

DRAFT rule revisions for 4/9/2019 Rule Development Meeting

Comments on this draft may be sent to DNRRNR700input@wisconsin.gov.

Subject matter (group/subgroup): Act 204 / database listing, fees, notifications (second draft)

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Changes (include treatment, list in order of rules):

NR 708.16 is created to read:

NR 708.16 Department database requirements and fees for interim actions with 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 ss. 292.12 (2) (a) to (c), Stats. for the approval of an interim action and any information required under s. 292.12 (2) (d) Stats. for the approval of an interim action.

(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 by ch. NR 749 to the department.

(4) Responsible parties shall comply with the documentation requirements listed in pars. (a) through (h) unless otherwise directed by the department:

(a) Submit an interim action report, in compliance with NR 708.15.

(b) Provide the geographic position of the property in accordance with the requirements of s. NR 716.15 (5) (d), on which a response action was taken, as well as for any other properties within the contaminated site boundaries.

(c) Include one or more photographs documenting the condition and extent of the feature at the conclusion of the response action required by the department for sites or facilities with an engineering control 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;. Pertinent features shall be visible and discernible. Photographs shall be submitted with a title related to the site name and location, compass direction of photograph, and the date on which it was taken.

(d) Provide a copy of the most recent deed which includes the legal description of each property, except for contaminated public-street or highway rights-of-way or railroad rights-of-way unless the source of the contamination is in the right-of-way. If the source of contamination is in the right-of-way, that right-of-way will be listed on the department database as a separate property.

(e) Provide 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.

(f) Submit the parcel identification number or numbers for each property.

(g) Provide 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 par. h.

(h) Include, 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

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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.

NR 714.05 (1) is amended to read:

NR 714.05 (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. The department shall include on the database any legally enforceable agreements entered into pursuant to s. 292.12 (5) or 292.12 (5m), Stats.

NR 722.17 (1) is amended to read:

NR 722.17 (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 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 ss. 292.12 (2) (a) to (c), Stats. for the approval of a remedial action and any information required under s. 292.12 (2) (d) Stats. for the approval of a remedial action.

NR 725.01 is amended to read:

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, or to approve ~~a~~an interim or remedial action plan which 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.

NR 725.02 is amended to read:

NR 725.02 Applicability. (1) This chapter applies to persons seeking 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, ¹ or persons receiving approval of an interim action plan under ch. NR 708 or a remedial action plan under ch. NR 722, when the department determines that notification is necessary.

NR 725.05 (2) (m) is created to read:

NR 725.05 (2)(m) An engineering control is being used to address contaminated sediment.

NR 725.07 (1) is amended to read

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

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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 shall be altered to fit the situation, as applicable. Notifications sent before a person applies for case closure at a site with residual contamination shall include, at a minimum, a description of the type of residual contamination and the location and description of any engineering control or sediment cover on the site.

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.

NR 726.07 is amended to read:

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. At a minimum, the department shall include on the database any requirements, limitations, or conditions imposed under ss. 292.12 (2) (a) to (c), Stats. when issuing a case closure letter and any information required under s. 292.12 (2) (d) Stats. when issuing a case closure letter.

(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 ch. NR 708, in a remedial action plan approval under s. NR 722.15, or in a closure approval under ch. NR 726. Continuing obligations will be listed in the database at the time of approval.

NR 726.11 (2m) is created to read:

NR 726.11 (2m) Plan, proof of financial responsibility and compliance schedule for sites or facilities with contaminated sediment.

(a) Responsible parties or other persons requesting closure at a site or facility where an engineering control was utilized to address contaminated sediment shall submit to the department the following documents:

1. A plan and compliance schedule and proof of financial responsibility for maintenance of an engineering control.

2. A plan, a compliance schedule and proof of financial responsibility for an investigation of the extent of contamination and the performance of any necessary remedial action if a structural impediment is subsequently removed that had prevented the responsible party from completing the investigation or remedial action at the site or facility.

(b) The department shall include this information on the database in accordance with s. 292.12(3).

NR 726.11(3m) is created to read:

NR 726.11 (3m) Legally enforceable agreement for continuing obligations at sites or facilities. The responsible party shall provide to the department a copy of any legally enforceable agreements entered into pursuant to s. 292.12 (5) or 292.12 (5m), Stats. for inclusion in the department's database.

NR 726.11 (4) is amended to read:

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NR 726.11 (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, except that~~ 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 unless the source of the contamination is in the right-of-way. If the source of contamination is in the right-of-way, that right-of-way will be listed on the department database as a separate property.

~~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/rrsm.html>.

Note to readers: further revisions may be made to Wis. Admin. Code § NR 726.11 as staff continue to develop rules relating to the requirements at Wis. Stat. § 292.12(2)(d) that were added by 2015 Wis. Act 204 and relate to planning and financial responsibility requirements for engineering controls and structural impediment removals at contaminated sediment sites.

Plain language explanation/analysis:

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The rule changes above are all changes to code that will be proposed to achieve consistency of the code with the changes that 2015 Wis. Act 204 made to Wis. Stat. §§ 292.12 and 292.15 regarding database listing, fees, and notifications.

Comparable state or federal rules or policies:

Not applicable.

Economic impact comments:

The rule changes above are all direct results of statutory revisions and do not incur economic impacts.