters of the state.

The DNR has the following authority to address contamination that is impacting the air, land or waters of the state:

Soil: Presently, there are soil cleanup standards established by administrative code in Wis. Admin. Code § NR 720. These promulgated standards are protective of both direct contact and the groundwater migration pathway. The direct contact standards rely on a land use classification of industrial and non-industrial. Wis. Adm. § NR 720 also allows the responsible party to: (1) establish a site-specific cleanup number; (2) utilize a performance standard (e.g., engineering control); or (3) conduct a risk assessment if approved by the DNR.

Groundwater: For groundwater contamination situations, Wis. Stats. § 160 and Wis. Admin. Code § NR 140 apply to response actions. This is clearly stated in Wis. Admin. Code NR § 722.09(2)(b).

Surface Water and Wetlands: Wis. Admin. § NR 722.09(2)(c) and (3) apply to sites undertaking a response action to address a hazardous substance discharge or environmental pollution impacting surface water or wetlands.

Air/Vapor: Air discharges – both within a building and into the environment – must be addressed in accordance with Wis. Admin. Code § NR 722.09.

Sediment: Wis. Admin. § NR 722.09(2)(c) and (3) allow the DNR to require the cleanup of contaminated sediment that has been impacted by a discharge of a hazardous substance or environmental pollution. Presently, DNR does not have promulgated, sediment cleanup standards, but does have authority to establish those on a site-by-site basis, in Wis. Admin. Code §§ NR 722.09(2)(c) and (3).

In 2003, the Department published guidance entitled "Consensus-Based Sediment Quality Guidelines: Recommendations for Use & Application (DNR Publ. # WT-72-2003. The guidelines assist in making initial evaluation of sediment sampling results, but are not intended as clean-up numbers. The guidelines are one line of evidence along with other information and data to support sediment management decisions for a site in a weight of evidence approach.

Proposal:

Using its authority in Wis. Admin. Code § NR 722.09(2)(c) and (3), DNR plans to develop guidance that would have numeric cleanup guidelines that responsible parties could elect to use for more simple or straightforward sediment cleanups. These numbers would be based in guidance and would not be enforceable. The numeric guidelines developed would be analogous to the Wis. Admin. Code § NR 720 residual cleanup levels for soil or NR 140 enforcement standards for groundwater, as far as those are clean-up levels.

Also potentially available to responsible parties would be other options that may address Wis. Admin. Code § NR 722 obligations, such as engineering controls, sediment covers or development of a site-specific numeric standard under Wis. Adm. Code § NR 722.09(2) and (3). It is important to consider that any action taken in a waterway must be reviewed and permitted under Wis. Stats. §30.

Further, the DNR *will not* be developing the following types of numeric guidelines as part of this effort:

- numeric guidelines pursuant to Wis. Admin. § NR 706 for "reportable" concentrations of hazardous substance or environmental pollution. Reporting to the Department will be determined on a case-by-case basis as it is for other contaminated media involving historical spills or environmental pollution.
- numeric guidelines for what concentration of contaminants in sediment trigger a Wis. Admin. Code § NR 716 site investigation. The DNR will use the criteria established in Wis. Admin. § NR 716.05 to determine the necessity of a site investigation, based on the complexity of the situation.