

Rule Development Meeting August 6, 2019

Remediation & Redevelopment Program



White Paper: Definition of “Continuing Obligations”



Proposed Rule Revisions - Drafting Update

Molly Schmidt

August 6, 2019

CO Definition – Rule Revisions

- Move from ch. NR 714 to ch. NR 700
- Ensure consistency with ch. 292





Next Steps

- First draft rule: Dec. 3, 2019, Rule Development Meeting
- Second draft rule: Jan. 9, 2020, Rule Development Meeting
- Post-meeting comments may be directed to:
DNRRRNR700input@wisconsin.gov

White Paper: Continuing Obligations for Interim Actions



Proposed Rule Revisions - Drafting Update

Michael Prager

August 6, 2019



Interim Action COs - Rule Revisions

- Interim action plan with fee – NR 708.12
- DNR response – NR 708.14
- Contaminated soil & IA plan in NR 718
- Notification requirements in NR 725
- CO requirements in NR 727





Next steps

- First draft rule: Dec. 3, 2019, Rule Development Meeting
- Second draft rule: Jan. 9, 2020, Rule Development Meeting
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White Paper: Rights and Responsibilities of Owners and Occupants at Sites with Continuing Obligations



Proposed Rule Revisions - Drafting Update

Michael Prager

August 6, 2019



Rule Revisions - Responsibilities of Owners and Occupants

Background:

- Act 204 made several changes to 292.12
- Non-interference with compliance with COs
- Owner or RP can enter in legally enforceable agreement to comply with COs
- Responsibilities for COs for sediment are RPs and not owner



Rule Revisions - Responsibilities of Owners and Occupants

- Add requirement to submit agreement to NR 708, NR 722, and NR 726
- Add non-interference to NR 727
- Source property documentation in NR 727
- Change NR 727 to be consistent with changes to responsibilities for COs
- Additional modifications



Next steps

- First draft rule: Dec. 3, 2019, Rule Development Meeting
- Second draft rule: Jan. 9, 2020, Rule Development Meeting
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First Draft: Rule Revisions for Financial Responsibility at Sites where an Engineering Control is used for Contaminated Sediments



Proposed Rule Revisions - Drafting Update

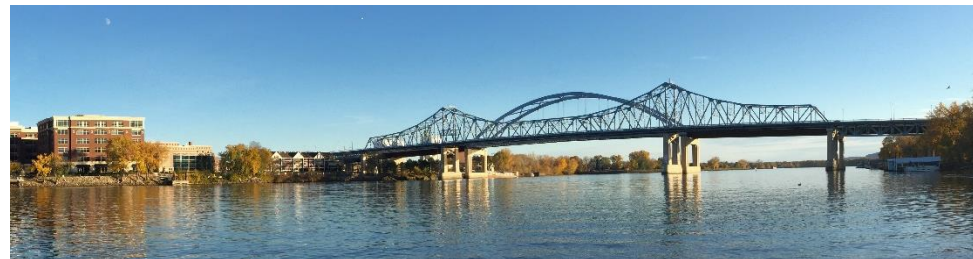
Molly Schmidt

August 6, 2019



Rule Revisions – ch. NR 756

- Background: statutory change
 - Act 204
 - Contaminated sediment sites with engineering controls
 - Plan and compliance schedule and proof of FR for
 - Maintenance of EC
 - SI and RA following impediment removal
 - Or both





Rule Revisions – ch. NR 756

- **Background: rule development**
 - March Rule Dev. Mtg - Intro
 - April subgroup meeting - Outline
 - May Rule Dev. Mtg – White paper



Rule Revisions – ch. NR 756

- Background: rule first draft
 - NR 520
 - FR methods & process
 - Differences
 - Plan and compliance schedule
 - FR costs



Rule Revisions – ch. NR 756

- First draft: overview
 - Plan and compliance schedule
 - FR requirements
 - FR methods
 - Calculating costs
 - Process



Rule Revisions – ch. NR 756

- First draft: plan & compliance schedule
 - Scheduled actions
 - Engineering analysis
 - Inspection and reporting
 - Length of requirements





Rule Revisions – ch. NR 756

- First draft: financial responsibility
 - Costs of planned EC maintenance
 - Costs of additional maintenance due to events or third-party actions
 - Costs of SI and RA following impediment removal
 - Costs of additional SI and RA following impediment removal



Rule Revisions – ch. NR 756

- First draft: methods of FR
 - Performance or forfeiture bond
 - Irrevocable letter of credit
 - Insurance
 - Other methods / financial commitments
 - Deposit with DNR
 - Escrow
 - Irrevocable trust



Rule Revisions – ch. NR 756

- First draft: determining costs of FR
 - List of minimum cost items
 - See lists at NR 756.07 (3), (4), and (5)



Rule Revisions – ch. NR 756

(3) Costs for engineering control maintenance.

- (a) Sampling, surveying, and monitoring, including: bathymetry survey, core sampling, pore water measurements, poling, surface water sampling, event-based monitoring, regular monitoring, and comparison with previous monitoring events. For the purposes of preparing cost estimates, all regular monitoring requirements specified in the plan and compliance schedule shall be assumed to apply over the entire period.
- (b) Modeling, including transport modeling, conceptual site modeling.
- (c) Chemical and physical analysis.
- (d) Repair, replacement of engineering controls. The expected operating life of all engineering controls shall be specified in the plan and compliance schedule. As each of these features reach the end of their anticipated operating life, the cost of their replacement shall be added to the estimate for the appropriate year of the proof period.
- (e) A 10% contingency.



Rule Revisions – ch. NR 756

(4) Costs for SI and remediation following impediment removal.

- (a) Site investigation.
- (b) Remedial action, including remedial action planning, design, and permitting. The length of time necessary to complete the remedial action shall be estimated and the cost of remedial actions for each year shall be presented.
- (c) Full dredge including disposal.
- (d) Regular annual monitoring and event monitoring.
- (e) The expected life of any structural impediments may be specified in the plan and compliance schedule. As each of these features reach the end of their anticipated life, the cost of the investigation and remediation shall be added to the estimate for the appropriate year of the proof period.
- (f) For structural impediments with no expected lifespan stated in the plan and compliance schedule, the costs of investigation and remediation following removal shall be calculated for the last year of the proof period.
- (g) A 10% contingency.



Rule Revisions – ch. NR 756

(5) Costs of events.

Where an assessment of the vulnerability of any engineering controls and structural impediments to any events or third party actions, or both, that may occur indicates that events or third party actions, or both, may affect attainment of the goals established in the plan and compliance schedule, costs shall include damage, destruction, deterioration, and failure of any engineering controls and structural impediments following an event, including, where applicable:

- (a) The costs of repair or replacement of any engineering controls used to address contaminated sediment;
- (b) The costs of site investigation and remedial action plan and design, including permitting, following the removal of any structural impediments;
- (c) Dredging and disposal for the area that may be affected by the unplanned event; and
- (d) The costs of post-event monitoring, operation, and maintenance.



Rule Revisions – ch. NR 756

- First draft: calculating costs of FR
 - Estimate costs based on type of FR req
 - Planned costs – in each year
 - Risks – for last year of FR period
 - Calculate based on selected FR method
 - Interest-bearing or non-interest-bearing



Rule Revisions – ch. NR 756

- First draft – process (part 1)
 1. RP request for approval
 2. DNR requires plan and compliance schedule and FR
 3. RP submits
 - IAP, RAP, or closure
 - Plan and compliance schedule
 - Cost estimates
 - FR methods
 4. DNR revises/responds



Rule Revisions – ch. NR 756

- First draft – process (part 2)
 5. RP resubmit with proof method
 6. DNR review and ackn/approve
 7. RP annual submittals & DNR response
 8. RP 10-yr submittals & DNR response
 9. RP reaches end of period, requests release
 10. DNR response/release



Rule Revisions – ch. NR 756

- First draft – compliance
 - Default or noncompliance
 - Funds may be taken and used by DNR
 - RP must notify DNR of bankruptcy
- First draft – questions?



Next steps

- Second draft rule: Oct. 1, 2019, Rule Development Meeting
- Post-meeting comments may be directed to:
DNRRRNR700input@wisconsin.gov



First Draft: Rule Revisions for Insurance and Financial Assurance at VPLE Sites with Contaminated Sediments



Proposed Rule Revisions - Drafting Update
Michael Prager
August 6, 2019



Rule Revisions – ch. NR 758

- Provide process to comply with requirements in Act 204 (Stats. § 292.15(2)(af) and (am)) regarding VPLE at contaminated sediment sites.
 - VPLE for sediment with insurance
 - Partial VPLE if site has sediment contamination





Rule Revisions – ch. NR 758

Overview of Process

1. Conduct Site Investigation & obtain DNR approval
2. Conduct Cleanup & obtain DNR approval
3. Obtain Closure Letter
4. Buy environmental insurance that includes required endorsement language and coverage
5. Provide certificate of insurance to DNR
6. Obtain Certificate of Completion
7. Maintain insurance coverage for 25 years



Rule Revisions – ch. NR 758

- Different than current VPLE insurance for natural attenuation
- Individual policies that are underwritten by insurer
- Work with any broker
- Any insurance company that meets financial requirements



Rule Revisions – ch. NR 758

Insurance Coverage

- Must Cover: pre-existing pollution in the sediment on, at or emanating from the property. Covers cleanup that DNR determines is needed because the conditions described in s. 292.15 (2) (b) 2. or 3, Stats., have occurred.
 - Cleanup failed
 - Contamination was missed in site investigation



Rule Revisions – ch. NR 758

Insurance Requirements

- A.M. Best rating of A X or higher
- Use insurance form from DNR that will have exact endorsement language
- Insurance beyond required coverage may be in policy (e.g. third party)
- If insurance is cancelled, terminated or insurance company goes bankrupt, must notify DNR and get replacement coverage
- DNR is named insured on policy
- Maintain insurance for 25 years
- If insurance requirements are not met, no longer have liability protection that goes with Certificate of Completion



Rule Revisions – ch. NR 758

Amount of Insurance Coverage

- Based on total spent on investigation and cleanup

Cleanup Cost	Policy Limit
< \$1.5 Million	\$1 Million
Between \$1.5 million and \$4 million	\$3 Million
Greater than \$4 million	\$5 Million



Rule Revisions – ch. NR 758

Financial Responsibility Other than Insurance

Other form of FR allowed if:

- Same level of coverage
- Same length of coverage
- Not mercury, PCBs or Dioxin
- Applicable requirements of NR 756.06 have been met



Rule Revisions – ch. NR 758

Waiver of Insurance Requirement

DNR may waive insurance requirement in exceptional circumstances if:

- Written explanation
- Not mercury, PCBs or Dioxin
- DNR concludes that risk or cost is low based on:
 - Volume
 - Concentrations
 - Ecological threats
 - Effects on human health



Rule Revisions – ch. NR 758

Partial Certificate of Completion

Partial COC for soil and groundwater cleanup if:

- All partial COC requirements in s.292.15(2)(am) have been met.
- SI complete including sediment
- Agreement to finish sediment cleanup
- Financial assurance to finish cleanup based on estimate and follow NR 756



Next steps

- Second draft rule: Oct. 1, 2019, Rule Development Meeting
- Post-meeting comments may be directed to:
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Second Draft: Rule Revisions Regarding Soil Standards



Proposed Rule Revisions - Drafting Update
Judy Fassbender
August 6, 2019



Rule Revisions - Soil Standards

- NR 720 calculates RCLs to meet compound specific target 1×10^{-6}
- Increasing risk targets => higher RCLs
- PAHs in soil samples often exceed RCLs, attributed to 'urban background'
- Other state standards and background studies examined to assess whether WI RCLs too conservative
- Revised Rule: Change target cancer risk goal to 1×10^{-5} (except naphthalene)



Rule Revisions - Soil Standards

- Cumulative requirement in NR 720
- Exposure assumptions and EPA Regional Screening Levels (RSL) calculator





Next steps

- This meeting is the last Rule Development Meeting for this item
- Post-meeting comments may be directed to:
DNRRRNR700input@wisconsin.gov

Thank you!

