

Structural Impediments (May 30, 2017)

Issue: Provide guidance related to steps that can be taken to clarify under what conditions structural impediments limit effective sediment site investigation and/or remediation, as well as continuing obligations needed at these sites.

Background: Structural impediments in relation to sediments are structures or other objects in a waterway that cannot be moved and limit the ability of a responsible party to fully investigate or remediate contamination from a site. Structural impediments typically encountered at sediment sites include utility lines (i.e. gas, sewer, fiber optic and other cables), abutments, culverts, pilings and piers associated with bridges, railways, roadways and seawalls (bulkheads), and could include sensitive archaeological/historical sites. In some cases engineering controls installed for one site may be a structural impediment for another project. For instance, an engineered cap may be an impediment to future sampling, since the act of sampling could undermine the control.

In some cases, the impediment can be temporarily or permanently relocated to allow for work in the area to commence, such as the large scale Legacy Act remediation project on the Kinnickinnic River in Milwaukee. Several cables were replaced to allow for dredging activities, and landowners replaced unstable seawalls to allow for deeper dredging adjacent to the walls. The cost of addressing the impediments in this case allowed for a better clean up for the long-run. However, there may be sites where the cost of or delays associated with moving or replacing a structural impediment may outweigh the benefit to the project.

According to § 292.12 (2)(b) Wis. Stats., DNR has the authority to “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” as a condition of approving an interim action, remedial action, LGU action under 292.11(9)(e) or case closure.

If it is determined that a structural impediment has limited the ability of a responsible party to complete a site investigation or remedial action, then continuing obligations addressing the impediments will be required at the site as a condition of approving an interim or remedial action or case closure.

Type of changes (admin, legislative, rule, etc.):

Resources needed to implement:

Guidance should be developed for internal and external audiences to provide appropriate steps to take to address structural impediments encountered at a site. For instance, if a structural impediment is hampering a responsible party from conducting a complete site investigation, this must be documented and reported as part of the site investigation. Continuing obligations will be imposed that require completing investigation if the impediment is removed in the future.

If, during design and/or implementation of a remedial action a structural impediment interferes with completing a thorough clean up, then the residual contamination considered to be left inaccessible by the impediment must be documented, and continuing obligations imposed, including documentation on BRRTS and RR Sites map.

Guidance will describe a process for determining if something is truly an impediment, and provide criteria and procedures for addressing the impediment either during the site investigation, interim action, remedial action, case closure or as a continuing obligation under § 292.12 (2)(b) Wis. Stats.

Comments: