

ISSUE: Defining “Continuing Obligations”

Rule Subgroup: Act 204 – CO definition

BACKGROUND

The department created a definition within rule for the term “continuing obligations” as part of a set of rule changes that became effective in 2013. Wis. Admin. Code ch. NR 714 defines the term, “continuing obligations”, as it is used with the chapter, as follows:

“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 (Wis. Admin. Code § NR 714.03(2)).

2015 Wis. Act 204 (“Act 204”) made several changes to Wis. Stat. ch. 292 that affect the conditions and limitations that may be imposed at a site with residual contamination as part of a department approval under Wis. Stat. s. 292.12(2), which are referred to in code as “continuing obligations” pursuant to the definition above. Following these revisions, the RR program is considering proposing revisions to the definition of the term “continuing obligations” that would (1) move the definition to Wis. Admin. Code ch. NR 700 such that it applies to all code chapters through the NR 700 rule series where the term is used, and (2) to ensure consistency with Act 204 revisions to Wis. Stat. s. 292.12(2) as well as consistency with Wis. Stat. ch. 292 overall.

PROPOSED CHANGES

The changes listed above are discussed in greater detail below.

1) Move the definition of “continuing obligations” from Wis. Admin. Code ch. NR 714 to Wis. Admin. Code ch. NR 700.

The definition of “continuing obligations” provided by Wis. Admin. Code § NR 714.03(2) applies only to ch. NR 714; however, the term is used in other code chapters, including in chs. NR 714, NR 722, NR 725, NR 726, and NR 727. RR program will consider relocating the definition to the section of definitions ch. NR 700 that apply to all chapters.

2) Ensure consistency with Wis. Stat. ch. 292.

Act 204 made several changes to when and how continuing obligations can be imposed and met. Act 204 added “interim action” approvals to the list of approvals during which the department can impose conditions, limitations, and obligations at a site with residual contamination. It also added specific requirements relating to persons and property for those subject to conditions imposed by DNR under § 292.12(2). RR program will consider revisions to the definition of “continuing obligations” to ensure that it accurately characterizes the statutory obligations that may be imposed by the department under Wis. Stat. § 292.12(2) and that it clearly encompasses conditions, obligations, and limitations imposed by other statutory sections and agreements entered into under those sections.

AFFECTED RULE CHAPTERS

NR 700, NR 714, NR 722, NR 725, NR 726, and NR 727

OTHER RELATED RULE REVISIONS

Comments on this white paper may be sent to DNRRRNR700input@wisconsin.gov.

Act 204 – Continuing Obligations for Interim Actions (August 6, 2019, Rule Development Meeting)

Act 204 – Rights and Responsibilities for Owners and Occupants (August 6, 2019, Rule Development Meeting)

COMPARABLE STATE OR FEDERAL POLICIES

n/a

DISCUSSION OF POTENTIAL ECONOMIC IMPACTS

n/a

COMMENTS
